(2005) 08 JH CK 0005

In the Jharkhand High Court

Case No : Writ Petition (Tax) No. 3037 of 2004

Tata Cummins Ltd. APPELLANT

Vs

State of Jharkhand and Others RESPONDENT

Date of Decision : 08-08-2005

Acts Referred:

Bihar Finance Act, 1981 — Section 22
Constitution of India, 1950 — Article 226

Citation : (2006) 2 JCR 146 : (2006) 148 STC 190

Hon'ble Judges : S.J. Mukhopadhaya, J;N.N. Tiwari, J

Bench : Division Bench

Advocate : S. Ganesh and Vijay Pratap Singh, Ashok Kumar Sinha, Susodhia and S. Sukumaran, for the Appellant; K.K. Jhunjhunwala, G.P. III, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—The writ petition has been preferred by the petitioner Tata Cummins Ltd., a company registered under the provisions of the Companies Act, 1956 (hereinafter referred to as ''the Company'') seeking a declaration that the petitioner is entitled to avail the benefit of set-off of Sales tax w.e.f. 1-1-2004 in terms of Jharkhand Industrial Policy, 2001 read with SO Nos. 65, 66 and 67. all dated 12th January, 2002 issued under the Bihar Finance Act, 1981 with other consequential reliefs. Alternative prayer has also been made for issuance of a writ in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India directing the Respondents to dispose of the application preferred by the petitioner on 26th December, 2003 (Annexure 6 to the writ petition), as early as possible, preferably within a time frame.

2. The issue involved in the present case is whether the petitioner is entitled to avail the benefit of set-off of sales tax w.e.f. 1-1-2004 in terms of Jharkhand Industrial Policy, 2001.

3. To determine the issue, it is necessary to notice the relevant facts, laws, Jharkhand Industrial Policy, 2001 and circulars/guidelines issued by the respondents, from time to time, as discussed hereunder.

4. The then State of Bihar issued an Industrial Policy In the year 1995, known as ''Bihar Industrial Policy, 1995'', "''here under provision was made to grant benefit "exemption of sales tax on purchase of raw materials and on sale of finished goods" to industrial units. Two Notifications bearing SO Nos. 478 and 479 both dated 22nd December, 1995 were issued by the then ''Stale of Bihar'' providing the benefit of exemption of sales tax on purchase of raw materials and on sale of finished goods to new industrial units.

5. The petitioner Company, a manufacturer of diesel engines and components, started its commercial production since 1st January, 1996. On 22nd January, 1996 it applied for exemption of sales tax on purchase of raw materials and on sale of finished goods for a period of eight years i.e. upto 31st December, 2003. The benefit having not allowed by the State, the petitioner had to move before this Court along with Tata Engineering and Locomotive Co. Ltd. (TELCO) in WP (T) No. 2587 of 2003.

6. In the meantime, the State of Bihar-was reorganized under the Bihar Reorganisation Act, 2000 and two successor States Bihar and Jharkhand were created. The petitioner Tata-Cummins Ltd. having its Office at Jamshedpur, fell within the territorial jurisdiction of the State of Jharkhand. The State of Jharkhand announced its first Industrial Policy on 25th August, 2001, known as "Jharkhand Industrial Policy, 2001" making it applicable from the "effective date". It was given effect from 15th November, 2000 for a period of about five years i.e. upto 31st March, 2005. Under the Jharkhand Industrial Policy, 2001, the benefit of exemption of sales tax on purchase of raw materials and on sale of finished goods has not been provided, but the benefit of ''set-off of sales tax has been provided for to "new" as well as "existing industrial units." The State of Jharkhand, thereafter, issued Notifications being SO, Nos. 65, 66 and 67 all dated 12th January, 2002 in exercise of power u/s 22 of Bihar Finance Act, 1981 (Bihar Act 5 of 1981) and allowed the benefits in terms of the provisions of Jharkhand Industrial Policy, 2001.

7. In the writ petition, WP (T) No. 2587 of 2003, preferred by the petitioner and another one of the questions arose for determination was whether the "petitioner is entitled to the benefits of notification issued by the Government of Bihar dated 22nd December, 1995 being SO Nos. 478 and 479 and was entitled for exemption of sales tax on purchase of raw. materials and on sale of finished goods." A Division Bench of this Court by its decision dated 31st July, 2003, reported in Tata Cummins Ltd. and Another Vs. State of Jharkhand and Others, , allowed the writ petition and held that the petitioner and another, are entitled for the benefit of exemption under the Industrial Policy, 1995 read with Notifications SO Nos. 478 and 479 both dated 22nd December, 1995. Instead of directing for refund of the amount of Rs. 54.5 crores to the petitioner Tata Cummins Ltd., the

Court directed the State of Jharkhand and the competent authority of the Commercial Taxes Department, to adjust the refundable amount, towards sales tax as was due from the petitioner -Tata Cummins Ltd. for the accounting year commencing from 1st of April, 2004. The State of Jharkhand moved, against the said judgment, before the Supreme Court in which leave having been granted, Civil Appeal No. 10272 of 2003 is pending before the Supreme Court, wherein the Apex Court by its order dated 26th March, 2004 directed the appellant State of Jharkhand to adjust the refundable amount only to the extent of Rs. 40 crores, for the accounting year commencing from 1-4-2004, with further direction to refund the balance amount to the petitioner Tata Cummins Ltd., the Company having assured that if the decision goes against it, the amount refunded to the Company, shall be paid back to the State of Jharkhand with 9% interest.

8. After the first Jharkhand Industrial Policy, 2001 was given effect to vide Notification being S.O. Nos. 65, 66 and 67 all dated 12th January, 2002, the petitioner applied for and requested to ''set-off the sales tax w.e.i. 1.1.2004 when no reply was received, the petitioner of its own approached the authority and filed its detailed submission explaining to the authority as to how it is entitled to such benefit, but no decision having been taken by the respondents and the benefit of ''set-off of sales tax'' having not allowed for the period from 1st January, 2004 to 31st March, 2005, the. petitioner has preferred the present writ application.

9. Learned counsel for the petitioner-Company made the following submissions :

(a) The Company is entitled to the benefit of ''set-off of sales tax'' under clause 28.1 of Jharkhand Industrial Policy, 2001; it is a part of Commercial Tax Reforms and the State Government is supposed to ensure that all new as well as existing units can avail the benefit of ''set-off of sales tax'' uniformly, without simultaneously overlapping the facility of tax exemption or deferment under notification announced earlier.

(b) The sentence "New Industrial Units" as well as "Existing Units" not availing any facility of tax exemption/deferment or tax free purchases or tax free sales under any notification announced earlier, particularly, the words "are not availing" have been used in ''Present Continuous Tense. To make it clear that the only condition is that the availment of another benefit of tax exemption or deferment should not take place in presenti i.e. when the benefit of ''set off under clause 28.1 is being availed of. The only object of clause 28.1 is to prevent the simultaneous availment of double benefit Le. the benefit of ''set-off under clause 28.1 side-by-side with the benefit of ''exemption or deferment'' under an earlier notification.

(c) it was not at all the object of 28.1 of Jharkhand Industrial Policy, 2001 to deny the benefit of ''set off to a unit merely on the ground that in the past it had availed of the benefit of tax exemption or deferment. Consequently, even if a unit has availed of the benefit of tax exemption or deferment, in the past, but if it is not doing so in the present, then the benefit of ''set-off under clause 28.1, cannot be denied to it.

(d) There is no specific cut-off date, which has been set out in clause 28.1 for applying this provision for granting benefit there under. The term ''effective date'', though defined in the policy, it has not been referred to at all in clause 28.1. therefore, whether an industrial unit has availed of the benefit of tax exemption or deferment as on the effective date, is relevant or important and it is not prohibited and as such non-availment as on the effective date is not required as a condition for grant of benefit of ''set-off under clause 28.1. The only requirement is that the Unit should not in presenti, be availing of the benefit of tax exemption or deferment under an earlier notification, simultaneously with the availment of ''set-off under clause 28.1.

10. Learned senior counsel for the petitioner referred to Annexure 3 of the Jharkhand Industrial Policy, 2001, which provides the list of Industries, which are not eligible for incentives. It was submitted that clause 28.1 cannot be read as a non-eligibility clause or as a disentitlement clause in view of specific List of non-eligible Industries having shown in Annexure-3 to the Industrial Policy. 2001.

11. Learned counsel referred to the decision in the case of ''Suprabhat Steel'' reported in 112 STC 258 (SC), wherein the Supreme Court held that a notification which is framed and issued in order to give effect to the Industrial Policy announced and issued by the State Government necessarily has to be fully in consistent with the Policy and cannot depart or deviate from or act in a manner which is repugnant or contrary to the policy, so as to negate the incentives and benefits which any Industrial Unit would be otherwise entitled to under General Policy Resolution itself.

12. It was submitted that the Notification SO No. 65, dated 12th January, 2002 must necessarily be read and understood in line and in harmony with clause 28.1 of Jharkhand Industrial Policy, 2001 so that there should be no inconsistency whatsoever between the Industrial Policy and the Notification.

13. Admittedly, the Jharkhand Industrial Policy 2001 was announced on 25th August, 2001, but it was given effect from 15th November, 2000 Ie, the date when the State of Jharkhand came into existence. The 2001 Policy defines "effective date", as under :

EFFECTIVE DATE :

Effective date means 15th November 2000 from which date the new State of Jharkhand has been created, the date on which the provision of this Policy come into force, Le, November 15, 2000. This Policy will remain in force till 31st March 2005.

14. It is not in dispute that the petitioner is an ''Existing Industrial Unit'', as defined under clause 3 of the ''Jharkhand Industrial Policy, 2001'' as quoted hereunder :

3. EXISTING INDUSTRIAL UNIT :

existing Industrial Unit means an industrial unit which has gone into commercial production before the effective date.

The terms ''New Industrial Unit'' has also been defined under clause 4 which reads as under :

4. NEW INDUSTRIAL UNIT :

New Industrial Unit means an Industrial Unit which has come into commercial production between 15th November, 2000 and 31st March, 2005.

Clause 28.0 of the Industrial Policy, 2001 deals with Commercial Taxes Reforms, while under clause 28,1, the benefit of ''set-off of sales tax on the purchase of raw materials within the State of Jharkhand has been provided. It reads as follows :

28.1 New Industrial Units as well as existing units which are not availing any facility of Tax-deferment or Tax free purchases or Tax free sales under any notification announced earlier, shall be allowed to opt for set off, of Jharkhand Sales Tax paid on the purchases of raw materials within the State of Jharkhand only against Sales Tax payable either JST or CST on the sale, excluding stock transfer or consignment sale out side the State, of finished products made out from such raw materials subject to a limitation of six months or the same financial year from the date of purchase of such raw materials.

As u/s 22 of Bihar Finance Act, 1981 the State Government is competent to adjust tax in certain cases in the interest of Industrial growth, the benefit of ''set-off of sales Lax'' having announced vide Jharkhand Industrial Policy, 2001, the State of Jharkhand in exercise of power u/s 22 of the Bihar Finance Act, 1981, issued different Notifications bearing SO Nos. 65, 66 and 67, all dated 12th January, 2002 allowing such benefits.

Sub-clause (2) of clause (1) of SO No. 65 dated 12th January, 2002 also defines ''existing Industrial Unit'' which means such Industrial Units which has started commercial production prior to the effective date. Sub-clause (3) of clause (1) of SO No. 65, defines ''New Industrial Units'' which means Industrial Units which started commercial production between 15th November, 2000 and 31st March, 2005. ''Effective date'' has been made clear under sub-clause (5) of clause (1) of SO No. 65, which is 15th November, 2000 i.e. the date when the successor State of Jharkhand came into existence. Said sub-clause (5) of clause (1) also makes it clear that the Jharkhand Industrial Policy, 2001 will remain effective only upto 31st March, 2005.

Clause (2) of Notification SO No. 65 dated 12th January, 2002 reads, as follows :

2 lek;kstu dh lqfo/kk orZeku bdkbZ;ksa ftuds }kjk izHkkoh frfFk dks iwoZ esa ?kksf"kr fdlh Hk vf/klwpuk ds varxZr fdlh Hkh rjg dh lqfo/kk ;Fkk dj LFkxu ;k dj eqDr dz; ;k fodz; dk ykHk ugha fy;k tk jgk gksa dks vuqekU; gksxk A

The English transaction of aforesaid clause (2) may read, as follows :

The facility of ''set-off shall be provided to the existing units, which have not availed any kind of benefit such as tax deferment or tax free purchase or tax free sale under any notification announced prior to the effective date.

15. It is settled law that when the words of a statute are clear, plain and unambiguous i.e. they are reasonably susceptible to only one meaning, the Courts are bound to give effect to that meaning irrespective of consequences.

The Supreme Court has also held that when a language is plain and unambiguous and admits of only one meaning, the question of construction of a statute by Court of law does not arise, as the Acts speaks for itself. Reference may be made to State of Uttar Pradesh v. Vijay Anand Maharaj AIR 1963 SC 950.

16. It is also a settled law that when a word has been defined in the interpretation clause, prima facie that definition has to be read for its meaning whenever that word is used in the body of the statute.

17. In this case, the meaning of ''effective date'' is common, as shown in the Jharkhand Industrial Policy, 2001 and Notification SO No. 65 dated 12th January, 2002, which means 15th November, 2000, the date when the successor State of Jharkhand came into existence.

From plain reading of Clause 28.1 of Jharkhand Industrial Policy, 2001, it is clear that only the New Industrial Units as also the Existing Industrial Units which are not availing any facility of ''tax deferment or tax free purchase or tax free sales on the effective date (15th November, 2000) under any Notification announced earlier, shall be allowed to opt for ''set. off of sales tax'' paid on the purchases of raw materials within the State of Jharkhand.

Clause (2) of Notification SO No. 65 dated 12th January, 2002 also envisages grant of facility of ''set-off only to such existing Units which are not availing any type of benefits such as tax deferment or tax free purchase or tax free sales on the basis of Notification issued prior to the effective date. Thus, it will be clear that only such existing Units which have not availed any kind of benefits such as tax deferment or tax free purchase or tax free sales on the basis of any notification prior to 15th November, 2000, are entitled to the facility of ''set-off of sales tax'' under the new Jharkhand Industrial Policy, 2001 and Notification SO No. 65 dated 12th January, 2002.

18. In the present case, there being no ambiguity nor there being any conflict between Clause (2) of Notification SO No. 65 dated 12th January, 2002 and clause 28.1 of Jharkhand Industrial Policy, 2001, meaning of both the provisions being same, no other interpretation of Clause 28.1 can be made.

19. Admittedly, the petitioner applied for the benefit of sales tax deferment for a period of eight years i.e. up to 31st December, 2003 under the old Bihar Industrial Policy, 1995 read with Notification SO Nos. 478 and 479, both dated

22nd December, 1995. Such prayer has been allowed in its favour by this Court in WP (T) No. 2587 of 2003, Tata Cummins Ltd. and Another Vs. State of Jharkhand and Others, though said judgment has been challenged by the State of Jharkhand before the Supreme Court in Civil Appeal No. 10272 of 2003, but the interim order passed therein is in favour of the petitioner. In the circumstances, till the decision rendered by this Court in favour of the petitioner holds good, having allowed in its favour, the petitioner cannot claim benefit of ''set-off of sales tax'' in terms with clause 28.1 of Jharkhand Industrial Policy, 2001/Notification SO No. 65 dated 12th January, 2002. However, if the Civil Appeal No. 10272 of 2003 is allowed by Supreme Court in favour of the State of Jharkhand and the judgment rendered in favour of petitioner in WP (T) No. 2587 of 2003 is set aside, in that case, the petitioner may renew its prayer for set-off of sales tax under the aforesaid Industrial Policy of 2001 and Notification SO No, 65 dated 12th January. 2002.

20. there being no merit, the writ petition is dismissed, but with the aforesaid observations.

N.N. Tiwari, J.

21. I agree.

