(1990) 02 PAT CK 0015

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 192 of 1988

Shewaram Hirwani and Another APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 02-02-1990

Acts Referred:
Bihar Sales Tax Rules, 1983 — Rule 13A, 26A

Citation : (1990) 1 PLJR 411 : (1990) 77 STC 55

Hon'ble Judges : N.P. Singh, J;N. Pandey, J

Bench : Division Bench

Advocate : Pawan Kumar and L.K. Tewary, for the Appellant; S.N. Jha, S.C.I., for the Respondent

Judgement

N.P. SINGH and N. PANDEY, JJ.—The main grievance which has been made on behalf of the petitioners in this writ application is that by introducing Rule 13-A of the Bihar Sales Tax Rules, 1983 (hereinafter referred to as "the Rules"), an arbitrary procedure has been introduced for ascertainment of percentage of cost incurred as labour charges in different types of works contract. According to the petitioners, what amount a contractor has spent over labour charges has to be determined with reference to individual contract.

2. A Bench of this Court in the case of Jamshedpur Contractors'' Association v. State of Bihar [1989] 75 STC 132 ; (1989) BBCJ 600, considered the validity of Rule 13-A aforesaid and observed :

"Thus it will be noticed that the rule provides that for different types of works in works contract, different percentage of labour shall be presumed to have been used and amount spent to that extent shall be deducted from the gross turnover. Tax is payable on labour charges under this rule. Under this rule even if the contractor might have spent more on labour charges than the prescribed percentage stated in the rule, the contractor shall not be entitled to claim deduction beyond what has been provided. In other words, tax is levied on labour charge. Neither sale nor purchase of any goods is involved when a contractor spends on account of labour. ''Labour'' cannot be said to be a goods even within the definition of ''goods'' in the Act. From the gross turnover, the total amount spent by the contractor as labour charges in execution of the works contract shall have to be excluded. Rule 13-A cannot be sustained and must be held to be ultra vires."

3. In view of the aforesaid judgment, now the assessment proceeding which is pending in the present case has to proceed ignoring Rule 13-A which has been declared as ultra vires and has to be completed in the light of the judgment aforesaid, read with the judgment of the Supreme Court in the case of Builders Association of India and Others Vs. Union of India (UOI) and Others, .

4. The assessing officer shall also consider the grievance of the petitioners in respect of tax-paid items like cement, steel, etc., which were used by the petitioners for the construction in question in the light of the judgments of the Supreme Court.

5. It will be open to the petitioners to urge before the assessing officer in respect of exemption from payment of tax on the ground of inter-State sale and purchase involved in the execution of the works contract. It will also be open to the petitioners to urge before the assessing authority in respect of the exemption from the payment of tax on goods supplied free of cost. However, we are not expressing any opinion on the merit of that argument ; that has to be considered first by the assessing authority.

6. On behalf of the petitioners it was submitted that in view of Rule 26-A authorising deduction "from all payments being made in respect of works contract executed" deductions are being made calculating the total bill of the works contract in question including payments over labour whereas deduction has to be made only in respect of materials used in execution of the works contract. The deduction under Rule 26-A should be made reading the words "from all payments being made in respect of works contract executed" to mean amount of consideration paid for the transfer of property in goods, whether as goods or some other form, involved in the execution of the works contract and shall not include the payments made on account of labour charge.

7. This writ application is, accordingly, disposed of.

