

CASE NO.:
Appeal (civil) 7559 of 2005

PETITIONER:
Tata Cummins Ltd

RESPONDENT:
State of Jharkhand & Ors.

DATE OF JUDGMENT: 01/08/2006

BENCH:
Ashok Bhan & Markandey Katju

JUDGMENT:
J U D G M E N T

MARKANDEY KATJU, J.

This Appeal has been filed against the impugned judgment of the Jharkhand High Court dated 08.8.2005 passed in Writ Petition (Tax) No.3037 of 2004 in Tata Cummins Ltd. vs. State of Jharkhand & Ors..

We have heard learned counsel for the parties.

The writ petition was filed by the petitioner-appellant seeking a declaration that the petitioner is entitled to avail the benefit of set-off of Sales Tax w.e.f. 1.1.2004 in terms of the Jharkhand Industrial Policy, 2001 read with S.O. Nos.65, 66 and 67 all dated 12.1.2002 issued under the Bihar Finance Act, 1981 with other consequential benefits.

To determine the issue, it is necessary to notice the relevant facts, laws, Jharkhand Industrial Policy, 2001 and Circulars/guidelines issued by the respondents from time to time which are as under.

The then State of Bihar issued an Industrial Policy in the year 1995, known as "Bihar Industrial Policy, 1995", where under provision was made to grant benefit of exemption of sales tax on purchase of raw materials and on sale of finished goods to industrial units. Two Notifications bearing S.O. No.478 and 479, both dated 22.12.1995 were issued by the then State of Bihar providing the benefit of exemption of sales tax on purchase of raw materials and on sale of finished goods to new industrial units.

The petitioner company, which is a manufacturer of diesel engines and components, started its commercial production since 1.1.1996. On 22.1.1996 it applied for exemption of sales tax on purchase of raw materials and on sale of finished goods for a period of eight years i.e. upto 31.12.2003, which was ultimately allowed.

In the meantime, the State of Bihar was reorganized under the Bihar Reorganization Act, 2000 and two successor States of Bihar and Jharkhand were created. The petitioner - Tata Cummins Ltd. having its office at Jamshedpur, fell

within the Territorial Jurisdiction of the State of Jharkhand. The State of Jharkhand announced its first Industrial Policy on 25.8.2001, known as "Jharkhand Industrial Policy, 2001" making it applicable from the "effective date", which was 15.11.2000, for a period of about five years i.e. upto 31.3.2005. Under the Jharkhand Industrial Policy, 2001, the benefit of exemption of sales tax on purchase of raw materials and on sale of finished goods has not been provided, but the benefit of 'set-off' of sales tax has been provided to "new" as well as "existing industrial units". The State of Jharkhand, thereafter, issued Notifications being S.O.No.65, 66 and 67 all dated 12.1.2002 in exercise of power under Section 22 of Bihar Finance Act, 1981, (Bihar Act of 1981) and allowed the benefits in terms of the provisions of the Jharkhand Industrial Policy, 2001.

After the first Jharkhand Industrial Policy, 2001 was given effect to vide Notification being S.O. Nos.65, 66 and 67 all dated 12.1.2002, the petitioner applied for and requested to 'set-off' the sales tax w.e.f. 1.1.2004. When no reply was received, the petitioner of its own approached the authority and filed its detailed submission explaining to the authority as to how it is entitled to such benefit, but no decision having been taken by the respondent and the benefit of 'set-off of sales tax' having not allowed for the period from 1.1.2004 to 31.3.2005, the petitioner preferred the writ petition, out of which this appeal arises.

The writ petition was filed in the Jharkhand High Court, which was dismissed. Hence this appeal.

The copy of the Jharkhand Industrial Policy, 2001, which was announced on 5.8.2001, has been annexed as Annexure-P1 to the Special Leave Petition. In this Industrial Policy the effective date has been defined to mean 15.11.200 from which date the new State of Jharkhand was created, and it is also the date on which this policy came into force. The Industrial Policy defines an existing Industrial Unit to mean an industrial unit which has gone into industrial production before the effective date. The Policy also defines a New Industrial Unit to mean an Industrial Unit which has come into commercial production between 15.11.2000 and 31.3.2005".

The Industrial Policy mentions the Commercial Tax Reforms in Clause 28 on the said Policy. Clause 28.1 reads as under :

"28.1 \026 New Industrial Units as well as existing units which are not availing any facility of Tax-deferment or Tax free purchases of tax free sales under any notification announced earlier, shall be allowed to opt for set off, of Jharkhand Sales Tax paid on the purchases of raw materials within the State of Jharkhand only against Sales Tax payable either JST or CST on the sale, excluding stock transfer or consignment sale outside the state, of finished products made out from such raw materials subject to limitation of six months or the same financial year from the date of purchase of such raw materials."

The question in this case is whether the appellant is entitled to the benefit of Clause 28.1.

Admittedly, the appellant had been granted the benefit of Sales Tax-deferment for a period of eight years from 1995 to 31.12.2003 under the Old Bihar Industrial Policy, 1995 read with Notification S.O. No.478 and 479 both dated 22.12.1995.

Thus, it is an admitted case that on the effective date i.e. 15.11.2000 the appellant was actually availing the facility of Tax-deferment under the Notification announced earlier. Hence in our opinion on a plain reading of Clause 28.1 of the Industrial Policy, which was introduced on 15.11.2000 in the State of Jharkhand, the appellant is not entitled to the benefit under Clause 28.1.

Learned counsel for the appellant contends that if we hold that Units which were actually availing the facility of Tax-deferment on 15.11.2000, will not be given the benefit under the Clause 28.1, the consequence will be that hardly any unit will get the benefit of Clause 28.1 because almost all the units of State of Jharkhand were enjoying the Sales Tax-deferment on 15.11.2000. Hence he submitted that such an interpretation should be avoided.

We are afraid we cannot accept this plea. It is well settled that when the plain and grammatical meaning of the provisions in an Act or Notification are clear then the literal rule of interpretation has to be applied. In the present case, in our opinion, Clause 28.1 is clear. The word used there are "not availing any facility of Tax-deferment". Thus the present continuous tense has been used in Clause 28.1. In our opinion, Clause 28.1 means that the benefit therein will be available only if the facility of Tax-deferment is not actually being availed of on the date of the Notification of the Industrial Policy, which is 15.11.2000. It is well settled when the meaning of a provision is clear, we cannot depart from the literal rule of construction.

In *Hiralal Ratan Lal vs. Sales Tax Officer, Section III, Kanpur & Anr.* (AIR 1973 SC 1034), the Supreme Court observed :

"In construing a statutory provision the first and foremost rule of construction is the literary construction. All that the Court has to see at the very outset is what does the provision say. If the provision is unambiguous and if from the provision the legislative intent is clear, the Court need not call into aid the other rules of construction of statutes. The other rules of construction are called into aid only when the legislative intent is not clear."

Since the appellant was availing the facility of Tax-deferment on 15.11.2000, in our opinion, he was not entitled to the benefit under Clause 28.1. Hence we agree with the view taken by the High Court. The appeal is

dismissed.

JUDIS