
(2004) 07 PAT CK 0017
In the Patna High Court
Case No : CWJC No. 4573 of 1990

Saraswati Industrial Syndicate Ltd.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 20-07-2004

Acts Referred:

Bihar Finance Act, 1981 — Section 17(5)

Citation : (2004) 2 BLJR 1502 : (2005) 4 PLJR 753

Hon'ble Judges : S. Naiyer Hussain, J; Nagendra Rai, J

Bench : Division Bench

Advocate : Ramesh Kumar Agrawal, Gopi Krishen and Anupa Nand, for the Appellant; A.K. Singh, SC III and Nirmala Kumari, JC to SC III, for the Respondent

Final Decision : Allowed

Judgement

Nagendra Rai and S.N. Hussain, JJ.—The present writ application has been filed by the petitioner for quashing the order dated 10.5.90 passed by the respondent No. 3 u/s 17 (5) of the Bihar Finance Act for the assessment year 1.4.1984 to 30.4.1990 as well as for quashing the notice making demand of Rs. 2,51,084.24 on the basis of the assessment order.

2. The factual position is like this. The petitioner has a registered office at - Yamuna Nagar at Ambala (Haryana) and is engaged in carrying on the business of designing engineering and supplying of equipments including boilers for thermal power plant. One of the units of the petitioner has its office at Kolkata. There was an agreement between the petitioner and the Bihar State Electricity Board for supply of design, manufacture, erection and commission of one boiler at its Karbigahiya Thermal Power Station through Purchase Order dated 7.3.84 for Rs. 2,00,28, 75200. The cost was inclusive of erection, commissioning, civil designing and engineering works for Rs. 19,27,000/-

3. In terms of the agreement, boiler was supplied to the Board and as the

transaction was inter-state sale the matter was covered u/s 3A of the Central Sales Tax Act. There is no dispute so far the supply of boiler is concerned for that already tax has been paid by the petitioner in terms of the provision of Central Sales Tax Act. The controversy is only with regard to the amount regarding commissioning, civil designing and engineering worth Rs. 19,27,000/- which the assessee authority has treated as work contract and on that basis assessed the amount and imposed penalty that the firm was not registered under the provisions of Bihar Finance Act.

4. Learned counsel for the petitioner has raised two points; firstly, he submitted that erection work was never done by the petitioner and, as such, there is no question of payment of tax and penalty on that count and secondly, learned counsel has relied upon a judgment of this Court in the case of Larsen and Toubro Ltd., Mumbai v. The State of Bihar and Ors., (2004 (1) PLJR 350) in which this Court has held that Sub-clause (1) of Clause (a) of Section 21(1) read with Rule 13-A, did not make Sub-clause (1) fully workable because the manner and extent of deduction relating to any other charges has not been provided/prescribed. This Court further directed the State Government to make the provisions workable. The Court quashed the assessment order but held that the liability of dealer will survive and continue and he would be liable to be taxed after the provisions are made workable.

5. Learned counsel appearing for the State on the other hand submitted that the authorities have rightly assessed and imposed penalty. Learned counsel for the State further stated that the petitioner has not taken the recourse of revision.

6. So far the objection regarding the maintainability of appeal is concerned, once the case has been admitted then at this stage the writ can not be thrown out in view of the settled law. Accordingly, the said objection of the State is rejected.

7. coming to the merits of the case, it appears that the assessment order does not show that the authorities have gone into the question regarding the commissioning of boiler. This apart, this Court has already quashed the assessment order with regard to the works contract on the ground that the aforesaid provisions are not workable and directed that the assessment will survive after the provision is made workable. In that view of the matter, the impugned assessment order so far the work contract is concerned is set aside and the matter is remitted to the authority concerned to consider afresh in the light of the observation made above.

8. The writ application is, accordingly, allowed.