

State of Bihar and Others

Vs

Jhunjhunwala Industries

Civil Appeal No. 807 of 1997

(S. P. Bharucha, J )

12.02.1997

JUDGMENT

S. P. BHARUCHA J

1. Leave granted.

2. The State of Bihar is in appeal against the judgment and order of the Division Bench of the High Court at Patna. Two questions arise in the appeal and they must be dealt with separately.

3. The respondents make and sell Khalli which is a cattle feed. The question is whether sales tax is payable on the Khalli for the period 26-12-1977 till June 1985.

4. On 26-12-1977, the State Government issued a Notification (No. 14545) in exercise of the powers conferred by Section 11(2) of the Bihar Sales Tax Fifth Ordinance, 1977 fixing the rate of sales tax on various commodities including oil-cakes. On the same date, the State Government issued a Notification (No. 14547) in exercise of the powers conferred by Section 6(3) (a) of the said Ordinance exempting from the levy of sales tax various commodities including, at Sl. No. 35. cattle feed and poultry feed. On 9-3-1978, the State Government issued a Notification (No. 3322) in exercise of the powers conferred by Section 6(3) (a) of the said Ordinance thereby it amended Sl. No. 35 in Notification No. 14547 so that it read thus :

"Cattle feed and poultry feed

Explanation. - (1) Pellets and mash concentrates for cattle;

(2) Pig mash and pellet;

(3) Poultry mash and pellets for layers, growers, chicks and broilers; (4) Poultry feed concentrate."

This amendment was to have retrospective effect from 26-12-1977. 5. It is contended on behalf of the appellant State that by reason of the said amendment exemption under Notification No. 14547 is available only to such cattle feed and poultry feed as meets the description contained in the Explanation quoted above; that, therefore, the respondents are not entitled to the said exemption and must pay tax on the sale of Khalli with effect from 26-12-1977.

6. It would appear that a point that goes to the root of the matter has been overlooked and that is that it has first to be found as a matter of fact that Khalli falls outside the limited description of cattle

feed that is to be found in the said Explanation and this is something that has not been done. We find it too late in the day to remand the matter for such a finding and, therefore, must reject the appeal insofar as it relates to this point without referring to any of the other contentions that have been raised on behalf of the respondents.

7. The second question relates to a notification issued by the State Government on 31-12-1980 in exercise of the powers conferred by Section 20-A of the Bihar Sales Tax Third Ordinance, 1980 as amended. It permits "every registered dealer, who is a manufacturer and is running an industrial unit of the category and description mentioned respectively in columns 2 and 3 of the Table below to adjust the amount of tax paid on the purchase of raw materials used in the manufacture of goods for sale within Bihar against the tax payable on sale of finished products in Bihar in the manner indicated in paragraph 2 of this order".

8. The High Court took the view that the said notification in clear terms provided that a dealer was entitled to adjust the amount of tax paid on the purchase of raw materials used in the manufacture of goods for sale within Bihar against the tax payable on sale of finished products in Bihar in the manner indicated therein. Whereas the notification clarified that the goods manufactured must be for sale within Bihar, there was no such geographical limitation with regard to purchase or payment of tax on purchase of raw materials. It, therefore, held that if the dealer was able to establish that he had paid tax on the purchase of raw materials, wherever it be, he would be entitled to claim set-off under the said notification if the goods that were manufactured were for sale in Bihar.

9. Having regard to the terms in which the notification has been worded, we are inclined to agree. The notification does not permit the dealer only "to adjust the amount of tax paid within Bihar on the purchase of raw materials". It permits him "to adjust the amount of tax paid on the purchase of raw materials". There is no limitation which calls for adjustment only if tax has been paid in Bihar on the purchase of raw materials.

10. The appeal, therefore, fails and is dismissed, but with no order as to a costs.