

State of W.B. and Others

Vs

Texmaco Ltd.

Civil Appeals No. 4626 of 1992 with No. 241 of 1996

(S. P. Bharucha, K. Venkataswami JJ)

30.07.1998

ORDER

1. The respondent-Company has a Scheme whereunder it pays to its employees what is called an "incentive bonus". The appellants took the stand that the incentive bonus fell within the definition of "salary" or "wage" contained in Section 2(j) of the West Bengal State Tax on Professions, Trades, Callings and Employments Act, 1979, and, therefore, it was liable to the levy of tax under that statute, which the respondent-Company was bound to deduct and pay on behalf of its employees. This contention was the subject-matter of applications before the West Bengal Taxation Tribunal. In its order under appeal, the Tribunal found that it was common ground that the incentive bonus was linked to production. It was paid at a certain rate for production in excess of a specified minimum quantity. It was payable only when production exceeded that quantity. If in a particular month, the production did not exceed the specified minimum quantity, there was no payment. If, on the other hand, there was in another month production exceeding the minimum quantity, the incentive bonus was payable commensurate with the additional production, which was naturally variable from month to month. Upon this basis, the Tribunal found that the payment of incentive bonus was not made on a regular basis and that, therefore, the requirement of the definition of "salary" or "wage" in Section 2(j) was not satisfied.

2. That definition says, so far as is relevant for our purposes, that "salary" or "wage" includes "pay, dearness allowance and all other remunerations received by any person on regular basis, whether payable in cash or in kind"

3. The findings of fact reached by the Tribunal are clear. The Scheme of the respondent-Company providing for incentive bonus sets out that it is payable only when production exceeds a specified minimum quantity. This implies that the incentive bonus is not paid when production does not exceed that minimum quantity. If so, clearly, the incentive bonus is not a remuneration received by the respondent-Company's employees "on regular basis".

4. Learned counsel for the appellant submitted, however, that there was a Scheme and that suggested regularity of payment. Judged only upon the basis of the Scheme, it must be held that it contemplates situations where the incentive bonus is payable and situations where it is not payable. Judged on the Scheme, therefore, the payments of incentive bonus are not on a regular basis. It would have been another matter had the appellants been able to place material before the Tribunal to show that, despite the terms of the Scheme, there had in fact been, over a substantial period of time, payment of incentive bonus from month to month.

5. In the result, the appeals are dismissed. There shall be no order as to costs.