

(2005) 11 PAT CK 0051
In the Patna High Court
Case No : Tax Case Nos. 6 and 7 of 1990

Radhe Krishna Oil Mills Pvt. Ltd.

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 18-11-2005

Acts Referred:

Citation : (2005) 11 PAT CK 0051

Judgement

J.N. Bhatt, C.J.—This reference is necessitated pursuant to an observation made by a Division Bench of this Court, in its order recorded on 16.7.2004, wherein, in the light of difference between English and Hindi versions of the notification dated 26.10.1977, apparently, conflict was conceived and felt between two following Division Bench decisions of this Court.

2. In the case of Mahabir Flour Mills Vs. Commissioner of Commercial Taxes and Another, it came to be held that English version will prevail over Hindi version of the notification with reference to the liability for payment of sales tax in respect of "oil cake" in Entry No. 35 of the notification No. 3320, dated 9th March, 1978, as it provides exemption from payment of sales tax under the Bihar Finance Act, 1981 (In short "Act").

3. Whereas on the other hand, in another Division Bench decision of this Court, rendered in the case of Rajendra Prasad Vs. The Chancellor, Magadh University, and Others, it came to be held that since the amendment was in Hindi, such Hindi version will prevail over English transaction. This is the root cause and the genesis, which, upon observation and feeling of the 3rd Division Bench that in view of the aforesaid two conflicting judgments of the Division Bench, a larger Bench is required to be constituted, we have been called upon to consider the aforesaid question raised in the said reference judgment,

4. We have heard the learned counsel for the parties. During the course of submissions, before us, on a pointed query, raised to the learned counsel for the asses-see, following was replied and stated at the Bar-

(i) That the assessee, a partnership firm, has become defunct, as it has been dissolved long before and the counsel will not be able to inform this Court that any body can be called to give any appropriate instructions in the matter; and

(ii) Not once, but more than once, it was the stand taken, and again, let it be recorded that even if we were to hold that the "oil cake" is a "cattle feed" and, therefore, got exemption in relation to the payment of sale tax for the relevant assessment .period of 1982-83, as well as 1983-84, then also the question of refund of payment of tax, even if held to be not liable, would have assumed larger significance, in view of the landmark celebrated decision of the Apex Court in the case of Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others, wherein question of refund has been considered and various and alternative directions have been issued. It is not "ipso facto" therefore, unless the asses-see shows to the satisfaction of the revenue or the Court, as the case may be, on factual profile that the incident of tax and resultant amount of tax has not been passed on to the consumers, the same cannot be directed to be refunded in terms of the said decision in the case of "Mafatlal Industries Ltd." (supra).

5. After taking over all view of the facts, as well as, the resultant effect either way, we deem it necessary that such an academic or dead or avoidable reference need not be answered. We, therefore, hereby, state and direct that in view of the narrations of the facts from the statement at the Bar, in the foregoing paragraphs, we need not answer the question posed, which is academic and a dead issue. Again, it may be noted that for the assessment year beyond the assessment years, in question, exemption of the liability to pay tax on the "oil cake" has been removed. So, mainly, it pertains to the aforesaid two assessment years.

6. When there is conclusion of the reference by the larger Bench, ordinarily, we send back the matter to the reference Court for passing final order in terms of the decision rendered. However, in an exceptional situational reality, like one in case on hand it is open for this Court, per force, as a necessity, due to changed circumstances or by passage of time, while rendering the matter infructuous or academic, that a final decision is required to be recorded by the bench constituted, instead of sending it to the reference Court. It is, therefore, we resort to the latter exceptional course, in view of the peculiar circumstances and special reasons highlighted, "hereinabove, in our judgment.

7. The tribunal has upheld the assessment orders of the appellate authority. In other words, the liability to pay the sales tax has been confirmed by the order dated July 18, 1989, in the revision. It may also, be mentioned that against the order of the Tribunal, dismissing the revision against the appellate Court, the assessee moved the Tribunal, in revision, which also came to be rejected. Thereafter in a reference case bearing No. GY. 12& 13/89, reference order came to be passed, on 8,1.1990, by the Chairman of the Tribunal for the opinion on three questions articulated in the order seeking reference and, finally, concluding

that "Accordingly, the Tribunal seeks to refer the above questions of law to the Hon"ble High Court for favour of its views."

8. It is in these contextual fact situation in this reference in terms of Section 48 of the Bihar Finance Act, 1981, and in the peculiar facts and special circumstances, narrated hereinabove, when ordinarily, we decide a question of law and answer the reference accordingly, and send the matter back to the Tribunal, we think in the larger perception, and interest that we should not since it has become academic and non-yielding, or infructuous no reference would serve the purpose and Tribunal shall proceed, as if it was not pressed.

9. Accordingly, this reference shall stand disposed of. No costs.