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(2013) 01 JH CK 0103

In the Jharkhand High Court

Case No : Writ Petition (T) No. 7647 of 2012

Tata Cummins Limited — APPELLANT

Vs

State of Jharkhand and Others — RESPONDENT

Date of Decision : 09-01-2013

Acts Referred:
Bihar Finance Act, 1981 — Section 5, 6

Citation : (2013) 2 AJR 93

Hon'ble Judges : Prakash Tatia, C.J;Jaya Roy, J

Bench : Division Bench

Advocate : Pallav Sisodia, M/s. Sukumaran and Sumeet Gadodia, for the Appellant; Ajit Kumar, AAG, for the Respondent

Judgement

1. These writ petitions are relating to different assessment years but involving the same question of law, therefore, are heard together. Admit.

2. No need to issue notice as the respondents have put in appearance. Respondents wants to file counter. They may file the counter within a period of four weeks.

3. Heard learned counsel for the parties on the prayer for grant of interim relief.

4. Contention of learned counsel for the writ petitioner is that in view of the Industrial Policy of the State, the petitioner was entitled to exemption from the payment of sales tax under the Bihar Sales Tax Act and matter reached to the Hon''ble Supreme Court in Civil Appeal No. 10272 of 2003 (State of Jharkhand and Others Vs. Tata Cummins Ltd. and Another, wherein Hon''ble Supreme Court held that the petitioner is entitled to exemption under the Industrial Policy from payment of Sales Tax and entitled to benefit of exemption under Notification Nos. 478 and 479 dated 22nd December, 1995. It appears, after the decision of the Hon''ble Supreme Court another controversy was raised by the State and the State moved an Interlocutory Application before the Hon''ble Supreme Court wherein a dispute was raised by the State that in exemption Additional Tax,

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Surcharge are not included, Hon''ble Supreme Court in its order dated 24th July, 2007 observed that such point was not raised by the State before the Supreme Court. Hon''ble Supreme Court further held that broadly, there are four heads, namely, sales tax, purchase tax, additional tax and surcharged. The controversy now raised by the State by filing Interlocutory Application No. 4 in Civil Appeal No. 10272 of 2003 is that Tata Cummins Ltd. was not entitled to claim refund/ adjustment under the above two notifications qua additional tax and surcharge. Hon''ble Supreme Court directed the State to issue notice to the petitioner for adjudication on the issue whether these two components; additional tax and surcharge also have been covered by Industrial Policy under two notification referred above. After the order of the Hon''ble Supreme Court, notices were issued and earlier some cryptic orders were passed by the authorities holding petitioner to liable to pay the additional tax and surcharge, which was challenged before this Court and those writ petitions were allowed by the Division Bench of this Court (By us) and after remand the impugned order was passed by the Deputy Commissioner of Commercial Taxes, Jamshedpur Circle, Jamshedpur after formulating following questions:

1. Whether the company is entitled to get exemption in terms of Bihar Industrial Policy 1995, in respect of additional tax and surcharge?

2. Whether the exemption in sale tax includes "additional tax and surcharge" under the Bihar Finance Act 1981 or not?

3. Whether the provisions of Sections 5 and 6 of the Bihar Finance Act, 1981 is not applicable in this case in terms of Bihar Industrial Policy 1995?

4. Whether under the Bihar Industrial Policy 1995, separate component of tax such as sales tax, surcharge, additional tax, and purchase tax etc. cannot be imposed upon the dealer company and the pleading of the company in respect of all the components of the tax commonly known as sales tax, is valid and legal?

5. The contention of the assessee was. that under Entry 55 List IV i.e., State List and Schedule VII of the Constitution, the State legislature has power to tax on sales and sales tax has been defined in the Act itself in Section 2(x) wherein it has been specifically mentioned that tax includes the sales or purchase tax levied u/s 3 as also additional tax levied u/s 6 of this part.

6. Learned counsel for the State vehemently submitted that in impugned orders detailed reasons have been given and it is also pointed out under the same Act i.e., State Sales Tax Act all the three, the sales tax, additional tax and surcharge have been defined separately which also has been considered in the impugned order. Learned counsel for the State further submitted that there are divergent view on the point but so far as exemption is concerned under the impugned notification exemption was granted for taxes other than the additional tax and surcharge. The Hon''ble Supreme Court also observed that authority was to decide whether the benefit of exemption of tax is available to the petitioner under the notification or not.

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7. We considered the submission of learned counsel for the parties and we are of the considered opinion that important question of law has been raised by the petitioner and petitioner was granted interim relief through out the period by various order; by order of this Court or order of the Supreme Court and, therefore, we are of the considered opinion that during pendency of the writ petitions, no coercive step shall be taken against the petitioners in relation to the payment of the above tax.

8. Put up these cases after four weeks. Copy of this order may be given to learned counsel for the State.

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