
(2017) 01 JH CK 0234

JHARKHAND HIGH COURT

Case No: 4279 of 2008

Rocky Ray @ Rocky
Kumar Ray

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: Jan. 12, 2017

Acts Referred:

- Central Sales Tax Act, 1956, Section 8(1), Section 10(d), Section 8(2-A) -
- Bihar Finance Act, 1950, Section 13(1)(b) -
- Bihar Sales Tax Ordinance, 1976, Sectio

Hon'ble Judges: D. N. Patel, Ratnaker Bhengra

Bench: DIVISION BENCH

Advocate: Sumeet Gadodia, Atanu Banerjee

Judgement

1) This writ petition has been preferred challenging the order passed by Assistant Commissioner of Commercial Taxes, Bureau of Investigation, Jamshedpur Circle, Jamshedpur dated 11th August, 1999 (Annexure 1), as well as the order passed by the Joint Commissioner of Commercial Taxes (Appeal), Jamshedpur Division, Jamshedpur dated 17th March, 2008 (Annexure 2), as well as the revisional order dated 13th May, 2008 passed by the Commercial Taxes Tribunal, Jharkhand, Ranchi (Annexure 3), so far as the said orders disallow/reject the claim of the petitioner in respect of sale made to UNICEF under Section 8(2-A) of the Central Sales Tax Act, 1956 and also the claim of the petitioner in respect of inter-State sales of store materials worth Rs.28,29,774/- on the ground of its purchase at concessional rate by this petitioner for its own use under the Provincial Sales Tax law. Thus, the goods, which were purchased at a concessional rate of tax under Section 8(1) of the Central Sales Tax Act, 1956, as well as under Section 13(1)(b) of the Bihar Finance Act sold to registered dealer under Section 8(1) and 8(3) of the Central Sales Tax Act, 1956, has been subjected to tax at the rate of 10% instead of 4%.

2) Having heard learned counsels for both sides and looking to the facts and circumstances of the case, it appears that the petitioner is relying upon a notification issued by the erstwhile State of Bihar under Section 6(3)(c) of the Bihar Sales Tax Ordinance, 1976 dated 22nd December, 1976, whereby the Government of Bihar was pleased to exempt from levy of "Special Sales Tax" and "General Sales Tax" sale made to the United Nations International Children's Emergency Fund (UNICEF) of such goods as are certified by them to be required for use of the UNICEF. For the ready reference, the said notification reads as under:-

"The 22nd December 1976.

Bikri-Kar/San/1005/76-14416- In exercise of the powers conferred by clause (c) of sub-section (3) of section 6 of the Bihar Sales Tax Ordinance, 1976 (Bihar Ordinance No.209 of 1976), the Governor of Bihar is pleased to exempt from the levy of "Special Sales Tax" and "General Sales Tax" sale made to the United Nations International Children's Emergency Fund (UNICEF) of such goods as are certified by them to be require for use of the UNICEF.

2. This notification shall come into force with effect from 1st January, 1977.

By order of the Governor of Bihar,

A. HAKIM,

Commissioner of Commercial Taxes and

ex-officio Special Secretary to

Government."

(Emphasis supplied)

3) Looking to Section 8(2-A) of the Central Sales Tax Act, 1956, the aforesaid sale by this petitioner to the UNICEF is not covered by Section 8(2-A) of the Central Sales Tax Act, 1956. For the ready reference, Section 8(2-A) of the Central Sales Tax Act, 1956 reads

as under: -

"Section 8- Rates of tax on sales in the course of of inter-State trade or commerce

1.

2.

2-A- Notwithstanding anything contained in sub-section (1A) of Section 6 or sub-section (1) or clause (b) of sub-section (2) of this section, the tax payable under this Act by a dealer on his turnover in so far as the turnover or any part thereof relates to the sale of any 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 or subject to tax generally at a rate which is lower than four percent (whether called a tax or fee or by any other name), shall be nil or, as the case may be, shall be calculated at the lower rate.

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 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 goods."

(emphasis supplied)

4) In view of the aforesaid provisions of Central Sales Tax Act, 1956, if the sale of the goods is generally not exempted as per the State Sales Tax Act, those sales are not covered under Section 8(2-A) of the Central Sales Tax Act, 1956. Looking to the exemption notification issued under Section 6(3)(c) of the Bihar Sales Tax Ordinance, 1976, there is an exemption from levy of "Special Sales Tax" and "General Sales Tax" upon the sales made to UNICEF, of such goods as are certified by them to be required for use of the UNICEF." This notification is to be read with clause 1 of Part-C of Annexure-I to the Bihar Finance Act. For the ready reference, Clause 1 of Part-C of Annexure-I of the Bihar Finance Act reads as under: -

"Part C.

Exemptions from sales tax granted without time limit from 1st January 1977 in individual cases.

Sl No	Notification No.	Date	Date of effect	Particulars
1.	14416*	22-12.-76	1-01-1977	Sales of goods to the UNICEF certified by them as per the use by it.
2.	14418*	do	do	-do- -do- to WHO -do -do- -do- -do-

3.	14426*	do	do	Sales of medicines, food, hospital equipments and instruments to all leprosy hospitals in Bihar run by charitable institutions registered under Act 21 of 1960
	(*Entries 1 to 3 are as amendment by notification no.14552 dated 26th December 1977			

4.	1063	01-11-1980	1-11-1980	Sales of newsprints to small and medium newspapers (see item 51 of Part A above)
5.	1199	17-08-1981	17-08-1981	Sales and purchases by the proposed duty free shop established by the ITDC in the Patna Airport.

6.	390 456	09-03-1982 02-04-1984	2-10-1981	Madhubani painting and handmade sikki, bamboo and cane goods, articles made of stone, of horn, tikuli, embroidery aplics and wooden toys.
7.	828	13-05-1982	15-04- 1982	Sales of aviation fuel to Vayudoot Air Service.

8.	1258	17-08-1982	6-07-1982	Sales of UNICEF calenders and greeting cards-invoices from the UNICEF or other proper evidence to be produced
9.	1256	do	do	Purchases of raw materials and sales of finished products by the Cottage Match Box Industries
10.	1283	16-12-1982	25-11-1982	Sales of saplings

11.	1585	do	01-04-1981	Sales of foodgrains to R.R. & P Department by the Govt. of India through the FCI subject to the production of certificate from that dept that the foodgrains are for use under the NRE3P of the G.I.
12.	133	28-01-1983	28-01-1983	Sales of wind-mill

13.	131	do	01-10-1982	Sales of solar cooker
14.	795	05-07-1984	01-03-1984	Sales of foodgrains to the R.R.&P Department by the Govt of India through the FCI subject to the production of certificate from that Dept that the foodgrains are for use under the RLEGP of the G.I.

15.	1311	02-12-1985	2-12-1985	Equipments operated by nonconventional energy (see list in the original notification published on page 51 of the Journal section of 1986 BRLJ).
16.	577 1199 1250	17-06-1985 08-11-1985 23-10-1986	01-04-1984 01-04-1985 01-04-1986	Sales of Beltron T.V. Sets manufactured by the Bihar State Electronic Development Corporation

	Note:- The validity of this exemption to locally produced goods as against the same goods imported from other States, is of doubtful validity in view of the decision in West on Electronics v. State of Gujarat, (1988) 70 STC 52 SC)			
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17.	987	13-11-87	13-11-87	Sales of cassettes named Azadi ki Kahani released by the Gramophone Company of India
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5) Thus, the exemption notification dated 22nd December, 1976 issued under Section 6(3)(c) of the Bihar Sales Tax Ordinance, 1976 is not a "sale" which is generally exempted from the tax to be levied under the Bihar Finance Act.

6) It has been held by Hon"ble Supreme Court in the case of Commissioner of Sales Tax, J & K and others Vs Pin Chemicals Ltd and others reported in (1995) 1 SCC 58, in paragraphs 4, 5, 6, 7 and 8 as under: -

"4. A reading of the sub-section yields the following features:

(a) The sub-section opens with a non obstante clause which gives an overriding effect to the rule contained therein over the provisions contained in sub-section (1-A) of Section 6 and in sub-section (1) of Section 8 itself;

(b) Where the turnover (or any part thereof) of a dealer relates to the sale of any goods, the sale or purchase of which is under the sales tax law of the appropriate State exempt from tax generally or is taxable at a rate lower than four per cent;

(c) The Central sales tax shall equally be exempt or shall be charged at such lower rate, as the case may be;

(d) The explanation which defines the expression "generally" occurring in the sub-section clarifies that a sale or purchase of any goods shall not be deemed to

be exempt from tax generally under the State sales tax law if under such law

(i) the sale or purchase of such goods is exempt only in specified circumstances or under specified conditions or

(ii) 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.

5. We may at this stage set out the relevant portion of Government Order No. 159, which provides for exemption. It reads:

"Sanction is accorded to the grant of the following incentives and facilities to Large and Medium Scale Industries in the State of Jammu & Kashmir:

* * *

(2) Grant of exemption from the State sales tax both on raw materials and finished products for a period of five years from the date the unit goes into production."

6. By a subsequent government order dated 25-8-1971 clause (2) was substituted. The substituted clause (2) reads thus:

"2. Grant of exemption from the sales tax both on raw materials and finished products.

The State sales tax paid by Large and Medium Scale Industries on the raw materials procured by them for the initial 5 years of the production would be refunded to such industries. Similarly such industry will be granted exemption from the payment of any State sales tax on their finished products for a period of five years from the date the unit goes into production."

For attracting the exemption provided by the government order, it has to be established that (i) the goods, the sale or purchase of which is claimed to be exempt from tax, are manufactured by a large or medium scale industry and (ii) that the said goods are manufactured and sold within five years from the date the

said industrial unit has gone into production.

7. The simple question before us is whether the Bench which decided *Pine Chemicals* is right in holding that the benefit of the said sub-section is available even where the goods are exempted with reference to industrial unit and for a specified period, viz., period of five years from the date the relevant unit goes into production. In other words, the question is whether an exemption of the nature granted under Government Order No. 159 dated 26-3-1971 is an exemption available "only in specified circumstances or under specified conditions" within the meaning of the Explanation to Section 8(2-A), as contended by the State or is it a case where the goods are exempt from the tax "generally" within the meaning of Section 8(2-A), as contended by the respondents/dealers? We are of the opinion that the respondents/dealers' contention cannot be accepted in view of the clear and unambiguous language of the sub-section.

8. The idea behind sub-section (2-A) of Section 8 of the Central Sales Tax Act, which we have analysed hereinbefore, is to exempt the sale/purchase of goods from the Central sales tax where the sale or purchase of such goods is exempt generally under the State sales tax law. We must give due regard and attach due meaning to the expression "generally" which occurs in the sub-section and which expression has been defined in the explanation. If the said expression had not been there, it could probably have been possible to argue that inasmuch as the goods sold by a particular manufacturer-dealer are exempt from the State tax in his hands, they must equally be exempt under the Central Act. But sub-section (2-A) requires specifically that such exemption must be a general exemption and not an exemption operative in specified circumstances or under specified conditions. Can it be said that the goods sold by the dealers in this case are exempt from tax generally under the State sales tax enactment? The answer can only be in the negative. Such goods are exempt from tax only when they are manufactured in a large or medium industrial unit within five years of its commencement of production and sold within the said period, i.e., in certain specified circumstances alone. The exemption is not a general one but a conditional one. The exemption under the Government Order No. 159 is not with reference to goods or a class or category of goods but with reference to the industrial unit producing them and their manufacture and sale within a particular period. For the purposes of the government order, the nature, class or category of goods is irrelevant; it may be any goods. It is concerned only with the industrial unit producing them and the period within which they are manufactured and sold. Can it be said in such a case that it is an instance where the sale is of goods, the sale or purchase of which is under sales tax law of the appropriate State, exempt from tax generally? Certainly not. Exemption provided by Government Order No. 159, to

repeat, is not with reference to goods but with reference to the industrial unit. So long as it is (i) a large or medium scale industry and (ii) it manufactures and sells goods within the five years of its going into production, the sale of such goods is exempt irrespective of the nature or classification of goods.

Similar goods may be manufactured by another unit but if it does not satisfy the above two requirements, the goods manufactured and sold by it would not be entitled to exemption from tax. Indeed, the goods manufactured by that very unit would not be eligible for exemption if they are manufactured after the expiry of five years from the date it goes into production and/or sells them beyond the said period. The period of exemption may also vary from unit to unit depending on the date of commencement of production in each unit. For the above reasons, we are of the opinion that the exemption granted under the aforesaid government order does not satisfy the requirements of Section 8(2-A)."

(emphasis supplied)

7) In view of the aforesaid decision, the most important ingredient explained under Section 8(2-A) of the Central Sales Tax Act, 1956 is sale or purchase of goods if exempted under the specified circumstances or under the specified conditions and not generally, under the Provincial Sales Tax laws applicable in the State, then they are liable for payment under Central Sales Tax Act, as they are not covered under Section 8(2-A) of the Central Sales Tax Act, 1956. The conditions attached in the notification issued by the erstwhile State of Bihar dated 22nd December, 1976 is to the effect that if such goods are certified by them to be required for the use of UNICEF, then only such sales are exempted from the payment of Provincial Sales Tax, meaning thereby to, there is no general exception for, every type of sale of goods, to the UNICEF. Thus, benefit under Section 8(2-A) of the Central Sales Tax Act, 1956 cannot be availed by this petitioner. This aspect of the matter has been properly appreciated by the Assessing Officer, by the appellate authority as well as by the revisional authority and we see no reason to take any other view than what is taken by these authorities, especially, looking to Section 8(2-A) of the Central Sales Tax Act, 1956 to be read with the aforesaid decision rendered by Hon"ble Supreme Court.

8) Second issue involved in this writ petition is about the sale made to registered dealer of store materials under Section 8(1) and 8(3) of the Central Sales Tax Act, 1956 at Rs.28,29,774/-. For such sale, the rate of tax applicable is 4%, whereas, the respondents-State Authorities have taxed the sale at the rate of 10%.

9) Having heard counsels for both sides on this issue, it appears that there is no substance in the contention of the petitioner mainly for the reason that the store articles were purchased by this petitioner at a concessional rate for the particular type of end use. After purchase at a concessional rate, the spare parts, etc for the manufacturing of a particular type of goods the spare parts have been sold away to the registered dealer. Thus, the goods which were purchased at a concessional rate under Section 8(1) of the Central Sales Tax Act, 1956 or under Section 13(1)(b) of the Bihar Finance Act, cannot be now utilized for any other purposes. Such type of goods, which were purchased for a particular type of end use, have been sold away to the registered dealer and hence, this petitioner is liable to make payment of tax under Central Sales Tax Act at the rate of 10% and not at the concessional rate of 4%.

10) It has been vehemently contended by the counsel for the petitioner that if there is any breach of the conditions imposed for the purchase of goods at a concessional rate by this petitioner, e.g. those goods are to be used for a particular type of end use and if those goods are not used for those specified end use, penalty can be imposed under Section 10A of the Central Sales Tax Act, 1956 for utilizing the goods which are purchased at a concessional rate, if they are not utilized for the purpose of manufacturing of a specific type of end use.

Similarly, counsel for the petitioner has also relied upon Section 10(d) of the Central Sales Tax Act, 1956 which is also about the penalty. On the basis of these two Sections, it is contended by the counsel for the petitioner that the goods, which are sold to the registered dealers under Section 8(1) and 8(3) of the Central Sales Tax Act, 1956, are levied at the rate of 4% and not at the rate of 10%. These contentions are not accepted by this Court mainly for the reasons that imposition of penalty is one thing, whereas, levy of Central Sales Tax upon the goods, which were purchased at a concessional rate and if are not utilized for the same purpose, is absolutely another thing. The goods, which are purchased at a concessional rate of duty, are always conditional in nature and the condition is to use those goods in the manufacturing of a particular type of end use. If these goods are diverted for some other purposes other than the particular type of manufacturing of goods, then they are are subjected to normal rate of tax which is 10% in the fact of the present case, even though they sold to the registered dealer.

11) As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, there is no substance in this writ petition. Hence, the same is hereby dismissed.