

CASE NO.:
Appeal (civil) 5679 of 2007

PETITIONER:
State of Chhattisgarh & Ors

RESPONDENT:
M/s. VTP Constructions

DATE OF JUDGMENT: 07/12/2007

BENCH:
Dr. ARIJIT PASAYAT & AFTAB ALAM

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 5679 OF 2007
(Arising out of SLP (C) No. 991 of 2007)

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment rendered by a Division Bench of the Chhattisgarh High Court. Respondent filed a writ petition before the Chhattisgarh High Court questioning constitutional validity of Section 35 of Chhattisgarh Vanijyik Kar Adhiniyam, 1994 (hereinafter referred to as the 'Adhiniyam'). It corresponds to the Chhattisgarh Commercial Tax Act, 1994 (in short the 'Act'). The respondent hereinafter is described as the 'assessee'.

3. Background facts highlighted by the respondent are as follows:

The writ petitioner is a proprietary concern of one Shri Krishana Mudliar and it has been executing works contracts for various Departments of the Chhattisgarh State Government and others and was holding sales-tax registration No.061/RDN/14,'2739/02. During the assessment year 2001-2002, the writ petitioner had executed works contracts awarded by Executive Engineer, P.W.D. (B&R), Division Khairagarh, for which it received payment of Rs.1,27,115/- on which sales tax of Rs.2,545/-, being 2% of sum of Rs.1,27,115/- was deducted at source towards the sales tax payable as provided under Section 35 of the Adhiniyam. Certificate of tax deduction is dated 11/04/2001 made under Section 35 of the Act.

4. In support of the writ petition, it was contended that Section 35 of the Act does not make any provision for deduction and ascertainment of value and nature of goods supplied during execution of work-contracts. Section 35 of the Act does not make any provision for determination of value of goods supplied in the course of inter State trade during execution of works contracts.

5. The writ petition is opposed by the present appellants by filing reply/statement of objections. In the reply statement, it was stated that the contractors who are engaged in the construction of buildings, roads, bridges, dams etc generally come from other States. The process of assessment of sales tax

is very lengthy and before the assessment is completed, such contractors disappear from the scene after receiving full payment under the contract. In such situation, it was very difficult for the Commercial Tax Department to trace out such contractors and eventually sales tax payable by such contractors could not be recovered at all thereby causing heavy financial loss to the Government. In order to safeguard the interest of the State, Section 35 is enacted in the Act and that the State Legislature has legislative competence to enact Section 35. It was stated that Section 35 is not a unique provision in the Act and similar provisions are enacted in the Sales Tax Acts of other States, for example, Section 6-D of the Uttar Pradesh Trade Tax Act, Section 6-E of the Bengal Finance (Sales-Tax) Act, 1941; Section 25-A of the Bihar Finance Act, 1981; Section 25-B of the Haryana General Sales Tax Act 1973, Section 12-A of the Himachal Pradesh General Sales Tax Act 1968, Section 16-C of the Jammu & Kashmir General Sales Tax Act, Section 19-A of the Karnataka Sales Tax Act and Section 13-AA of the Orissa Sales Tax Act, 1947. It was also contended that the Constitutional validity of Section 35 of the Adhiniyam was already considered and upheld by the Division Bench of the Madhya Pradesh High Court in the case of *Punj Lloyd Ltd. v. State of Madhya Pradesh and Ors.* (1996) 29 VKN 533.

6. The High Court referred to decisions of this Court in *Steel Authority of India Ltd. v. State of Orissa and Others* [2000(3)SCC 200] and *M/s. Nathpa Jhakri Jt. Venture v. State of Himachal Pradesh and Ors.* [2000 (3) SCC 319] and declared the provision to be unsustainable.

7. In support of the appeal learned counsel for the appellants submitted that the ambit and scope of Section 35 of the Act were not kept in view by the High Court. The decision in *Steel Authority's case* (supra) and *Nathpa's case* (supra) were dealing with different provisions and, therefore, has no application to the facts of the case.

8. *Steel Authority's case* (supra) related to Section 13AA of the Orissa Sales Tax Act, 1947 (hereinafter referred to as the 'Orissa Act'). In *Nathpa Jhakri's case* (supra) dispute related to Section 12A of the Himachal Pradesh General Sales Tax Act, 1968 (in short the 'Himachal Pradesh Act'). While striking down Section 13AA of the Orissa Act, this Court observed as follows in *Steel Authority's case* (supra):

"There can be no doubt, upon a plain interpretation of Section 13AA, that it is enacted for the purposes of deduction at source of the State sales tax that is payable by a contractor on the value of a works contract. For the purpose of the deduction neither the owner nor the Commissioner who issues to the contractor a certificate under Section 13AA(5) is entitled to take into account the fact that the works contract involves transfer of property in goods consequent upon of an inter-State sale, an outside sale or a sale in the course of import. The owner is required by Section 13AA(1) to deposit towards the contractor's liability to State sales tax four per cent of such amount as he credits or pays to the contractor regardless of the fact that the value of the works contracts includes the value of inter-State sales, outside sales or sales in the course

of import. There is, in our view, therefore, no doubt that the provisions of Section 13AA are beyond the powers of the State Legislature for the State Legislature may make no law levying sales tax on inter-State sales, outside sales or sales in the course of import."

9. In Nathapa Jhakri's case (supra) this court held Section 12A of the Himachal Pradesh Act to be unconstitutional and the relevant portion of the judgment reads as follows:

"A bare perusal of the two provisions will make it clear that in either provision there is an obligation to deduct from transactions relating to works contract on bills or invoices raised by the works contractor an amount not exceeding 4 percent or 2 per cent as the case may be. Though the object of the provision is to meet the tax in respect of the transactions on all works contract on the valuable consideration payable for the transfer of property in goods involved in the execution of the works contract, the effect of the provision is that, irrespective of whether the sales are inter-State sales or outside sales or export sales which are outside the purview of the State Act and those transactions in respect of which no tax can be levied even in terms of the enactment itself, such deductions have to be made in the bills or invoices of the contractors. To say that if a person is not liable for payment of tax inasmuch as on completion of the assessment refund can be obtained at a later stage in no solace, as noticed in *Bhawani Cotton Mills Ltd. v. State of Punjab* [(1967) 20 STC 290 (SC): (1967) 3 SCR 577]. Further, there is no provision for certification of the extent of the deduction that can be made by the authority. Therefore, we must hold that arbitrary and uncanalised powers have been conferred on the concerned person to deduct up to 4 per cent from the sum payable to the works contract irrespective whether ultimately the transaction is liable for payment to any sales tax at all. In that view of the matter, we have no hesitation in rejecting the contention advanced on behalf of the State."

10. In view of what has been stated by this Court in *Steel Authority's* case and *Nathpa's* case (supra) the inevitable conclusion is that the High Court was right in holding that Section 35 of the Act was constitutionally invalid. The direction for refund of the amount collected from the respondent under the provisions of the said section had been rightly directed to be refunded.

11. The appeal is sans merit and, therefore, deserves dismissal, which we direct. There will be no order as to costs.