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(1977) 04 OHC CK 0001

In the Orissa High Court

Case No : O.J.C. No''s. 2331 of 1975 and 61 of 1976

Western Coal Fields Ltd. APPELLANT

Vs

Sales Tax Officer and Others RESPONDENT

Date of Decision : 11-04-1977

Acts Referred:
Coal Mines (Nationalisation) Act, 1973 — Section 20, 28, 3, 6, 7

Citation : (1977) 43 CLT 648 : (1977) 40 STC 225

Hon'ble Judges : R.N. Misra, J;N.K. Das, J

Bench : Division Bench

Advocate : Bijan Ray, S.B. Choudhury and R. Mohanty, for the Appellant; Standing Counsel (S.T.), for the Respondent

Final Decision : Allowed

Judgement

R.N. Misra, J.—Both these applications are by a common petitioner, the Western Coal Fields Limited which is a Government company owned by the Central Government with its registered office in the State of Maharashtra. Under Central Ordinance 1 of 1973, the management of all the coal mines in the country were taken over by the Government of India pending a scheme of nationalisation of such mines and with effect from 30th January, 1973, the management of all the coal mines vested in the Central Government. Subsequently, the Coal Mines (Taking Over of Management) Act (15 of 1973) was duly enacted and from 1st May, 1973, the mines were nationalised. The period between 30th January, 1973, till 30th April, 1973, was described as the management period and during this intervening gap, the Government of India managed the collieries on behalf of the owners. Under the Coal Mines (Nationalisation) Act (26 of 1973) the coal mines specified in the schedule thereto stood vested absolutely in the Central Government from 1st May, 1973, free from all encumbrances. On 18th June, 1973, the Coal Mines Authority Limited was incorporated as a Government company and all right, title and interest of the Central Government acquired u/s 3 of Act 26 of 1973 were transferred to the said mining authority with retrospective effect from 1st May, 1973. In due course, the Central Government decided to reorganise the management structure of the coal industry with a view to streamlining the structural set-up. The Coal Mines Authority Limited was, therefore, converted into a Holding Company called Coal India Limited and the various existing divisions of the Coal Mines Authority Limited were converted into five subsidiary companies and the petitioner is one of those. It was incorporated on 29th October, 1975 and has acquired the right, title and interest of the Coal Mines Authority Limited in respect of the coal mines located within the State of Orissa.

2. Sales tax dues raised against some of the previous owners of collieries have been asked to be paid by the petitioner-company relying on the provisions of Section 19 of the Orissa Sales Tax Act. The petitioner challenges the direction of the sales tax authorities on the footing that the mines have vested free of encumbrances and the petitioner is not a "person" within the ambit of Section 19 of the Orissa Sales Tax Act to whom liabilities against the previous coal mine owners can attach. Reliance has been specifically placed on the provisions of Sections 3 6 7 20 and 28 of Act 26 of 1973. As far as relevant, these provisions run thus:

3. (1) On the appointed day, the right, title and interest of the owners in relation to the coal mines specified in the Schedule shall stand transferred to and shall vest absolutely in, the Central Government free from all encumbrances....

6. (1) All property which vests in the Central Government or in a Government company under this Chapter shall, by force of such vesting, be freed and discharged from any trust, obligation, mortgage, charge, lien and all other encumbrances affecting it and any attachment, injunction or decree or order of any court restricting the use of such property in any manner shall be deemed to have been withdrawn.

7. (1) Every liability of the owner, agent, manager or managing contractor of a coal mine, in respect of any period prior to the appointed day, shall be the liability of such owner, agent, manager or managing contractor, as the case may be and shall be enforceable against him and not against the Central Government or the Government company.

(2) For the removal of doubts, it is hereby declared that-

(a) save as otherwise provided elsewhere in this Act, no claim for wages, bonus, royalty, rate, rent, taxes, provident fund, pension, gratuity or any other dues in relation to a coal mine in respect of any period prior to the appointed day, shall be enforceable against the Central Government or the Government company ;....

20. Every person having a claim against the owner of a coal mine shall prefer such claim before the Commissioner within thirty days from the specified date:

Provided that....

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28. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act, or in any decree or order of any court, tribunal or other authority.

3. In view of these peremptory provisions of an overriding character, there is no scope for treating the petitioner-company as a transferee of the business.

4. Section 19(1) of the Orissa Sales Tax Act provides :

When the ownership of the business of a dealer liable to pay tax under this Act is entirely transferred any tax payable in respect of the business till the date of the transfer and remaining unpaid at the time of transfer, shall, without prejudice to any action that may be taken for its recovery from the transferor, be payable by the transferee as if he were a dealer liable under this Act for such tax and the transferee shall be liable to pay tax on the sales made by him on and from the date of such transfer and shall within thirty days of the transfer apply for registration under this Act unless he is already registered.

Explanation....

5. A bare reading of this provision juxtaposed to the provisions of Section 7 of Act 26 of 1973 clearly indicates that the petitioner can have no liability for sales tax dues against the owners of the collieries which have vested in the petitioner. The learned standing counsel has stated to us during the hearing of this application that Government have duly registered their claim with the Commissioner under Central Act 26 of 1973. We are, therefore, inclined to agree with the contention of Mr. for the petitioner that the steps taken by the Sales Tax Officer to recover the taxes due against the previous mine owners from the petitioner are not warranted by law and since the petitioner has no liability for those dues, no steps for collection of the taxes can be taken against the petitioner. The view we have taken is directly supported by a recent decision of the Calcutta High Court in the case of Shethia Mining and Manufacturing Corporation Ltd. v. Commercial Tax Officer, Central Section [1977] 39 S.T.C. 246.

2. We would accordingly allow both these writ applications, quash the various orders of the tax authorities in the matter of collecting the sales tax dues against the previous mine owners from the petitioner and restrain them from taking any such action in future. In the peculiar facts of these cases, there would be no direction for costs.

N.K. Das, J.

3. I agree.

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