
(2010) 09 JH CK 0128
In the Jharkhand High Court
Case No : Writ Petition (T) No. 3951 of 2010

Sri Ram Sales

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 14-09-2010

Acts Referred:

Jharkhand Value Added Tax Rules, 2006 — Rule 3

Citation : (2010) 09 JH CK 0128

Hon'ble Judges : Bhagwati Prasad, C.J.;Narendra Nath Tiwari, J

Bench : Division Bench

Advocate : M.S. Mittal and N.K. Pasari, for the Appellant; Rajesh Shankar, S.C.I. and Dheeraj Kumar, JC to S.C.I, for the Respondent

Judgement

1. Heard learned Counsel for the parties.
2. The Petitioner before us is aggrieved by a notification issued by the Additional Commissioner, Department of Commercial Taxes, Jharkhand, Ranchi, dated 31.12.2007, produced herewith as Annexure-3. According to this notification, facility of getting a consolidated registration for the purpose of the Rules, is to be given to those dealers, whose payable tax is more than rupees one crore.
3. The learned Counsel for the Petitioner is aggrieved by this condition and he assails that this condition of "rupees one crore" payable tax is discriminatory and is beyond the scope of the legislative intent of the State, which has enacted Rule 3(x)(a) of the Jharkhand Value Added Rules, 2006 (hereinafter referred to as "the Rules"), whereby a provision has been made that those businessmen, who sells goods throughout the territory of the State and are having more than one place of business, then they can get a consolidated registration for the purposes of taxation. This is also being specified in Rule 3(x)(a) of the said Rules that such benefit would be provided only if the Commissioner or the officer, specially authorized in this behalf, thinks that doing so is necessary in the interest of revenue. Therefore, the very ambit of granting a consolidated registration was to be guided as per Rule 3(x)(a) of the said Rules, which is the principle

consideration in the interest of revenue. Nothing further could be provided by a circular.

4. The learned Counsel for the Petitioner emphasizes that the condition of payment of rupees one crore as tax is not such, which can be considered to have been envisaged as per the provisions of Rule 3(x)(a). According to him, it is in contradiction and in derogation of the Rules and therefore the same requires to be struck down and the application of the Petitioner for consolidated registration was required to be granted by the authority concerned.

5. To support his argument, he has placed reliance on a decision of the Supreme Court, rendered in the case of Bengal Iron Corporation and Anr. v. Commercial Tax Officer and Ors. reported in 90 S.T.C. 47. He has placed the following observation of the Supreme Court:

So far as Clarifications/ Circulars issued by the Central Government and/or State Government are concerned, they represent merely their understanding of the statutory provisions. They are not binding upon the Courts. It is true that those clarifications and circulars were communicated to the concerned dealers but even so nothing prevents the State from recovering the tax, if include such tax was leviable according to law. There can be no estoppel against the Statute. The understanding of the Government, whether in favour or against the Assessee, is nothing more than its understanding and opinion. It is doubtful whether such clarifications and circulars bind the quasi- judicial functioning of the authorities under the Act While acting in quasi-judicial capacity, they are bound by law and not by any administrative instructions, opinions, clarifications or circulars. Law is what is declared by this Court and the High Court - to wit, it is for this Court and the High Court to declare what does a particular provision of statute say, and not for the executive. Of course, the Parliament/Legislature never speaks or explains what does a provision enacted by it mean (See Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and Another, .

6. Apart from the aforesaid law, as laid down by the Hon"ble Supreme Court, the learned Counsel for the Petitioner has relied on another case, which has been decided by the Patna High Court in the matter of Pro Agro Seeds Co. Ltd. Vs. State of Bihar and Others , wherein the learned Counsel has placed reliance on the following observation:

Coming to the facts of the present case, it is clear that there is no dispute that for the last several years the Petitioner has been filing return and paying tax due according to the information furnished in the return at 4 per cent. It is also an admitted position that no final assessment has been made u/s 17 of the Act nor any step has been taken u/s 20 of the Act (escaped turnover detected before assessment.). The only material before the assessing authority to direct the Petitioner to pay the sales tax at 9 per cent was a direction of the Commissioner, as contained in annexure 3 to the writ application. Under the Act and the Rules, the Commissioner is not empowered to issue a direction to the authority

exercising quasi-judicial function. In that view of the matter, the aforesaid direction issued by the Commissioner cannot be a ground to issue a notice demanding sales tax at 9 per cent without assessment as provided under the provisions of the Act. The assessing authority, in our view, has exceeded its jurisdiction in making a demand, vide annexures 1 series, regarding amount of tax without making an assessment under the provisions of the Act. It is not a case that the aforesaid amount is due according to the information furnished in the return. It is also not the case that return has not been approved and action has been initiated u/s 20 of the Act after giving opportunity of hearing to the Petitioner. Thus, the impugned notices, as contained in annexures 1 series, are quashed. It is made clear that this Court is not expressing any opinion as to the rate of tax, which is to be paid by the Petitioner, It is for the assessing authority to consider the matter in terms of the provisions of the Act and determine the rate of tax in terms of the statutory provisions/instructions by taking independent decision without being influenced by the direction issued by the Commissioner, who, as we have held, has no authority in law to issue the said direction. It is also made clear that in case the assessing authority on final assessment finds that the information furnished in the returns were incorrect then the authority may take actions as provided under the Act

7. Learned Counsel for the Petitioner has further relied on another decision of the Hon'ble Supreme Court in the matter of Padinjarekara Agencies Limited Vs. State of Kerala, and has placed reliance on the following observation of the Hon'ble Supreme Court, wherein the Supreme Court has held:

In our view, the High Court has failed to consider the question of law, which arose for determination before it in Sales Tax Revisions Nos. 177-89 of 2007. As stated above, in this case, we are concerned with interpretation of various exemption notifications. We are not concerned with interpretation of Circular No. 16/98 dated 28.5.1998. We do not wish to express our views at this stage on the interpretation of the exemption notification(s). Suffice it to state that, in this case, we are not concerned with classification. In this case, we are concerned with the words and expressions used in the notification(s). This point has been missed by the High Court in its impugned judgment. It is no doubt true that the AO is bound by the directions issued by the Commissioner even with regard to the terms used in the exemption notification(s). However, as held in our earlier judgment in Kurian Abreham(P) Ltd., circulars/ orders issued by the Commissioner are not binding on the Assessee. Therefore, dehors the directives given by the Commissioner, it is open to the Assessee to claim the benefit of exemption/concession on the basis of various exemption notification(s) issued by the Government from time to time. We express no opinion on the interpretation of those notification(s). Suffice it to state that the Assessee was not bound by the orders/directions issued by the Commissioner to the AO, therefore, on the scope and effect to each of the above exemption notifications, the matter needs to be remitted to the AO for fresh decision in accordance with law. In other words, if the Assessee satisfies the terms and conditions mentioned in the

exemption notification, the Assessee would be entitled to the benefit thereunder notwithstanding the circular issued by the Board/Commissioner. This is on the principle mentioned hereinabove that such circular does not bind the Assessee if the Assessee demonstrates that it fulfills the conditions mentioned in the exemption notification

8. Learned Counsel for the Petitioner apart from alleging that the circular in question being not only contrary to Rule 3(x)(a), yet there is another provision in Rule-3 itself as Rule 3(xv), which requires that if in the circumstances the prescribed authority is not satisfied in respect of the application for consolidated registration, then before rejection, notice is required to be issued to the Petitioner and, therefore, also the order impugned is bad.

9. Learned Counsel for the Revenue per contra contested the claim of the Petitioner and submitted that the whole exercise has to be done for issuing a consolidated registration in the interest of revenue. This is an exception to the other provisions, because the Rule starts with a non-obstante clause and that being the exception, it has to be guided by sound provisions and fixing a ceiling of rupees one crore is intended to reduce the number of such applications, which may swell up and frustrate the whole functioning of the Commercial Taxes Department. In that view, it was considered appropriate that a reasonable classification be made by putting a limit of rupees one crore of payable tax for the purpose of consolidated registration.

10 .As regards the second contention of the learned Counsel for the Petitioner, it has been submitted by learned Counsel for the Revenue that there is no dispute regarding the amount of tax being paid by the Petitioner, which is less than rupees one crore. Since, there is no factual dispute in this regard, the notice u/s 3(xv) of the said Rules would have been a mere formality. When the basic condition is lacking and is not fulfilled by the Petitioner, notice u/s 3(xv) of the said Rules would not have improved the situation in favour of the Petitioner. The factual matrix in this case is admitted as the Assessee is paying less than rupees one crore and essential eligibility for the consolidated registration being absent, no prejudice appears to be caused to the Petitioner by not issuing notice under Rule 3(xv).

11. Having considered the rival contentions, we find that the said Circular is neither in derogation of the Rule nor any vested right of the Petitioner has been taken away. The said Circular only explains in the interest of revenue, which is life and soul of Rule 3(x)(a), Consolidated registration is only available when it is in the interest of revenue. The Circular cannot be said to be beyond the scope of competence of the Commissioner and in that view of the matter, the argument of the learned Counsel for the Petitioner that the impugned Circular is in derogation to the statutory Rules is without any substance. The decisions referred to and relied by learned Counsel for the Petitioner are rendered on different facts and the same are not applicable to the facts of this case.

12. The second argument also has no significance. It is an admitted fact that the Petitioner is not such a dealer, who is taxed to the tune of Rupees one crore and if he is not a dealer paying tax to the tune of rupees one crore then he lacks basic eligibility, according to the Circular, issued by the revenue. The application thus was by unqualified Assessee and the notice was not required. The second argument also fails.

13. Since both the arguments have no basis, we do not see any reason to entertain this writ petition. There being no force, the writ petition is, hereby, dismissed.