(2003) 09 PAT CK 0110

In the Patna High Court

Case No : C.W.J.C. No. 8645 of 2003

Parle Biscuits (P) Ltd. APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 24-09-2003

Acts Referred:
Bihar Finance (Amendment) Act, 1985 — Section 13, 13(1)

Citation : (2003) 3 BLJR 2064 : (2004) 1 PLJR 572 : (2004) 138 STC 423

Hon'ble Judges : R.S. Garg, J;Nagendra Rai, J

Bench : Division Bench

Advocate : Ram Balak Mahto and N.K. Agrawal, Amrendra Kr. Sinha and D.N. Tiwari, for the Appellant; R.K. Dutta, SC IV, for the Respondent

Judgement

Nagendra Rai and R.S. Garg, JJ.—The petitioner, a company registered under the Indian Companies Act, 1956, has filed the present writ application for a direction to the respondents-authorities not to enforce Notification S.O, No. 154 dated 28-1-1985 issued under proviso to Section 13(1) of the Bihar Finance Act (hereinafter referred to as the Act) in relation to sale and purchase of packing materials by it which is covered by Section 13(1) (e) inserted in the Act by Bihar Finance Amendment Act, 1985 with effect from 1-8-1985. Prayer has also been made for quashing the order of Deputy Commissioner of Commercial Taxes, Pafna City, Patna, respondent No. 3, dated 7-4-2003 whereby prayer made on behalf of the petitioner to include in column 13 of the registration certificate the packing materials made out of papers, have been rejected. A copy of the aforesaid Notification and a copy of the order dated 7-4-2003 have been annexed as Annexures-6 and 5 respectively to the writ application.

2. The petitioner is a company registered under the Companies Act. Earlier it was running a business in the name of M/s. Parle Products Ltd. It is registered under the Act as well as the under Central Sales Tax Act. It is engaged in manufacture of biscuits and to pack the manufactured biscuits for sale and supply to the customers. it requires all kinds of packing materials including packing paper,

Cartoon and Corrugated Boxes. Earlier packing materials were exempted from payment of sales tax as the sale price was not included in the taxable turn over u/s 21 (1) of the Act. Section 21 (1)(c) was amended with effect from 1-8-1985 and the provision with regard to non-inclusion of sale price on account of sale of packing materials in the taxable turn over was deleted. However, amendment was made u/s 13(1) of the Act by adding Clause (e) providing concessional rate o(tax with regard to sales and purchases by a registered dealer of goods specified in the registration certificate issued u/s 14 of the Act as required by him in or for packing of goods which he sells. The petitioner applied for inclusion of all kinds of packing materials including packing materials made out of paper in the Registration certificate against column 13. The Deputy Commissioner of Commercial Tax, Patna City (E) Circle, respondent No. 3, by order dated 31-3-2002 added the packing materials, such as plastics and polybags, gunny bags, gum tapes, adhesives, complaint slips, tin containers & pouches etc. but rejected the prayer for including the packing materials made out of papers, such as cartoons, corrugated boxes etc. The petitioner thereafter filed a petition for inclusion of the said items which was rejected by order dated 7-4-2003 (Annexure-5) by respondent No. 3 on the ground that in view of the Notification dated 28-1-1985 (Annexure-6) papers of all kinds is excluded from the operation of Section 13 of the Act.

3. The stand of the State is that Section 13 of the Act provides for concessional rate of tax. However, the same is subject to the conditions mentioned in the said Section under the Act. According to the proviso to Section 13(1) of the Act the State Government may exclude any goods or class or description of goods from the operation of the said Section and the State Government accordingly issued a Notification dated 28-1-1985 amending the earlier notification dated 26-12-1977 and excluded the paper and packing materials made out of paper from the operation of Section 13 of the Act. The other packing materials will enjoy the benefit of concessional rates as provided u/s 13(1) (e) of the Act. Insertion of Clause (e) in Sub-section (1) of Section 13 of the Act with effect from 1-8-1985 Will not supersede the earlier notification, on the other hand, the said clause will apply to all the packing materials except papers and packing materials made out of papers.

4. Section 21 of the Act deals with taxable turnover, according to which, taxable turnover of a dealer shall be that part of his gross turnover which remains after making deductions therefrom as mentioned in Sub-section (1) thereof. Prior to 1-8-1985, the sale price of the goods for use in the packing of goods which the dealer used to sell inside Bihar or in course of inter-state trade and commerce were excluded from the taxable turn over.

5. Thus, the sale price of the packing materials for packing the goods used by the dealer prior to 1-8-1985 as stated above was exempted from payment of sales tax under the Act.

6. Section 13 of the Act provides special rate of tax on certain sales or

purchases. According to the said provision, concessional rate of sales tax has been provided with regard to sales or purchases. Originally the section was applicable with regard to sales or purchases under four categories, namely, 13(1) (a), (b), (c) and (d) provided a certificate is granted by the prescribed authority in the prescribed manner as mentioned in the aforesaid Section. Proviso to Sub-section (1) empowered the State Government to issue a notification from time to time to exclude any goods or class or description of goods from the operation of this Section. In exercise of the said power, the State Government issued a notification on 28-1-1985 (Annexure-6) excluding the paper (of all kinds) from the operation of the said section, The description of the goods as mentioned in the notification are as follows:

"12. Paper (of all kinds) including Paste Board, Mill Board, Straw Board, Card Board, Blotting paper; Cartridge paper, Paper bags, packing paper, cartoons, cards and Blank registers, Note books, Exercise books, Envelops labels, Letter pads, Writing tablets and flat files made out of paper."

7. Sections 13 and 21 as stated above were amended by Bihar Act, 1985 with effect from 1-8-1985. In Section 13(1) of the Act, Clause (e) was added after Clause (d) which runs as follows:

"(e) Sales to or purchases by a registered dealer of goods specified in his registration certificate issued u/s 14 as required by him in or for packing of goods which he sells."

8. Thus, with regard to sales or purchases of goods specified in registration certificate issued u/s 14 as required by a dealer in or for packing of goods were included for the purpose of giving concessional rate of sales tax.

9. Clause (c) of Sub-section (1) of Section 21 was also amended. The provision for excluding the sale prices of goods used for packing the goods sold by the dealer in the State of Bihar or in course of inter State trade of commerce from taxable turn over was deleted. The amendment of Clause (c) of Sub-section (1) of Section 21 provides inter alia, the words "for use in packing of goods which he sells inside Bihar or in course of inter-State trade of commerce" shall be deleted."

10. As a result of the amendment of Clause (c) of Sub-section (1) of Section 21, the sale prices of the goods used for packing materials which were not part of the taxable turn over was deleted and Clause (e) to Sub-section (1.) of Section 13 was added to impose concessional rate of sales tax with regard to sale or purchases of packing materials by registered dealer of goods specified in the registration certificate.

11. Prior to the said amendments, as stated above, the notification was already issued vide Annexure-6 excluding the paper of all kinds including packing materials made out of papers from the coverage of Section 13 of the Act.

12. The learned counsel appearing for the petitioner submitted that after the amendment by Bihar Act, 1985 with effect from 1-8-1985, the sale and purchase

of packing materials including packing materials made out of papers will attract only concessional rate of sales tax as provided u/s 13(1)(e) of the Act and not the higher rate of tax and the earlier notification dated 28-1-1985 issued under proviso to Section 13(1) of the Act excluding the paper of all kinds from the operation of Section 13 of the Act will not hold the field and will be treated to have been either nullified or repealed in view of insertion of Clause (e) in Sub-section (1) of Section 13 of the Act.

13. The learned counsel appearing for the State on the other hand submitted that insertion of Clause (e) to Sub-section (1) of Section 13 of the Act will not take away the effect of the notification already issued excluding the paper materials from the operation of Section 13 of the Act. Clause (e) to Sub-section (1) of Section 13 of the Act has to be read with the aforesaid notification. The benefit of concessional rate of sales tax will be available to all types of the packing materials minus packing materials made out of papers. He also submitted that though the notification issued in terms of the proviso to Section 13(1) of the Act was earlier in point of time to the addition to Clause (e) in Sub-section (1) Section 13 by Bihar Act, 1985 but that notification will cover the said clause also. The notification is valid and not nullified and will also apply to Section 13(1)(e) of the Act in view of the provisions contained u/s 27 of the Bihar and Orissa General Clauses Act, 1917.

14. On the basis of the rival contentions raised on behalf of the parties, the main question for determination in this case is as to whether the packing materials made out of paper will attract the concessional rate of sales tax as provided u/s 13(1)(e) of the Act or higher rate of tax in view of the exclusion of the packing materials made out of papers by notification dated 28-1-1985 issued under proviso to Section 13(1) of the Act as contained in Annexure-6 to the writ application.

15. The learned counsel appearing for the petitioner to substantiate his stand submitted that proviso to Sub-section (1) of Section 13 has been placed just after Clause (d) and thereafter Clause (e) has been added by the amendment of Bihar Act, 1985 and as such the notification issued under the proviso will not cover Clause (e).

16. The said submission has to be rejected for the simple reason that the amendments as contained in Annexure-2 to the writ application clearly show that Clause (e) to Sub-section (1) of Section 13 of the Act was just placed after Clause (d) and thereafter there is subordinate sentence and the proviso. Thus, the proviso to Section 13(1) governs not only Clauses (a) to (d) but also covers the newly inserted Clause (e) and as such the said submission has to be rejected as devoid of any substance.

17. The question is as to whether the petitioner is liable to pay concessional rate of tax or higher rate of tax depends upon the fact as to whether the notification issued under proviso to Section 13(1) of the Act earlier in point of time will be

effective and will also apply in case of Clause (e) to Sub-section (1) of Section 13 of the Act.

18. No doubt the notification dated 28-1-1985 was issued earlier but the object behind the issuance of the notification is clear and explicit. It excluded papers of all kinds including packing materials made out of papers from the benefit of concessional rate as provided u/s 13 of the Act. Though earlier it was applicable only with regard to existing provisions of Section 13 but it will equally apply to the newly added Clause (e) to Sub-section (1) of Section 13 of the Act brought on the statute book for the reason that that is also a part of Section 13 with regard to which the said notification was issued. The object of the notification was to exclude papers of all kinds from the operation of the Act and as such the packing materials made out of papers have to be excluded from the operation of Section 13 of the Act even if it is covered by Clause (e) to Sub-section (1) of Section 13 of the Act by virtue of the power in the State Government by proviso to Section 13(1) of the Act to exclude any goods from the operation of Section 13 of the Act. Clause (e) to Sub-section (1) of Section 13 of the Act has to be read with the notification dated 28-1-1985 and the exception has to be carved out in terms of the notification with regard to packing materials mentioned u/s 13(1)(e) of the Act. In other words Clause (e) to Sub-section (1) of Section 13 provides for concessional rate with regard to all types of packing materials required by a registered dealer mentioned in the registration certificate or for the packing of goods sold by him and the notification excluded the operation of the aforesaid provision with regard to papers of all kinds including packing materials made out of papers. It is also to be mentioned that the petitioner has not challenged the validity of the notification and have challenged only its applicability. Once the notification is valid and is a part of the Section then the same has to be given a full effect and the sale and purchase of goods though specified in any of the clauses of Section 13 (1) of the Act including newly added Clause (e) will not attract the concessional rate of tax if covered by notification.

19. The question as to whether the notification will be treated to have been impliedly superseded or annulled by virtue of subsequent addition of Clause (e) in Sub-section (1) of Section 13 of the Act has to be judged with reference to the provisions contained u/s 27 of the Bihar and Orissa General Clauses Act which provides for continuation of orders, notification etc. issued under enactments repealed and re-enacted. According to the said provision unless a different intention appears from the amended or re-enacted provision, the notification issued under the earlier enactment, if not inconsistent with the provisions of re-enacted shall continue in force and be deemed to have been issued under the re-enacted provisions unless and until it is superseded by issuance of fresh notification. Though the Selection does not speak of an amendment but that does not make any difference as the said provision is also applicable in the case of amendment. There is no real distinction between the repeal and amendment. The amendment is a wider term and it includes deletion or abrogation in existing statute, When the statute provision is amended to a limited/small extent then it

is termed as amendment and when the provision is extensively amended then it is called repeal and in that case after repeal there is re-enactment of the law. In this connection, reference may be made to the decision of the Supreme Court in the case of Bhagat Ram Sharma v. Union of India and Ors., reported in AIR 1988 Supreme Court 740, wherein in paragraphs 17 and 18 it was held as follows:

"17. It is a matter of legislative practice to provide while existing an amending law, that an existing provision shall be deleted and a new provision substituted. Such deletion has the effect of repeal of the existing provision. Such a law may also provide for the introduction of a new provision. There is no real distinction between repeal and an amendment. In Sutherland''s Statutory Construction, 3rd Edn., Vol. 1 at p. 477, the learned author makes the following statement of law.

The distinction between repeal and amendment as these terms are used by the Courts, is arbitrary. Naturally the use of these terms by the Court is based largely on how the legislatures have developed and applied these terms in labelling their enactments. When a section is being added to an Act or a provision added to a section, the legislatures commonly entitle the Act as an amendment.... When a provision is withdrawn from a section, the legislatures call the Act an amendment, particularly when a provision is added to replace the one withdrawn. However, when an entire Act or section is abrogated and no new section is added to replace it, legislatures label the Act accomplishing this result a repeal. Thus as used by the legislatures, amendment and repeal may differ in kind -addition as opposed to withdrawal or only in degree-abrogation of part of a section as opposed to abrogation of a whole section or Act; or more commonly, in both kind and degree-addition of a provision to a section to replace a provision being abrogated as opposed by abrogation of a whole section of an Act. This arbitrary distinction has been followed by the Courts, and they have developed separate rules of construction for each. However, they have recognised that frequently an Act purporting to be an amendment has the same qualitative effect as a repeal - the abrogation of an existing statutory provision - and have, therefore, applied the term ''implied repeal'' and the rules of construction applicable to repeals to such amendments."

"18. Amendment is, in fact, a wider term and it includes abrogation or deletion of a provision in an existing statute. If the amendment of an existing law is small, the Act professes to amend; if it is extensive, it repeals a law and re-enacts it. An amendment of substantive law is not retrospective unless expressly laid down or by necessary implication inferred."

20. There is nothing in Section 13(1)(e) of the Act which specially provides that earlier notification shall not cover Clause (e) of Section 13{1), nor the provisions of the notification is inconsistent with the amended provision nor there is anything in the amended provision to show that the earlier notification is superseded. Thus the said notification will continue and cover Clause (e) to Sub-section (1) of Section 13 of the Act also. As stated above, there is no question of inconsistency as Clause (e) of Sub-section (1) of Section 13 cover all types of

sales or purchases of packing materials where the notification makes out an exception of that and keeps out the packing materials made out of papers from the operation of this Section. This notification has neither become ineffective nor impliedly annulled or superseded as a result of insertion of Clause (e) in Sub-section (1) of Section 13 of the Act. The notification will apply equally like other clauses to Clause (e) of Sub-section (1) of Section 13 of the Act.

21. The Division Bench judgment of this Court in the case of Card Board Products v. The State of Bihar, reported in 1973 STC 438 (PAT) (Pat) referred by the learned counsel appearing for the petitioner has no application in this case as in that case the question for consideration was as to whether the sale of the Card board boxes by the assessee was subject to special sales tax under 5 of the Bihar Sales Tax Act read with relevant notification. It was held that in the notification card board boxes is not mentioned and as such card board boxes is not subject to special sales tax. The said judgment has no relevancy in the present case.

22. Thus, in our view, the decision taken by the authorities not to include the packing materials made out of papers, namely, packing paper, cartoons, corrugated boxes in the registration certificate for concessional rate of sales tax in terms of Section 13(1)(e) of the Act is valid one in view of the exclusion of those articles by notification dated 28-1-1985 issued under proviso to Section 13(1) of the Act.

23. In the result, there is no merit in this writ application and the same is dismissed.