

# SUPREME COURT OF INDIA

State of Jharkhand

Vs.

Atibir Hi-Tech Pvt.Ltd., Giridh

C.A.No.3450 of 2008

(S.H. Kapadia and B. Sudershan Reddy JJ.)

30.04.2008

## ORDER

1. Leave granted.
2. This batch of Civil Appeals is filed by the State of Jharkhand against the judgment and order passed by the High Court of Jharkhand at Ranchi.
3. For the sake of convenience we may mention facts of the case in original Writ Petition (T) No. 6163 of 2006 filed by M/s. Atibir Hi-Tech (Pvt) Ltd. v/s. State of Jharkhand disposed of by the High Court vide its judgment dated 11.1.2007.
4. M/s. Atibir Hi -Tech Pvt. Ltd. is an Industry having Induction Furnace and Rolling Mill at Mohanpur. It purchases electricity from Damodar Valley Corporation ("DVC", for short) for the purpose of its Industry under an agreement executed between it and DVC (respondent No.2 herein). The petitioner started its commercial activities from November, 1998. Before the High Court the Company pleaded that under ill-advice it had applied for registration as an assessee under Rule 3 of *Bihar Electricity Duty Rules, 1949* and consequently on 9th December, 1999 it stood registered under Rule 4 and a Registration Certificate stood issued making it liable to pay duty for distribution and/or consumption of energy from 7.11.1998, as an assessee under the Bihar Electricity Duty Act, 1948. Accordingly, the Company sought refund of electricity duty and surcharge paid on the footing that it had applied for cancellation of registration which was wrongly rejected by the Authority under the said Rules, 1949. In short, the Company submitted before the High Court that it was not obliged to pay duty directly to the State as an assessee and that the Deputy Commissioner had wrongly dismissed their application for cancellation of registration. The Company accordingly sought refund of the duty paid by them for the period 7.11.1998 to 27.1.2006. Having examined the provisions of the said 1948 Act and the said 1949 Rules, the High Court, inter alia, came to the conclusion vide impugned judgment that the Company was not liable to pay duty and surcharge and consequently the impugned order dated 3rd March, 2006 passed by Deputy Commissioner of Commercial Taxes rejecting the application of the

petitioner for cancellation of registration was set aside. Hence, this Civil Appeal has been filed by the State.

5. The matter was argued threadbare before this Court. We have examined in detail the impugned judgment of the High Court. The key issue which arose for determination before the High Court was whether the Company was an assessee under the 1948 Act read with 1949 Rules. Detailed arguments were advanced before us on the interpretation of Section 3 of 1948 Act in the light of the judgment of the Supreme Court in the case of Damodar Valley Corporation. At this stage we may state that, on instructions, learned counsel for the Company - respondent No.1 (M/s. Atibir Hi-Tech Pvt. Ltd.) stated that the said respondent would not press its claim for refund, particularly, as the said Company is interested in an authoritative decision of this Court on its liability to pay duty/surcharge to the State. According to the learned counsel, the Company is not an assessee under the said 1948 Act and, therefore, it is not bound to file returns and face assessment proceedings under the said Act. It is important to note at this stage that under Section 2(d) of the 1948 Act, the word 'licensee' is defined to mean any person including a Company licensed under Part II of *Indian Electricity Act, 1910* to supply energy. Pre 2003, Damodar Valley Corporation was not a licensee under *Indian Electricity Act, 1910*. However, on 10.6.2003 the earlier enactment, namely, *Indian Electricity Act, 1910* stood repealed and it stood replaced by the *Electricity Act, 2003*. Under fourth proviso to Section 14 of the said 2003 Act it has been stipulated that Damodar Valley Corporation shall be deemed to be a licensee under 2003 Act but shall not be required to obtain a licence under the said Act and the provisions of *Damodar Valley Corporation Act, 1948* insofar as they are not inconsistent with the provisions of the Act, shall continue to apply to that Corporation.

6. In our view, with the enactment of the *Electricity Act, 2003* the nature of the dispute has undergone structural change particularly in view of the fact that under the *Electricity Act, 2003* the entire scheme brings in new concepts like 'deemed licensee'. In this connection Section 185 which deals with repeal and savings is also relevant. This aspect has not, at all, been considered by the High Court in the impugned judgment. In fact, upfront this question was not specifically raised by any of the Companies before the High Court. However, since an important point of law arises, we are of the view that the point needs to be considered afresh by the High Court keeping in mind the change in law in view of the *Electricity Act, 2003*. We may reiterate that the respondent - Company has fairly given up its claim for refund and, therefore, what needs to be decided is whether the said Company or the Damodar Valley Corporation is the assessee under the 1948 Act particularly in view of the provisions of Section 14 of the Said 2003 Act; the effect of 2003 Act on the Registration Certificate issued earlier under the *Bihar Electricity Act, 1948* and the interpretation of 1948 Act, the 1949 Rules in juxtaposition to the *Electricity Act, 2003*. These questions were not raised and, therefore, not gone into by the High Court, however, they are of considerable public importance hence we have to remit this matter for consideration in accordance with law.

7. We make it clear that till the High Court decides the matter the respondent - Company shall continue to pay duty/surcharge under the 1948 Act. It may be clarified that the Company is directed to pay the taxes under the said 1948 Act as the primary question

involved is not on quantum of liability, but whether the Company is required to file its returns as an assessee under the Act or whether it is the obligation of Damodar Valley Corporation to do so. We keep all contentions on both sides expressly open. We, however, make it clear that the High Court shall also consider whether its judgment should or should not operate prospectively, particularly, when after the enactment of the 2003 Act the Regulatory Regime has come into force.

8. Liberty is given to the respondent - Company to amend its original Writ Petition (T) No. 6163 of 2006. Needless to add that the State and Damodar Valley Corporation would be entitled to file its additional affidavit to the amended Writ Petition.

9. We request the High Court to hear and expeditiously decide the Writ Petition in accordance with law within a period of four months from today.

10. Accordingly the civil appeals are disposed of with no order as to costs.