(2012) 09 JH CK 0200

In the Jharkhand High Court

Case No : Writ Petition (T) No. 4562 of 2008

Tata Motors Limited APPELLANT

Vs

State of Jharkhand and others RESPONDENT

Date of Decision : 06-09-2012

Acts Referred:

Central Sales Tax Act, 1956 — Section 8, 8(1), 8(5)

Citation : (2012) 55 VST 323

Hon'ble Judges : Prakash Tatia, C.J;Aparesh Kumar Singh, J

Bench : Division Bench

Advocate : S.K. Kapoor, S. Gadodia, A.K. Sinha and V. Bajoria, for the Appellant; S. Choudhary, Government Advocate, A.K. Sahay, JC to GA and P. Chitresh, for the Respondent

Final Decision : Allowed

Judgement

1. Heard learned counsel for the parries. This writ petition has been preferred to challenge the order passed by the Assistant Commissioner of Commercial Taxes, In-charge, Jamshedpur Circle, Jamshedpur, dated March 21, 2005, in respect of the assessment year 2000-01, levying a tax on sale of the goods in course of inter-State trade and commerce by the writ petitioner-assessee at 10 per cent and at 14.43 per cent rejecting the petitioner''s claim of concessional rate under the Notification No. S. O. 27 dated January 30, 1993, which was upheld by the order passed by the appellate authority, Joint Commissioner of Commercial Taxes (Appeal), Jamshedpur Division, vide order dated April 19, 2007 and further upheld by the Commercial Taxes Tribunal, Jharkhand, vide order dated July 10, 2008.

2. The petitioner''s contention throughout was that the petitioner''s sale in question was the sale in the course of inter-State trade or commerce, of the articles which have been notified in the notification dated January 30, 1993. The notification dated January 30, 1993 has been issued by the State Government in exercise of the power conferred by clause (b) of sub-section (5) of section 8 of

the Central Sales Tax Act, 1956. By this notification, it has been provided that for all sales in course of inter-State trade or commerce irrespective of the buyers--whether it is Government or it is a registered dealer or unregistered dealer--if made of the articles mentioned in the notification dated January 30, 1993, then the rate of sales tax will be four per cent in place of regular higher rate of tax. However, the petitioner''s said contention was rejected by all the three authorities, i.e., assessing officer, appellate authority and the Tribunal and it has been held that for taking any benefit of the notification dated January 30, 1993, the dealer is required to submit form C or D as the case may be and the petitioner should have furnished form C without which it is not entitled to the benefit of the notification and consequently the petitioner has been levied with tax at 10 per cent/14.43 per cent creating a total liability of Rs. 54,96,61,740.

3. The learned counsel for the petitioner vehemently submitted that all these three authorities committed serious error of law in interpreting the notification dated January 30, 1993 and ignored the fact that the notification was issued under sub-section (5) of section 8, which has overriding effect over other provisions of section 8 in view of the non obstante clause and which specifically provides that "notwithstanding anything contained in this section" (section 8), the State Government may grant any exemption in tax in respect of the sales by the dealer, subject to fulfilment of certain conditions, if imposed, obviously under sub-section (5) of section 8 of the Central Sales Tax Act, 1956. It is submitted that the notification unqualifiedly has covered all sales in the course of inter-State trade or commerce of the commodities mentioned in the notification dated January 30, 1993 and is not related to specific buyer, i.e., Government or registered dealers only but it includes unregistered dealers. It is further submitted that forms C and D are required by sub-section (4) of section 8 only when the sale falls under sub-section (1) of section 8 and for the sales covered under sub-section (2) of section 8, no form is required and one is required to prove that the sale in question is the sale in course of inter-State trade or commerce, obviously, by other evidence than forms C and D and that the notification dated January 30, 1993, nowhere says that it shall have application only to the sales made under sub-section (1) of section 8. It is also submitted that all the authorities and specifically the Tribunal has committed gross error not only in interpreting the notification dated January 30, 1993 but also committed error of law in misinterpreting the judgment of honourable Supreme Court delivered in the case of State of Rajasthan and Another Vs. Sarvotam Vegetables Products etc., . The Tribunal committed further error of law in not appreciating the Division Bench judgment of the Patna High Court delivered in the case of Rameshwara Jute Mills v. State of Bihar reported in [2007] 9 VST 444 (Pat), wherein the scope of section 8(5) of the Central Sales Tax Act, 1956, has been considered in detail and in Rameshwara Jute Mills Vs. The State of Bihar and Others the case of State of Rajasthan and Another Vs. Sarvotam Vegetables Products etc., was also considered and it has been held that when there is no restriction in the notification issued u/s 8(5) and when there is no requirement of

furnishing of form, in that situation, demanding for any form from the dealer in the State is contrary to the requirement of the notification. Learned counsel for the petitioner also relied upon the judgment of the honourable Supreme Court delivered in yet another case of Shree Digvijay Cement Co. Ltd. and Others Vs. State of Rajasthan and Others, in support of his argument. The learned counsel further relied upon yet another judgment of the Madras High Court delivered in the case of Sree Ayyanar Spinning and Weaving Mills Limited v. State of Tamil Nadu reported in [1998] 109 STC 205 (Mad).

4. The learned counsel for the State submitted that taxing provision is subsections (1) and (2) of section 8 of the Central Sales Tax Act, 1956 and one is required to be covered by either of the sales falling in the category of sub-section (1) and/or sub-section (2) of section 8 of the Act of the 1956 and that once one is liable to pay tax u/s 8, then the provision of exemption applies and sub-section (4) of section 8 clearly provides that for sale or transaction made in course of inter-State trade or commerce, one is required to submit form C or D, as the case may be and sub-section (4) clearly provides that sub-section (1) shall not apply to any sale in Course of inter-State trade or commerce unless the dealer selling the goods furnishes the requisite particulars in forms C and D and therefore, when such certificate is not furnished, sub-section (1) itself will not apply and thus, compliance with sub-section (4) is mandatory in nature. It is submitted that in view of the above reasons and in view of the judgment of honourable Supreme Court delivered in the case of State of Rajasthan and Another Vs. Sarvotam Vegetables Products etc., , the Tribunal rightly held that the petitioner is not entitled to exemption under the notification dated January 30, 1993.

5. We considered the submissions of the learned counsel for the parties and perused the relevant provisions of law as well as reasons given in the impugned orders and considered the judgments relied upon by the learned counsel for the parties.

6. Sub-sections (1), (2), (4) and (5) of section 8, being relevant, are quoted below :

8. Rates of tax on sales in the course of inter-State trade or commerce.--(1) Every dealer, who in the course of inter-State trade or commerce,--

(a) sells to the Government any goods ; or

(b) sells to a registered dealer other than, the Government, goods of the description referred to in sub-section (3)

shall be liable to pay tax under this Act, which shall be four per cent of his turnover or at the rate applicable to the sale or purchase of such goods inside the appropriate, State under the sales tax law of that State, whichever is lower.

(2) The tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of inter-State trade or

commerce not falling within sub-section (1),--

(a) in the case of declared goods, shall be calculated at twice the rate applicable to the sale or purchase of such goods inside the appropriate State ; and

(b) in the case of goods other than declared goods, shall be calculated at the rate of ten per cent or at the rate applicable to the sale or purchase of such goods inside the appropriate State, whichever is higher; and

(c) in the case of goods, the sale or, as the case may be, the purchase of which is, under the sales tax law of the appropriate State, exempt from tax generally shall be nil,

and for the purpose of making any such calculation under clause (a) or clause (b), any such dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under that law.

Explanation.--For the purposes of this sub-section, a sale or purchase of any goods shall not be deemed to be exempt from tax generally under the sales tax law of the appropriate State if under that law the sale or purchase of such goods is exempt only in specified circumstances or under specified conditions or the tax is levied on the sale or purchase of such goods at specified stages or otherwise than with reference to the turnover of the goods.

(2A). . .

(3) . . .

(4) The provisions of sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner,--

(a) a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority ; or

(b) if the goods are sold to the Government, not being a registered dealer, a certificate in the prescribed form duly filled and signed by a duly authorized officer of the Government :

Provided that the declaration referred to in clause (a) is furnished within the prescribed time or within such further time as that authority may, for sufficient cause, permit.

(5) Notwithstanding anything contained in this section, the State Government may, on the fulfilment of the requirements laid down in sub-section (4) by the dealer if it is satisfied that it is necessary so to do in the public interest, by notification in the Official Gazette, and subject to such conditions as may be specified therein, direct:

(a) that no tax under this Act shall be payable by any dealer having his place of business in the State in respect of the sales by him, in the course of inter-State trade or commerce, to a registered dealer or the Government from any such place of business of any such goods or classes of goods as may be specified in the notification, or that the tax on such sales shall be calculated at such lower rates than those specified in sub-section (1) or sub-section (2) as may be mentioned in the notification ;

(b) that in respect of all sales of goods or sales of such classes of goods as may be specified in the notification, which are made, in the course of inter-State trade or commerce, to a registered dealer or the Government by any dealer having his place of business in the State or by any class of such dealers as may be specified in the notification to any person or to such class of persons as may be specified in the notification, no tax under this Act shall be payable or the tax on such sales shall be calculated at such lower rates than those specified in sub-section (1) or sub-section (2) as may be mentioned in the notification.

7. A bare perusal of sub-section (1) of section 8 will reveal that it applies to the sales in the course of inter-State trade or commerce (a) if the sale is to the Government and (b) if the sale is to a registered dealer other than the Government. A perusal of sub-section (2) of section 8 will reveal that it covers the sales which are not covered by sub-section (1), meaning thereby if the sale is not to the Government and not to the registered dealer obviously then it may be a sale to anybody who is not a registered dealer. In subsection (1), there is a different rate of tax and it is four per cent of the turnover of the seller or the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law applicable to the State, whichever is lower. Sub-section (2) prescribes different rate of tax and as per clause (a) under sub-section (2) of section 8, for a sale in the course of inter-State trade or commerce not falling under sub-section (1) and if it is of declared goods, it shall be calculated at twice the rate applicable to the sale or purchase of such goods inside the appropriate State. As per clause (b) of sub-section (2) of section 8, in the case of goods other than declared goods, it shall be calculated at the rate of ten per cent or at the rate applicable to the sale or purchase of such goods inside the appropriate State, whichever is higher. As per clause (c) of sub-section (2), in the case of goods, the sale or, as the case may be, the purchase of which is, under the sales tax law of the appropriate State, exempt from tax generally shall be nil. The other provisions are not very much relevant for our purpose.

8. Sub-section (4) applies only to the sales covered under sub-section (1) and has no application to the sales which are covered by sub-section (2) of section 8 and therefore, requirement of furnishing forms C and D is for the transactions covered under sub-section (1) obviously, which are the sales in the course of inter-State trade or commerce to (1) the Government or (2) to a registered dealer other than the Government. No requirement of furnishing any form for the sale covered under sub-section (2) of section 8 may have obvious reason that

the Government may issue such form as prescribed in the sales tax law and the same can be done by the registered dealer but if the purchaser is not a registered dealer, he cannot obtain any form from the sales tax authority and therefore, these transactions are required to be proved by other evidence so as to fall in the category of sale in the course of inter-State trade or commerce.

9. Be that as it may, the issue involved in this case is that whether the notification in question has exempted sales covered under sub-section (1) or under sub-section (2) or both. For better understanding, it will be appropriate to quote the notification dated January 30, 1993, which is as follows :

Notification No. S. O. 27 (Ibid, page 8.), dated January 30, 1993.

In exercise of the powers conferred by clause (b) of sub-section (5) of section 8 of the Central Sales Tax Act, 1956 (Act No. 74 of 1956), the Governor of Bihar, after being satisfied that it is necessary to do so in the public interest, is pleased to direct that the Central sales tax payable in respect of sales in course of inter-State trade and commerce of chassis of heavy motor vehicles (bus and truck), all kinds of motor vehicles (excluding motor cycle, scooter and moped), excavators and other implements of that category, that is hydraulic excavators, clamshell, dragline, rock-breaker, mini-excavators, crawler-cranes, wheeled-cranes, wheel-loaders, front-end loaders, shovels, breakhoe and articulated cranes from any place of business situated in the State of Bihar, shall be calculated at the rate of four per centum.

2. Notification No. S. O. 40, dated February 26, 1992 (See [1992] 87 STC Statutes 109.) is hereby cancelled

3. This notification shall come into force from February 1, 1993.

10. This notification nowhere has restricted itself to either of the provisions under sub-section (1) or (2) of section 8 and this notification in an unambiguous and clear language declared that the reduced rate of tax will be applicable to the sales in the course of inter-State trade or commerce of the articles mentioned in the notification. Learned counsel for the State also could not dispute this position and fairly admitted that this notification applies to sub-sections (1) and (2) both.

11. In that fact-situation, we may consider the judgment of honourable Supreme Court delivered in the case of State of Rajasthan and Another Vs. Sarvotam Vegetables Products etc., , which has been relied upon by the learned Tribunal for holding that the petitioner was required to submit form C. In State of Rajasthan and Another Vs. Sarvotam Vegetables Products etc., , the writ petitioner''s contention was that since the inter-State sale effected by the petitioner was covered by the exemption notification dated December 26, 1986 and another notification dated April 17, 1990, the petitioner was not required to produce form C for availing of the exemption provided under the notification and the petitioner, who initially tried to take benefit of tax exemption under the above notification by submitting spurious C forms, submitted that because of that reason no action

could be taken against the petitioner as he was not under obligation to submit C form. In State of Rajasthan and Another Vs. Sarvotam Vegetables Products etc., , the notification under consideration specifically gave benefit of concessional rate of tax for the sales covered only under sub-section (1) of section 8 of the Central Sales Tax Act, 1956 and therefore, in that fact-situation, the honourable Supreme Court specifically held that charging section is section 8(1) and the sale must fall within the ambit of section 8(1) and then only one can claim concessional rate of tax under the notification which has granted concession of tax only to the sales under sub-section (1) of section 8. In this context, the honourable Supreme Court considered the requirement of furnishing of form C and held that to cover the transaction of sale under sub-section (1), one is required to comply with the mandatory provision of sub-section (4) of section 8 without which exemption cannot be claimed. Therefore, submitting of form C for seeking exemption under the notification to cover itself within sub-section (1) of section 8 is essential and sub-section (4) has excluded application of sub-section (1) in a case when required form C is not furnished. Therefore, State of Rajasthan and Another Vs. Sarvotam Vegetables Products etc., had entirely different facts. Here in this case, the contention of the petitioner is that the petitioner''s sale is covered under sub-section (2) and not under sub-section (1). Had the petitioner''s sale been under sub-section (1), it would have been required to furnish requisite form C or D as prescribed in sub-section (4). There is no requirement of furnishing any form C or D when the sale is covered by sub-section (2). It is also submitted that by notification in question, the rate of tax has been reduced to four per cent and for the sale covered under sub-section (1), the rate of tax is already four per cent and therefore, had the petitioner furnished form C and had his case been covered under sub-section (1), then also he would not have any benefit merely by virtue of the notification dated January 30, 1993, which also provides for levy of four per cent tax. It is also submitted that the notification in question has been issued to cover the sale under sub-section (2); otherwise this notification would have no effect at all. The higher rate of tax is only under sub-section (2) and the rate is higher for the sales not falling under sub-section (1) and the rate of tax for the sales falling under sub-section (2) of the goods other than the declared goods is equal to the rate as provided under the notification dated January 30, 1993. It is also submitted that if the petitioner would have furnished C forms, his case would not have fallen under sub-section (2). It is also submitted that the Revenue has not questioned the nature of transaction and it is undisputedly the sale in the course of inter-State trade or commerce and therefore, by virtue of the notification dated January 30, 1993, all sales whether under sub-section (1) or sub-section (2) are covered by the notification dated January 30, 1993 and there can be levy of tax at the rate of four per cent per annum only.

12. It appears that the Tribunal, instead of reading the notification as such and finding out what is the effect of the notification, proceeded astray and tried to find out what the notification should have contained. We are, thus, of the

considered opinion that when the statute, rule or any notification is unambiguously clear in its language, then there was no need to look into other aspect as to how the notification should have been framed. The honourable Supreme Court in the case of State of Rajasthan and Another Vs. Sarvotam Vegetables Products etc., itself clearly held as under (page 551 in 101 STC) :

Sub-section (5) of section 8 confers the power of exemption upon the State Government. As is well-known, almost every taxing enactment contains such a provision. The exemption u/s 8(5) can he granted either with reference to dealers or class of dealers or with reference to goods or classes of goods. The exemption can be total or partial. It can also be subject to such condition as may be prescribed in that behalf.

13. Therefore, by virtue of the power conferred under sub-section (5) of section 8 of exemption upon the State Government, the State Government can grant exemption from payment of tax either with reference to dealers or class of dealers or with reference to goods or class of goods and exemption can be total or partial and exemption can also be subject to such conditions as may be prescribed in the notification. As we have already noticed from the notification that the notification nowhere has put any condition for availing of the benefit of tax exemption, the notification covered all sales under sub-sections (1) and (2) of section 8 and that exemption could have been granted by the State Government and has been granted. In the State of Rajasthan and Another Vs. Sarvotam Vegetables Products etc., , as we have already noticed that exemption was only for the sales covered under sub-section (1) and the honourable Supreme Court, while considering this aspect of the matter that as the notification dated December 26, 1986 and another notification dated April 17, 1990, itself imposed conditions and provided for submitting C form for availing of the benefit of the notification, held as under (page 553 in 101 STC) :

Now the contention of the respondents-dealers, which has found favour with the Division Bench of the High Court is this : The notifications and sub-section (5) of section 8 whereunder it has been issued, are self-contained notifications/ provisions. Section 8(5) empowers the State Government to grant exemption subject to such conditions as they may deem fit to impose in public interest. The notifications do impose certain conditions. They do not provide that production of a C form is essential for availing of the benefit of the notification. If so, no such condition should be read into notification . . .

14. It is clear from the above that u/s 8(5), while granting exemption, the Government can impose condition and honourable Supreme Court held that if they do not provide any condition, then no such condition should be read into the notification. Here in the present case, as we have already observed that there is no condition in the notification and there could not have been any condition of producing form C or D for sales covered under sub-section (2).

15. In the case of Rameshwara Jute Mills Vs. The State of Bihar and Others , by

the notification, concessional tax was granted for the transactions covered under sub-sections (1) and (2) of section 8 of the Central Sales Tax Act, 1956 and in that notification, there was no requirement of furnishing form C or D, then the Division Bench of the Patna High Court, of which one of the Members was honourable Mr. Justice Aftab Alam, (as he then was), after considering the case of State of Rajasthan and Another Vs. Sarvotam Vegetables Products etc., held, that in a case, when the dealer claimed the benefit under sub-Section (1) of section 8 of the Central Sales Tax Act, 1956, but failed to produce certificate or declaration in form D, the same would fall under sub-section (2) of section 8 and by virtue of the notification, the rate of tax under that subsection too would only be three per cent and not 10 per cent as applied by the Commercial Taxes Officers in the impugned order. Meaning thereby in the present case also petitioner''s sale is not falling under sub-section (1) of section 8 and is falling under sub-section (2) of section 8 and since the notification applies to the sales under sub-section (2) of section 8 fully, then in that situation the petitioner''s sale/transaction is fully covered by the notification dated January 30, 1993 and the petitioner was liable to pay tax as provided by the notification and was liable to pay tax at four per cent only and not as levied by the impugned order. In view of the above reasons, the writ petition of the petitioner is allowed and the impugned orders dated March 21, 2005 passed by the Assistant Commissioner of Commercial Taxes, In-charge, Jamshedpur Division, and dated July 19, 2007, passed by the Joint Commissioner of Commercial Taxes (Appeal), Jamshedpur Division and dated July 10, 2008 passed by the Commercial Taxes Tribunal, Jharkhand, are set aside. The assessing officer is directed to recalculate the tax in accordance with the notification dated January 30, 1993.