
(1998) 12 PAT CK 0031

In the Patna High Court

Case No : Civil Review Jurisdiction Case No. 69 of 1988 (R)

Steel India

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 02-12-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 2 BLJR 942 : (1999) 1 PLJR 586

Hon'ble Judges : R.A. Sharma, J;A.K. Prasad, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.A. Sharma, J.—The petitioner has filed this petition to review our judgment dated 19th August, 1998, whereby its writ petition, C.W.J.C. No. 1887 of 1998 (R), was dismissed.

2. The petitioner was granted exemption by the Deputy Commissioner of Commercial Taxes, Dhanbad, vide order dated 30.4.1997 from payment of tax on purchases of raw materials under the Govt.

Notification No. S.O. 95 dated 4.4.1994 (hereinafter referred to as the Notification), which has provided incentive in the form of exemption from payment of tax on purchase of raw material to those entrepreneurs who use the raw material so purchased in manufacturing the new finished goods. The Joint Commissioner of Commercial Taxes (Administration), Dhanbad (hereinafter referred to as the Joint Commissioner), in exercise of his suo motu power of revision u/s 46(4) of the Bihar Finance Act (hereinafter referred to as the Act) after giving opportunity of being heard to the petitioner cancelled its exemption certificate on the ground that it does not manufacture new finished goods out of the raw material purchased and is involved only in cutting of iron sheets into smaller pieces. Being aggrieved by the said order of the Joint Commissioner, the petitioner filed a writ petition, which was dismissed on 19th August, 1998 by us.

By this petition, the petitioner wants us to review our said judgment.

3. The learned Counsel for the petitioner has made the following submissions in support of this petition:

(i) We have not properly appreciated the judgment of the apex

Court in the case of Commissioner of Sales Tax Orissa and Anr. v. Jagannath Cotton Co. and Anr. (1995) 99 STC 86(ori), in its entirety;

(ii) We have also failed to consider properly the judgment of this Court in Kross Manufactures v. State of Bihar and Ors. 1997 BRLJ 49;

(iii) We have also not properly appreciated and applied the ratio of other judgments cited and referred to in our judgment dated 19th August, 1998;

(iv) We have not given due importance to the definition of the word "Manufacture" contained in Section 2(n) of the Act; and

(v) We have also not considered the two documents filed as Annexures-10 and 11 to the writ petition.

4. The learned Standing Counsel on the other hand while disputing the above submissions has contended that the review petition contains various aspects/ points, which were not argued on behalf of the petitioner at the time of hearing of the writ petition. It is further submitted that this petition is not a simple petition to review of the judgment, but it is in fact appeal in the guise of review for getting our judgment set aside. In this connection an the learned Counsel has invited our attention to various paragraphs of the petition. The submission of the learned Standing Counsel prima facie appears to be justified. The petitioner has tried to improve upon his pleadings as originally contained in the writ petition and the arguments as made at the time of hearing. But, it is not necessary to deal with this matter any further in view of the fact that the learned Counsel for the petitioner has confined his submissions to the specific points mentioned above.

5. Before dealing with the argument of the learned Counsel for the petitioner, it is necessary to point out the scope of review of the judgment of this Court under Article 226 of the Constitution. The apex Court in Babboo alias Kalyandas and Others Vs. State of Madhya Pradesh, has in this connection laid down as under:

...It is true as observed by this Court in Shivdeo Singh and Others Vs. State of Punjab and Others, there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised

where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court.

In *Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury*, the apex Court held that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of the review under Order XLVII, Rule 1 of the Code of Civil Procedure. In its connection, the apex Court relied upon its earlier judgment in *A.T. Sharma v. A.P. Sharma* (supra). While dealing with as to what constitute an error apparent on the face of record for the purpose of review the apex Court declared that it must be "an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where there may conceivably be two opinions".

6. None of the grounds raised by the learned Counsel for the petitioner in support of this petition warrants review of our judgment dated 19th August, 1998. We have considered the apex Court's decisions and cited the relevant extracts thereof also in our judgment. We have also considered the decisions of this Court as well as of other courts and have referred their such aspects in our judgment, which we considered relevant. We have also laid down in our judgment that exemption can only be granted if an applicant satisfies the requirements contained in the Notification and the definition of the word "manufacture" contained in Section 2(n) of the Act is not very much relevant in this connection. The learned Counsel failed to point out any error apparent on the face of the record in our judgment on the basis of which review can be permissible.

7. As regard the alleged non-consideration of the two documents (Annexures-10 and 11 of the writ petition), it may be observed that merely because those documents are not referred to in our judgment that does not mean that we have not considered them. We have considered those documents, but we did not consider it proper to refer them in our judgment. Annexure-10 to the writ petition is an order undated, by which proceedings u/s 33(1) of the Act have been closed. Section 33 of the Act deals with "production, inspection and seizure of accounts, documents and goods, and search of premises," This is a document relating to different context and controversy, although there are some observations in it regarding the case of the petitioner set up before the concerned authorities in those proceedings. Annexure-11 is a report on the basis of which the petitioner was granted exemption certificate, which was ultimately cancelled by the revisional authority in exercise of suo moto power. It is not necessary for this Court to refer to every document filed by the parties in its judgment. Only those documents are referred to which the Court consider relevant for the purpose of judgment.

8. This review petition lacks merit and it is, accordingly, dismissed.

A.K. Prasad, J.

9. I agree.