Supreme Court of India
State Of Bihar & Ors vs Steel City Beverages Ltd, & Anr on 18 November, 1998
Bench: S.P.Bharucha, G.T.Nanavati, B.N.Kirpal.

PETITIONER:
STATE OF BIHAR & ORS.

Vs.

RESPONDENT:
STEEL CITY BEVERAGES LTD, & ANR.

DATE OF JUDGMENT: 18/11/1998

BENCH:
S.P.Bharucha, G.T.Nanavati, B.N.Kirpal.

JUDGMENT:

Nanavati.J A short question which arises for consideration in this appeal is whether investment made by Steel City Beverages Limited, respondent No. 1 herein and hereafter referred to as "the Company"), in bottles and crates can be said to be investment in "Plant" so as to amount to "Fixed Capital Investment" under the Bihar Sales Tax Supplementary (Deferment of Tax) Rules, 1990 (hereinafter referred to as "the Deferment Rules").

The Company is engaged in the business of manufacturing softdrinks and beverages. It is a registered dealer under the Bihar Finance Act, 1981. It filed a writ petition being Civil Writ Jurisdiction Case No. 1118 of 1992, through its Director-respondent No.2 in Patna High Court for a direction to the State Government and its officers, appellants herein, to accord permission under Rule 42 (7) of the Bihar Sales Tax Rules, 1983 and exempt it from using Form No. XXVIII-B. White the petition was pending before the High Court, it made an application under the Deferment Rules to the competent authority for grant of an eligibility certificate which would enable it to claim benefit of deferment of payment of sales-tax scheme declared under the Deferment Rules. It was stated in the application that under the Resolution of the State Government dated 6.9.1989 and the Deferment Rules, it was qualified to seek the benefit of deferment. The High Court by its order dated 13.7.1992 directed the Deputy Commissioner of Commercial Taxes, respondent No.4, to place that application before the District Level Committee for Singhbhum District for its consideration. The District Level Committee decided on 9.1.1995 that the Company was entitled to the benefit of deferment of payment of sales-tax to the extent of 90% of its fixed capital investment in fixed-capital assets. However, it rejected the Company's claim that investment in bottles, crates, electrification and tools was an investment in "Plant" and, therefore, it was also a "fixed capital investment". The Company, therefore, amended the writ petition and challenged that part of the decision of the District Level Committee which was against it.

The High Court after considering that under the Deferment Rules "fixed capital investment" means investment inland, building, plant and machinery and that they do not define the word "Plant", observed that it was required to be construed according to its dictionary meaning or as understood in common parlance and not in its technical sense. It then held that the word "Plant" would include whatever apparatus is Used by a businessman for carrying on his business; not his stock in trade which he buys or makes for sales, but all goods and chattels fixed or movable which he keeps for employment in his business and which have some degree of durability. Considering the nature of business of the Company, namely, manufacturing soft drinks and beverages, the High Court held that bottles and crates employed by it for its business are also 'Plant' and, therefore, the Company is entitled to get the benefit of deferment on the investment made in them. The High Court quashed the decision of the District Level Committee which was under challenge and directed the State and its officers to grant the benefit of deferment after taking into account the investment made in bottles and crates also. The claim in relation to electrification and tools was not pressed before the High Court. Aggrieved by the decision of the High Court, the State has filed this appeal. ' ' It was contended by Mr. B.B. Singh, learned counsel for the appellant-State that the High Court has mis-interpreted the word "Plant" in Rule 2(v) of the Deferment Rules. It was submitted by him that unless a thing is of durable nature and fixed like land, building or machinery, it cannot be said to be 'Plant' and. therefore, bottles and crates have been wrongly held as 'Plant'. He also submitted that all the decisions relied upon by the High Court were under the Income-Tax Act, 1961 which defines the word "plant" very widely and, therefore, they were really not relevant for the correct interpretation of the word plant as used in Rule 2(v) of the Deferment Rules. On the other hand, learned counsel for the respondents supported the decision of the High Court on the grounds given by the High Court in its judgment.

Therefore, what we have to consider is whether under the 'Deferment Rules' "plant" would include bottles and crates employed by an industrial unit manufacturing soft-drinks and beverages for carrying on its business. The word plant has a very wide meaning and a variety of articles, objects or things have been held to be plant. Dictionaries have defined plant as land, building, fixtures, machinery, implements and tools, and apparatus used in carrying on a mechanical operation or an industrial process. This Court in C.I.T. v. Taj Mahal Hotel 11971] 82 ITR 44 and Scientific Engineering House P. Ltd. v. CIT 119861 157 ITR 86 referred to with approval the observations of Lindley LJ In Yarmouth v. France [1887) 19 QBD 647 that in its ordinary sense plant includes whatever apparatus is used by a businessman for carrying on his business, - not his stock-in-trade which he buys or makes for sale', but all goods and chattels, fixed or movable, live or dead, which he keeps for permanent employment in his business. In that case, this Court further held that the test to decide whether a particular thing is plant would be : "Does the article fulfil the function of a plant in the assessee's trading activity ? Is it a tool of his trade with which he carries on his business ? If the answer is in the affirmative, it will be a plant". Learned counsel for the respondents, heavily relying upon this decision, submitted that the High Court was right in interpreting the word plant in the Deferment Rules as including bottles and crates also as they are used by the Company for carrying on its business. We cannot agree with this contention as we are of the view that the High Court was wrong in interpreting the word plant in Rule 2(v) so widely. It failed to consider whether the object and scheme of the Deferment Rules permit such a wide interpretation. The High Court also failed to appreciate that the decisions of this Court in Tsj Mahal Hotel (supra) and Scientific

Engineering House (supra) were under the Income Tax Act and the observations made and the test indicated therein were in the context of the wide definition of the word plant given in mat Ad ana, therefore, not of universal application. Obviously, if plant is defined differently under a different provision or if the context so requires, it may have to be given a different and a narrower meaning. The Deferment Rules do not define plant and, therefore, what should have been considered by the High Court was what meaning should be given to it in the context of the Deferment Rules.

It was in pursuance of the Government Resolution dated 6.9.1989 which declared its policy of giving incentives to new industrial unit? and the existing industrial units going for expansion that the State Government in exercise of the powers conferred by sub-section (1) of Section 58 of the Bihar Finance Act, made the Deferment Rules. An examination of these discloses that they provide for deferred payment of sales-tax in respect of sale of goods manufactured by new industrial units and existing industrial units under expansion. The deferment is limited to 90 per cent of the fixed capital investment in fixed capital assets at the time of grant of eligibility in the case of new industrial units and 90 per cent of the additional fixed capital investment in the case of an existing industrial unit undertaking expansion. For claiming the benefit of deferred payment, an eligible unit has to apply for a certificate of eligibility. The District Level Committee or the State Level Committee, as the case may be, adjudges the eligibility of the industrial unit. An application for grant of eligibility certificate made by a small-scale industrial unit is required to be considered by the District Level Committee of the district in which the industrial unit is situated. The District Level Committee, after considering the report prepared by the District Industries Centre or the Director of Industries and any other relevant information, decides whether and to what extent the industrial unit is entitled to the benefit of deferment. The extent of benefit is partly made dependent upon the 'Fixed Capital Investment' made by the industrial unit and also upon its status viz. whether it is a large scale industrial unit or a small-seals industrial unit, As disclosed by the industrial policy and the Deferment Rules, the State agrees to suffer temporary loss of revenue by not requiring immediate payment of sales-tax on sale of goods produced or manufactured by an industrial unit if it makes new fixed capital investment in the State. What the State desires and what the Deferment Rules require for getting the benefit thereunder, is not capital investment but fixed capital investment. Rule 2(v) defines 'fixed capital investment' to mean investment in land, building, plant and machinery. Thus, the nature of investment contemplated by the Deferment Rules is investment in fixed assets which are ordinarily considered essential for production or manufacture of goods and have some degree of permanency. The second proviso to Rule 3 makes this position further clear. It states that "Deferment shall be limited to 90 per cent of the fixed capital investment in fixed capital assets". To explain how in business accounting "fixed capital" and "fixed assets" are understood, Mr. Singh, learned counsel for the State, drew our attention to the book titled "Advanced Accounting" by Jamshed R. Batliboi. Therein, it is stated that "fixed capital of a business consists of its fixed assets" and "fixed assets are those which are acquired and intended to be retained permanently for the purpose of carrying on a business, such as land, buildings, plant and machinery etc. Therefore, the context in which the word 'plant' is used in Rule 2(v) indicates that it is not used in its wider sense and does not include within its meaning land, building and machinery. It also appears that the rule-making authority did not intend 'plant' to mean what is not a fixed asset. For all these reasons, we are of the view that by 'plant' what is intended by the rule-making authority is that apparatus which is used by the industry for carrying on its industrial process of manufacture. In respect of an industry manufacturing

soft-drinks and beverages, it can be said that plant would mean that apparatus which is used for manufacturing soft-drinks or beverages and not articles like crates and bottles used for storing the manufactured product.

It is also relevant to refer to the two notifications of the Government of India in the Ministry of Industry (Department of Industrial Development) dated 2.4.1991 and 1.1.1993 issued under Section 11-B of the Industries (Development & Regulation) Act, 1951. Notification No.232 dated 2.4.1991 while staling what has to be included under fixed assets while ascertaining whether a small-scale industrial unit's investment has exceeded the limit of Rs.60 lakhs has clarified that the cost of storage tanks which store raw material or finished products is to be excluded. The 1993 notification has amended the notification of 2.4.1991 and clarified by adding Note No.2 that in calculating the value of plant and machinery, the cost of storage tanks which store raw materials/finished products only and which are not linked with the manufacturing process shall be excluded. On 8.5.1995, the Government of India again issued a Circular, after having received representations from the industry seeking clarification whether bottles and crates are to be taken into account for determining the SSI status of the units engaged in manufacture of soft drinks/concentrates, clarifying that investment in bottles and crates in such units is in the nature of storage of finished products and, therefore, such investment has to be excluded while computing the value of plant and machinery.

As pointed out in the affidavit in rejoinder, the Company had applied for an Eligibility Certificate claiming the status of a small scale industry. It is, in fact, registered as a small scale industrial unit. While declaring Its investment at the time of seeking registration as a smallscale industrial unit it did not include investment in bottles and crates under the head 'Plant and Machinery'. The investment in bottles and crates was shown under a separate head. It is further pointed out in the said affidavit that if the investment of the Company in bottles and crates is included under the head 'Plant' then its total fixed capital investment will reach the level of 137.36 lakhs and it can no longer be regarded as a small scale industrial unit. As the Company had applied as a SSI unit, the District Level Committee had to verify the status of the Company as SSI Unit and, therefore, it was bound to take into account the above referred two notifications of years 1991 and 1993 if under these circumstances, the District Level Committee came to the conclusion that the Company is not entitled to the benefit of deferment in respect of its investment in bottles and crates, it cannot be said that it has acted contrary to law.

We, therefore, allow this appeal, set aside the judgment of the High Court and dismiss the writ petition filed by the Company.