The State Of Jharkhand vs M/S. Akash Coke Industries Pvt. Ltd. on 10 May, 2019

Equivalent citations: AIRONLINE 2019 SC 449, (2019) 3 PAT LJR 52, (2019) 7 SCALE 791, 2019 (7) SCC 142

Author: K.M. Joseph

Bench: K.M. Joseph, Sanjay Kishan Kaul, Ranjan Gogoi

NON-REPORTA

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4949 OF 2019
(@ S.L.P.(C) No.2404 of 2018)

THE STATE OF JHARKHAND & ORS. … APPELLANT(S)

VERSUS

M/S. AKASH COKE INDUSTRIES PVT. LTD. … RESPONDENT(

WITH
CIVIL APPEAL NO.4950 OF 2019
(@ S.L.P.(C) No.2407 of 2018)

J U D G M E N T

K.M. JOSEPH, J.

1. Leave granted.

2. By the impugned judgment passed in a Writ Petition, the High Court has directed the appellants to reimburse the State Sales Tax paid by the respondent-writ petitioner towards the purchase of coal with statutory interest. The respondent-writ petitioner purchased coal within the State of Jharkhand. It paid sales tax in a sum Rs.17,89,412/-. Coal was thereafter converted to coke. The coke was thereafter sold by way of inter-state sale. On the inter-state transaction, Central Sales Tax was levied and it was paid in a sum of Rs.63,80,573/-. Thereafter, the respondent filed an application for refund of the Sales Tax paid on the inter-state purchase of coal under Section 15(b) of the Central Sales Tax Act, 1956 (hereinafter referred to as 'the Act'). A perusal of the impugned judgment would show that with the refund application, excess demand notice was not allegedly sent as per Rules 35(4) and 35(6) read with Rule 34(2) of the Bihar Sales Tax Rule, 1983. The High Court, however, rejected the contentions on the following reasons:

> "14. The contention raised by the learned counsel appearing for the respondents that with refund application excess demand notice was never annexed as per Rules 35(4) and 35(6) to be read with Rule 34(2) of the Bihar Sales Tax Rules, 1983. This contention is not accepted by this Court mainly for the reasons of the following absolutely undisputed facts:
>
> (a) Sales Tax paid under the State Sales Tax by this petitioner for purchase of the coal as an intra- state sale is at Rs.17,89,412/-.
>
> (b) The coal is converted into coke and now the coke is sold as an inter-state sale. Hence, Central Sales Tax has to be paid @ 4% because the same is declared goods of special importance under Section 14 of the CST Act. For the Central Sales Tax, there is an order of assessment and there is payment of Sales Tax also, which is at Rs.63,80,573/-.
>
> (c) As per Section 15(b) of the CST Act, when end product is sold as inter-state sale and Central Sales Tax is already paid and for the purpose of raw material if any tax is paid under the State Sales Tax, the same shall be reimbursed."

3. We heard the learned Counsel for the parties.

4. Learned Counsel appear for the appellant would raise only one contention before this Court. It is the case of the appellant that respondent has purchased coal by way of intra-state sale. What was sold by way of inter-state sale was not coal but coke. Therefore, the appellant is not entitled for reimbursement of the Sales Tax paid on coal under Section 15(b) as both goods are not same.

5. Article 286 of the Constitution of India, 1949, at the relevant time prior to its omission, read as follows:

> "286. Restrictions as to imposition of tax on the sale or purchase of goods.
>
> (1) *** (2) *** (3) Any law of a State shall, in so far as it imposes, or authorises the imposition of,
>
> (a) a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter State trade or commerce; or
>
> (b) a tax on the sale or purchase of goods, being a tax of the nature referred to in sub clause (b), sub clause (c) or sub clause (d) of clause 29 A of Article 366, be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify."

6. It is in view of Article 286(3)(b) of the Constitution that Parliament enacted the Act and purported to lay down the conditions and restrictions subject to which tax could be levied on

declared goods besides also providing for declaration as to certain goods as declared goods.

7. It is apposite to refer to Section 14(ia) alone so far as it relates for the purpose of this case:

> "14. Certain goods to be of special importance in inter-State trade or commerce.— It is hereby declared that the following goods are of special importance in inter-State trade or commerce:—
>
> (i) *** *** *** *** (ia) coal, including coke in all its forms, but excluding charcoal:
>
> Provided that during the period commencing on the 23rd day of February, 1967 and ending with the date of commencement of section 11 of the Central Sales Tax (Amendment) Act, 1972 (61 of 1972) this clause shall have effect subject to the modification that the words "but excluding charcoal" shall be omitted."

8. Now, it is necessary to advert to Section 15 of the said Act:

> "15. Restrictions and conditions in regard to tax on sale or purchase of declared goods within a State.— Every sales tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely:—
>
> (a) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed four per cent of the sale or purchase price thereof;
>
> (b) where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce, and tax has been paid under this Act in respect of the sale of such goods in the course of inter-State trade or commerce, the tax levied under such law shall be reimbursed to the person making such sale in the course of inter-State trade or commerce in such manner and subject to such conditions as may be provided in any law in force in that State;
>
> (c) where a tax has been levied under that law in respect of the sale or purchase inside the State of any paddy referred to in sub-clause
>
> (i) of clause (i) of section 14, the tax leviable on rice procured out of such paddy shall be reduced by the amount of tax levied on such paddy; where a tax on sale or purchase of paddy referred to in sub-clause (i) of clause (i) of section 14 is; leviable under the law and the rice procured out of such paddy is exported out of India, then, for the purposes of sub-section (3) of section 5, the paddy and rice shall be treated as a single commodity;

> (d) each of the pulses referred to in clause (via) of section 14, whether whole or separated, and whether with or without husk, shall be treated as a single commodity for the purposes of levy of tax under that law."

9. The question arises as to whether such a right can be claimed when the goods sold under the inter- State are allegedly different from the goods which were subjected to tax under the intra-State transaction. This is despite the fact that both the goods which were purchased by way of intra-State transaction and the goods which are subject matter of the inter-State transaction are both declared goods under Section 14 of the Act.

10. Learned Counsel for the appellant drew our attention to the judgment in the case of Tvl. K.A.K. Anwar and Co. v. State of Tamil Nadu1.

11. The question, however, arises as to whether we should go into the issue which has been raised by the appellants. The respondent – writ petitioner contends that the question as to whether Coal and Coke are same goods was not at all raised before the High Court. The issue before the High Court was something different. The writ petition was filed by the respondent feeling aggrieved by the refusal to reimburse the respondent, the amount of tax paid on the intra-State transaction. Let us peruse the pleadings to ascertain as to what really the issue was before the High Court. The relief sought by the respondent – writ petitioner is as follows:

> "It is, therefore, prayed that Your Lordships may graciously be pleased to issue Rule Nisi calling upon the Respondents to show cause as to why;
>
> 1 (1998) 1 SCC 437
>
> (i) An appropriate writ/order/direction, including Writ of Mandamus, be not issued directing the Respondents to issue Refund Payment Order to the petitioner for an amount of Rs.12,32,496/- pertaining to the Financial Year 2005-06, being the admitted amount adjudicated by Respondents themselves in terms of Section 15(b) of the Central Sales Tax Act, 1956 towards the claim of the petitioner for reimbursement of the tax levied by the State Government under the Bihar Finance Act, 1981 on declared goods which were subsequently sold in course of inter-State trade and commerce.

Further appropriate writ/order/directions, including Writ of Mandamus, be not issued directing the Respondents to pay statutory interest to the petitioner @ 9% per annum in terms of Section 43 of the Bihar Finance Act, 1981 from the expiry of the period of six months from the date of receipt of the application of refund filed by the petitioner till the date when Refund Payment Order is issued in favour of the petitioner."

12. The case that was set up before the High Court was inter alia as follows:

> "The respondent is a manufacturer of Hard Coke and for manufacture of hard coke, one of the necessary raw material is 'Coal' which the respondent used to purchase by way of intra State transaction in the State of Jharkhand. Coal including Coke, in all its forms is also one of the declared goods under Section 15 of the C.S.T. Act. He referred to the original Assessment Order for the period 2005-06 as having been passed on 17.06.2008 both under the State Sale Tax Act and C.S.T. Act. It is further its case that certain transactions have been wrongly classified as falling under the State Act and the tax was levied under the State Act. It filed an appeal before the Joint Commissioner who set aside the Assessment and remanded the matter."

13. The respondent thereupon filed Revision Petition before Commercial Taxes Tribunal complaining that instead of Appellate Authority remanding the matter back to the Assessing Officer, it should have itself decided the issue whether sales were actually inter-state and not intra-state sales. The same was dismissed. The Assessing Officer passed a revised order and the sales were determined as interstate sale. The liability was fixed at Rs.26,97,266.34. A NIL demand was raised as the respondent had already paid the said amount. The respondent was entitled to be reimbursed the tax paid under the State Law on Coal and, therefore, the respondent had filed an application seeking refund. On the basis of the detailed adjudication by the Assistant Commissioner of Commercial Taxes, the amount refundable to the petitioner under Section 15

(b) of the Act was determined and an amount of Rs.12,32,496 was determined. Thereupon, the respondent filed an application under statutory Form-XX as prescribed under Rule 35 of the Rules, 1983 but no steps were taken by the respondent for issuance of the Refund Payment Order. Despite repeated requests to process its application for refund and to issue the Refund Payment Order, no steps were taken. The respondent was entitled to claim refund of the said amount with interest @ 9% from the date of expiry of 6 months of the date of receipt of the application.

14. On these allegations, the writ petition was filed.

15. In the counter affidavit to the writ petition filed by the appellants, the question as raised in the special leave petition, viz., whether Coal and Coke are different goods mentioned under Section 15(b) of the Act was not raised. The question set up in the counter affidavit was that refund can be claimed only in the event where a separate order has been duly passed under such provisions and it was contended that the application for refund in the instant case should have been in Statutory FORM XXIII and not in regular FORM XX and furthermore there should have been an issuance of excess payment notice in the statutory demand notice in Form XV. It was also contended that there was no inaction on part of the appellants. The appellants insisted on excess payment notice in the prescribed form. A supplementary counter affidavit was filed on behalf of the Assistant Commissioner of Commerce Taxes who is the 4th appellant before us. Therein, it was stated that under Memo dated 10.12.2016 for both financial years 2004-05 and 2005-06, the Joint Commissioner Commercial Taxes informed the respondent regarding rejection of its application for refund. Therein, it was again reiterated that the respondent is required to submit the statutory FORM XXIII. Thereafter, respondent filed an application to amend its writ petition seeking to challenge the orders of rejection. Petitioner Nos.3 and 4 in the special leave petition, filed a counter

affidavit. Therein, it is inter alia contended that in Form XXIII annexed by the respondents, the amount of tax paid in Column 6 was shown as Rs.9,28,379.52 whereas the claim of the respondent in the writ petition is Rs.12,32,496. The error is said to have been originated from the order dated 04.08.2011 passed under Section 15(b) of the Act. It was, therefore, prayed that revenue of the government exchequer was involved, the writ petition may be disposed of remanding the case back to the respondent to pass an order considering the actual facts of the case. It is also stated that the appellants are duty bound to refund any such amount which will be accrued as claimed under Section 15(b) of the Act.

16. It is on these pleadings that High Court proceeded to consider the petition and pass the order which we have already adverted to. There was absolutely no whisper in the counter affidavit or additional affidavit filed by the appellants seeking to project the dispute that Coal purchased by the respondents was not the same good as Coke manufactured out of Coal and, therefore, on sale of Coke in an inter-state Sale, the respondent is not entitled to get refund of the tax paid on the intra-state purchase of Coal.

17. The same issue is involved in the other connected appeal, i.e., Civil Appeal arising out of SLP(C)No.2407/2018.

18. In our view, the question which has been raised by the Appellant-State, was never raised and the writ petition filed by the respondent, was on the basis of the determination of the Refund under Section 15(b) of the Act. In such circumstances, we are of the view that no relief can be granted to the appellant. Accordingly, the appeals will stand dismissed.

.....CJI.

(RANJAN GOGOI) .....J. (SANJAY KISHAN KAUL) .....J. (K.M. JOSEPH) New Delhi, May 10, 2019.