(2009) 04 JH CK 0073

In the Jharkhand High Court

Case No : Writ Petition (T) No. 71 of 2009

Tata Steel Ltd. APPELLANT

Vs

The State of Jharkhand and Others RESPONDENT

Date of Decision : 08-04-2009

Acts Referred:

Bihar Finance Act, 1981 — Section 12, 12(2), 13, 13(1), 13(2)
Bihar Finance Rules, 1981 — Rule 13
Constitution of India, 1950 — Article 14, 301, 304

Citation : (2009) 57 BLJR 2763

Hon'ble Judges : M.Y. Eqbal, J;Dilip kumar sinha, J

Bench : Division Bench

Advocate : K.N. Jain, M.S. Mittal, Sumit Gadodia, Ashok Kr. Sinha and A.R. Chaudhary, for the Appellant; R. Krishna, Senior Standing CounselI and Rajiv Ranjan, for the Respondent

Judgement

M.Y. Eqbal, J.—In these two writ petitions, since common questions of law are invoked, hence they have been heard together and are disposed of by this common judgment.

2. In W.P. (T) No. 71 of 2009, the petitioner M/s. Tata Steel Limited, has prayed for the following reliefs:

(i) For issuance of an appropriate writ for a declaration that the Second provision to Section 13(1) as inserted vide the notification No. SG 12/2001/AJ-01 dated 2.1.2002 (Annexure 4) of the Bihar Finance Act, 1981 (hereinafter referred to as "the Act") as adopted by the State of Jharkhand is violative of Article 14, 301 and 304 of the Constitution in as much as the said proviso gives benefit of the Special/Concessional rate of tax on purchase of goods for manufacturing only in such cases where the such goods are used for manufacturing of goods for sale in the State of Jharkhand or in the course of inter state trade and commerce but denies such benefit in cases where such manufactured goods are transfered by way of stock transfer outside the State for sale.

(ii) For issuance of an appropriate writ for a declaration that vide notification No. SG 12/2001/AJ-01 dated 2.1.2002 no geographical restriction for sale of the manufactured goods has been imposed for being eligible for concessional rate of tax u/s 13(1)(b) and as such the Petitioner will be eligible u/s for purchase of goods at concessional rate of tax u/s 13(1)(b) even if such goods are used for manufacturing goods for sale outride the State of Jharkhand.

(iii) For issuance of an appropriate writ for a declaration that the petitioner is entitled to the benefit of purchase of goods at a Special/Concessional rate of tax u/s 13(1)(b) of the Act as the Form IX being the prescribed declaration form u/s 13(2)(i) read with Rule 13, do not provide for any declaration to the effect that the goods purchased at concessional rate of tax must be sold only within the State of Jharkhand or in the course of inter state trade or commerce and in the absence of any such declaration in the statutory form, the petitioner can not be denied purchase of goods at concessional rate of tax u/s 13(1)(b) for use in manufacturing goods for sale outside the State of Jharkhand.

(iv) For issuance of an appropriate writ for a declaration that in absence of any mechanism prescribed by Rules for assessment of tax on denial of concessional rate of tax u/s 13(1)(b), the entire Section 13(1)(b) has been rendered unworkable.

(v) For issuance of an appropriate writ or writ in the nature of certiorari for quashing the order of assessment made in respect of the assessment year 2004-05 (Annexure-5) being wholly illegal, invalid and arbitrary being violative of Article 301 of the Constitution of India as well as Article 14 of the Constitution of India.

(vi) For issuance of an appropriate writ or writ in the nature of certiorari for quashing the notice of demand dated 19.08.2008 (Annexure-5/1) raised pursuant to the aforesaid assessment order is illegal, invalid and arbitrary.

3. Similarly, in W.P. (T) No. 1325 of 2009, the petitioner M/s. Tata Motors Limited, prayed for the following reliefs:

(i) For issuance of an appropriate writ for a declaration that the Second proviso to Section 13(1) as inserted vide the notification No. SG 12/2001/AJ-01 dated 2.1.2002 (Annexure-3) of the Bihar Finance Act, 1981 (hereinafter referred to as "the Act") as adopted by the State of Jharkhand is violative of Article 14, 301 and 304 of the Constitution in as much as the said proviso gives benefit of the Special/Concessional rate of tax on purchase of goods for manufacturing only in such cases where the such goods are used for manufacturing of goods for sale in the State of Jharkhand or in the course of inter state trade and commerce but denies such benefit in cases where such manufactured goods are transferred by way of stock transfer outside the State for sale and also sale in course of export outside the territory of India.

(ii) For issuance of an appropriate writ for a declaration that vide notification No.

SG 12/2001/AJ-01 dated 2.1.2002 no geographical restriction for sale of the manufactured goods has been imposed for being eligible for concessional rate of tax u/s 13(1)(b) and as such the Petitioner will be eligible for purchase of goods at concessional rate of tax u/s 13(1)(b) even if such goods are used for manufacturing goods for sale outside the State of Jharkhand, as also sale in course of export outside the territory of India.

(iii) For issuance of an appropriate writ for a declaration that the petitioner is entitled to the benefit of purchase of goods at a Special/Concessional rate of tax u/s 13(1)(b) of the Act as the Form IX, being the prescribed declaration form u/s 13(2)(i) read with Rule 13, do not provide for any declaration to the effect that the goods purchased at concessional rate of tax must be sold only within the State of Jharkhand or in the course of inter state trade or commerce and in the absence of any such declaration in the statutory form, the petitioner can not be denied purchase of goods at concessional rate of tax u/s 13(1)(b) for use in manufacturing goods for sale outside the State of Jharkhand including sale in course of export.

(iv) For issue of any appropriate writ for a declaration that in absence of any mechanism prescribed by Rules for assessment of tax on denial of concessional rate of tax u/s 13(1)(b), the entire Section 13(1)(b) has been rendered unworkable.

(v) For issuance of an appropriate writ or writ in the nature of certiorari for quashing the order of assessment made in respect of the assessment year 2005-06 (Annexure-4) being wholly illegal, invalid and arbitrary being violative of Article 301 of the Constitution of India as well as Article 14 of the Constitution of India to the extent the said assessment order relates to disallowance of the claim of the petitioner for purchase of raw materials at concessional rate and levy of tax on the petitioner u/s 13(3) of the Bihar Finance Act being differential rate of tax of additional 8% over the enhanced turnover.

(vi) For issuance of an appropriate writ or writ in the nature of certiorari for quashing the notice of demand dated 31.12.2008 (Annexure-4/1) raised pursuant to the aforesaid assessment order, to the extent it relates to disallowance of the claim of the petitioner for purchase of raw materials at concessional rate and levy of tax on the petitioner u/s 13(3) of the Bihar Finance Act being differential rate of tax of additional 8% over the enhanced turnover.

(vii) For issuance of any other appropriate writ(s)/order(s)/direction(s) as Your Lordships may deem fit and proper in the facts and circumstances of the case.

4. Undisputedly, the order of assessment has been passed by the authority under the provisions of 1981 Act and against the assessment order, there is a provision of statutory appeal and revision under the said Act. But the instant writ petitions have been filed not only for quashing the assessment order but also for a declaration that the proviso to Section 13(1) as inserted by notification dated 2.1.2002 is violative of Article 14, 301 and 304 of the Constitution of India and

also for a declaration that the said notification, no geographical restriction for sale of manufactured goods has been imposed for being eligible for concessional rate of tax u/s 13(b) of the Act.

5. We have heard Mr. K.N. Jain, learned Senior Counsel appearing for M/s. Tata Motors Limited and, Mr. M.S. Mittal, learned Counsel appearing for M/s. Tata Steel Limited. We have also heard Mr. Rajendra Krishna, learned Senior Standing Counsel appearing for the respondents.

6. In 1981, Bihar Finance Act was enacted which came into force with effect from 1.4.1981. Incidence and levy of tax as provided under Sections 3 and 4 of the Act which are charging sections and deal with the payment of sales tax and purchase tax by a dealer. Section 12 of the Act provides that the sales tax for purchase of tax payable by a dealer u/s 3 or 4 shall be levied @ 8% of his taxable turnover. Section 13 provides for concessional rate of tax being charged subject to certain restrictions and conditions prescribed in the Rules to registered dealers. Section 13 as stood originally in the Bihar Finance Act, 1981 reads as under:

13. Special rate of tax on certain sales or purchases. - (1) Notwithstanding anything contained in this part but subject to such conditions and restrictions as may be prescribed--

(a) sale of goods, for purchases other than re-sale or for use in manufacture of goods for sale, to State or Central Government or to a Company, Corporation or undertaking owned, financed or controlled wholly by such Government;

(b) Sales to or purchases by a registered dealer of goods required by him directly for use in the manufacture or processing of any goods for sale in Bihar or in course of inter-State trade of comer;

(c) sale of goods to a registered dealer required directly for use in mining, or to a person, company or undertaking holding registration certificate under the Bihar Electricity Act, 1948 (Bihar Act XXXVI of 1948) required directly for use in the generations or distribution of electricity; and

(d) sale of machineries, tools, plants and accessories thereof to a person, firm, company, corporation or concern intending to establish a business in Bihar for the purposes of manufacturing goods for sale and in whose case the likely sale-proceeds of such manufactured goods is expected to exceed the quantum specified in Sub-section (1) of Section 3, or for mining or generation and distribution of electricity;

and in respect of which the purchaser has been granted a certificate by the prescribed authority in the prescribed manner and for the prescribed period shall, unless the goods are taxable at a lower rate u/s 12, be subject to Sub-section (2), leviable to tax at such rate as may be notified by the State Government in this behalf not exceeding 4 per centum;

Provided that the State Government may, from time to time by notification in the Official Gazette, exclude any goods or class or description of goods from the operation of this section.

(2) In case of sales under Clause (a), (b) or (c) of Sub-section (1) a declaration in the prescribed form duly filled up and signed by the purchaser shall be furnished in the prescribed manner by the selling dealer and the prescribed authority may require the selling dealer to satisfy him that the sale was made to the purchaser holding certificate granted under the said sub Section.

(3) In respect of sales under Clauses (a), (b), (c) and (d) and purchase under Clause (b) of Sub-section (1), if the goods purchased are utilised by the purchaser for any purpose ether than those specified in the said clauses, the purchaser shall, without prejudice to any action which is or may be taken u/s 49, be liable to pay tax on the sale or purchase price, as the case may be, at the rate which is arrived at after deducting the concessional rate under this section from the rate applicable to the goods, class or description of goods u/s 12.

(4) In respect of sales under Clause (c) of Sub-section (1) if the goods purchased are unused by the purchaser for any purpose other than those specified in the said clause the tax on sale price of the goods so purchased shall, without prejudice to any action which is or may be taken u/s 49, be payable by the said person by making deposit of the amount into the Government Treasury in accordance with the direction issued to him by the prescribed authority and, in default of such deposit, the amount shall be recovered as an arrear of land revenue.

7. In the year 1985, amendments were brought in Section 13 of the aforesaid Act. By virtue of said Amendment Act, the words appearing in Clause (b) i.e. "In Bihar or in the course of inter-state trade or commerce" were deleted with effect from 1.4.1.985.

8. Again in 2002, a proviso was inserted in Section 13 of the said Act whereby the provision which originally existed in the said Act of 1981 was again introduced vide notification dated 2nd January, 2002. For better appreciation, the original notification in Hindi is reproduced herein below:

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9. Learned Counsels for the petitioners have put much stress on the wordings of the amended provision of the Act i.e. "sale of goods manufactured from it may also be sold with the State of Jharkhand and in the course of inter-state trade and commerce". Learned Counsels submitted that since the Rules have not been amended accordingly inasmuch as declaration in the prescribed form i.e. Form IX continues, the amended provision cannot be given effect to and as a result, the amended provision is violative of Articles 14, 301 and 304 of the Constitution and the order of assessment is wholly illegal and without jurisdiction. Learned Counsels submitted that all these aspects of the matter have not been considered by the Assessing Authority, the amended provision cannot be held to be violative of Articles 14, 301 and 304 of the Constitution of India. We find force in the submission of the learned Counsels appearing for the petitioners. The effect of the amended provision without amending the corresponding rules have to be considered.

10. In the aforesaid premises, the petitioners may avail the statutory remedy of

appeal, if already filed, against the assessment order passed by the respondent-authority and raise all the points which have not been considered by the authority.

These writ petitions are, therefore, disposed of with a direction to the appellate authority to consider the appeals on its own merits and dispose of the same in accordance with law.

11. Let it be clarified that we have not gone into the legality and validity of the amended provision of Section 13 of the Act.

D.K. Sinha, J.

12. I agree.

