

**(1996) 01 PAT CK 0038**  
**In the Patna High Court**  
**Case No : C.W.J.C. No. 1118 of 1992 (R)**

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|---------------------------------------|------------|
| Steel City Beverages Ltd. and Another | APPELLANT  |
| Vs                                    |            |
| State of Bihar and Others             | RESPONDENT |

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**Date of Decision :** 18-01-1996

**Acts Referred:**

Bihar Sales Tax Rules, 1983 — Rule 42(7)  
Income Tax Act, 1922 — Section 10(2)  
Income Tax Act, 1961 — Section 32

**Citation :** (1996) 1 PLJR 868

**Hon'ble Judges :** D.P. Wadhwa, C.J; S.K. Chattopadhyaya, J

**Bench :** Division Bench

**Advocate :** S.B. Gadodia, for the Appellant; M.Y. Eqbal, for the Respondent

**Final Decision :** Allowed

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## Judgement

S.K. Chattopadhyaya, J.—The Petitioner No. 1, a Limited Company, being represented by its Director, Petitioner No. 2, Killol D. Kamani have moved this Court for a direction to the Respondents to grant permission under Rule 42(7) of the Bihar Sales Tax Rules, 1983 and exempt them from using Form No. XXVIII-B. A prayer was also made to issue atleast 500 permits in Form No. XXVIII-B during the peak season.

2. By interim order dated 2.4.92 while granting time to the State counsel to seek instruction, a direction was given to issue road permits/forms to the Petitioners without insisting upon them to deposit sales tax.

3. It appears that the Petitioners filed an application for grant of eligibility certificate under the provisions of rules on the ground that in view of the Resolution of the State Government in the Department of Industry dated 6th September, 1989, the Industry of the Petitioners qualifies for the benefit of the deferment scheme of the Sales Tax. On 13.7.1992 on the basis of this submission, this Court directed Respondent No. 4 to place the application before the District Level Committee for its disposal. The District Level Committee was

directed to dispose of the said application within two months. Pursuant to that order, the District Level Committee disposed of the application of the Petitioners by its order dated 9.1.95 holding that the industry of the Petitioners is entitled for deferment payment @ 90% on the investment in fixed assets. However, the Committee rejected the claim of the Petitioners for deferred payment on the investment made by the Petitioners by way of bottles and crates, electrification and tools on the ground that those are not plant and machineries. By filing an amendment petition, the Petitioners challenged the said order of the District Level Committee as contained in Annexure 8 to the amendment petition. Thus, the Petitioners limited their prayer in the writ application to the extent of the order by which the Petitioners have been denied the benefit of deferment tax in respect of bottles, crates, electrification and tools.

4. It appears that a counter affidavit was filed on behalf of the Respondents controverting the statements made by the Petitioners in the main writ application. The main thrust of the Respondents in the counter affidavit was that in the facts and circumstances of this case the Petitioners were not entitled to get any relief prayed for in the writ application. However, no counter affidavit has been filed in reply to the amendment petition. In such view of the matter, when the District Level Committee has already allowed 90% of the deferred payment on the investment in fixed assets, we need not deliberate on the averments made in the counter affidavit in respect of the prayer made in the main writ application. The only point which remains to be considered is as to whether the District Level Committee has erred in law in refusing relief to the Petitioners in respect of bottles, crates, electrification and tools.

5. Mr. Gadodia, learned Sr. Counsel appearing on behalf of the Petitioners, has urged that the only question for consideration by this Court is as to whether bottles and crates etc. shall be treated as "plant" for the purpose of giving benefit under the deferment scheme. Advancing his argument, it is urged that the word "plant" should be construed in popular sense by giving a wide meaning. In support of his contention, he has relied upon the decisions in the case of Commissioner of Income Tax Vs. Sri Krishna Bottlers Pvt. Ltd., , Commissioner of Income Tax Vs. Jai Drinks (P.) Ltd., and Commissioner of Income Tax, Andhra Pradesh Vs. Taj Mahal Hotel, Secunderabad, .

6. Mr. M.Y. Eqbal, learned Govt. Advocate, on the other hand, has contended that he terms "Fixed Capital investment" as defined under the Bihar Sales Tax Supplementary (Deferment of Tax) Rules, 1990 means investment in land, building, plant and machinery and as such, the District Level Committee has rightly held that bottles and crates, electrification and tools are not plant and machinery. Trying to distinguish the decisions cited by Mr. Gadodia, (sic) Eqbal has submitted that all those decisions are under the Income Tax. Act (sic), as such, those decisions are not applicable to the facts and circumstances of (sic) case. However, he has not drawn our (sic)ntion to any decision either of the High Court or of the Supreme Court to substance his argument.

7. Having regard to the respective contentions, the only question which arises for consideration is as to whether an Assessee company which manufactures and sells soft drinks, can claim deferred payment in respect of bottles and crates used by it and the Company is entitled for the same, as the bottles and crates must be deemed to be plant for the purpose of Acts and Rules.

8. In the Webster's New Twentieth Century Dictionary the word "plant" has been defined as the tools, machinery, fixture, buildings, grounds, etc. of a factory or business; the apparatus or equipment for a certain mechanical operation or process. Similarly, according to Shorter Oxford English Dictionary (Third Edition), meaning of the word "plant" has been given as the fixtures, implements, machinery and apparatus used in carrying on any industrial process. Plant in its ordinary sense includes whatever apparatus is used by a businessman for carrying on his business; not his stock-in-trade which he buys or makes for sale, but all goods and chattels fixed for movable which he keeps for employment in his business with some degree of durability. It is admitted that the term "plant" has neither been defined in the Bihar Finance Act or in the sales Tax Supplementary (Deferment of Tax) Rules, 1990.

9. It is well settled that words and expressions not defined in any Statute should ordinarily be taken in their legal sense (sic) dictionary meaning but in all such cases the terms must be construed not in a technical sense but as understood in common parlance, particularly by those dealing in them.

10. In the case of Commissioner of Income Tax, Andhra Pradesh v. Taj Mahal Hotel (supra), the Apex Court has observed that "where the definition of a word has not been given, it must be construed in its popular sense if it is a word of every day use. popular sense means "that sense which people conversant with the subject matter with which the Statute is dealing, would attribute to it".

In the case of Commissioner of Income Tax v. Sri Krishna Bottlers Pvt. Ltd. (supra), a Division Bench of the Andhra Pradesh High Court dealt with the question as to whether, on the facts and circumstances of the case, the bottles and shells constitute "plant" and depreciation is admissible thereon u/s 32(i)(ii) of the Income Tax Act, 1961. After noticing various Foreign as well as Indian decisions the Division Bench has, inter alia, held that the bottles are essential tools of the trade for it is through them that the soft drinks are passed on from the Assessee to the customers. Without these bottles the soft drinks cannot be effectively transported. According to their Lordships, the bottles and shells also satisfy the durability test for it is nobody's case that their life is too transitory or negligible to warrant an inference that they have no function to play in the Assessee's trade. The Division Bench has agreed with the decision of the Rajasthan High Court in the case of Commissioner of Income Tax v. Jai Drinks (Pvt.) Ltd. (supra).

In the case of Commissioner of Income Tax v. Taj Mahal Hotel (supra), a question was posed before the Supreme Court as to whether sanitary and pipeline settings

a building which is run as a hotel would fall within the meaning of word "plant" (sic) Section 10(2)(vib) of the Indian Income Tax Act, 1922. Their Lordships held that sanitary fittings etc. in a bathroom is one of the essential amenities or conveniences which are normally provided in any good hotel in the present times and, as such, they constitute "plant" within the meaning of the Act.

11. In the premises of the aforesaid authoritative pronouncement, in my considered opinion, having regard to the business of the Petitioners of manufacturing soft drinks, it must be held that bottles and crates are plant for which the Petitioners are entitled for grant of deferment payment in respect of bottles and crates.

12. I have already indicated that no counter affidavit in reply to the amendment petition has been filed by the Respondents. But pursuant to our order dated 1.12.95 written notes of submissions were filed by the parties. In their written notes the Respondents annexing some circulars have contended that the District Level Committee has rightly rejected the claim of the Petitioners for grant of exemption for deferment of sales tax in respect of investment made towards bottles and crates and in view of the Industrial Policy issued from time to time as also the circulars and notifications issued by the Government in exercise of powers conferred by the Industries (Development and Regulation) Act, 1951, the Industries Department made it clear that while assessing value of the investment in plant and machineries, some items including bottles and crates shall be excluded.

13. It is now well settled that when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ Petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the Respondent, from the counter affidavit. If facts not pleaded or evidence in support of such facts are not annexed to the writ application or counter affidavit, as the case may be, the court will not entertain such point.

14. In the case of *Bharat Singh and Others Vs. State of Haryana and Others*, , while making a distinction between the pleadings under the CPC and a writ petition or a counter affidavit, their Lordships, inter alia, have held:

While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. So, the point that has been raised before us by the Appellants is not entertainable.

15. On the same premises, in the facts and circumstances of this case also, I am of the opinion that the plea of the Respondents taken in the written notes cannot be entertained as neither it was pleaded by filing a counter affidavit in reply to the amendment petition nor any such documents were annexed prior to that.

16. Consequently this writ application is allowed and the order as contained in Annexure 8 to the amendment petition refusing to grant exemption by the District Level Committee is set aside. The concerned Respondent is directed to grant exemption for deferment of sales tax in respect of investment made by the Petitioners towards bottles and crates. In the facts and circumstances, the parties will bear their own costs.

D.P. Wadhwa, C.J.

17. I agree.