NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WP No. 645 of 2001

1. Associated Cement Company Limited, Kymore Cement Works 25 MW Captive Power Plant, Post Kymore, Tahsil Vijayraghogarh, Distt. Jabalpur now in Distt. Katni (M.P.)

---- Petitioner

Versus

1. The State Of C.G.Through its revenue Secretary (Commercial Tax) Raipur.
2. State of Madhya Pradesh Through its Secretary Vanijyik Kar Vibhag Vallabh Bhawan, Bhopal
3. Commissioner, Commercial Tax Raipur, (Chhattisgarh)
4. South Eastern Coal Fields Ltd. Through its Chairman Seepat Road, Bilaspur(Chhattisgarh)

---- Respondents

WP No. 111 of 2001

1. Prism Cement Ltd. a Public Limited Company having its registered office at 305, Laxmi Niwas Apartments, Ameerpet, Hyderabad and Corporate Office at Plot No. 8E, Main Avenue V.B. Road, Santacruz Mumbai, Having its unit at Mankahari, Tahsil Rampur Baghelan, District: Satna (M.P.)

---- Petitioner

Versus

1. State of Chhattisgarh through its Revenue Secretary (Commercial Tax), Raipur
2. State of Madhya Pradesh through its Secretary Vanijyik Kar Vibhag Vallabh Bhawan, Bhopal
3. Commissioner, Commercial Tax, Raipur
4. South Eastern Coal Fields Ltd. Through its Chairman Seepat Raod, Bilaspur, Chhattisgarh
5. Union of India, though the Secretary, Minister of Finance Department of Commercial Tax, New Delhi

---- Respondents

WP No. 216 of 2001

1. Jay Pee Bela Plant (A Unit Of Jay Prakash Associate Limited a Public Limited Company having Its registered Office at N-5, Park Road, Hazrat

Gunj, Lucknow, having Its Cement Unit Known As Jaypee Bela Cement., District : Lucknow, Uttar Pradesh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Its Revenue Secretary (Commercial Tax) Raipur,District : Raipur, Chhattisgarh
2. State Of Madhya Pradesh Through Its Secretary Vanijyik Kar Vighag Vallabh Bhawan Bhopal, Madhya Pradesh
3. Commissioner Commercial Tax Raipur, Chhattisgarh
4. South Eastern Coal Fields Limited Through Its Chairman Seepat Road Bilaspur, Chhattisgarh

---- Respondents

WP No. 291 of 2001

Mysore Cement Ltd., A public Limited Company having its registered office at 4th Floor, Tower Bel, Golden Enclave, Air Port Road, Banglore having its unit in the name of Diamond- II at Nasingarh, District Damoh, M.P.

---- Petitioner

Versus

1. State Of Chhattisgarh Through its Secretary, Finance and Commercial Tax Department, Raipur, Chhattisgarh
2. State Of Madhya Pradesh Through Its Secretary Vanijyik Kar Vighag Vallabh Bhawan Bhopal, Madhya Pradesh
3. Commissioner, Commercial Tax Raipur, Chhattisgarh
4. South Eastern Coal Fields Limited Through Its Chairman Seepat Road Bilaspur, Chhattisgarh

---- Respondents

WP No. 275 of 2001

Century Textiles And Industries and Industries Ltd., Industry House, 159, Church Gate Reclumation, Bombay having its Cement Manufacturing Units at Sarla Nagar, Maihar in the name of Maihar Cement, Unit No. II Represented by Joint President (Commercial....

---- Petitioner

Versus

1. State Of Chhattisgarh Through its Secretary, Finance and Commercial Tax Department, Raipur, Chhattisgarh
2. State Of Madhya Pradesh Through Its Secretary Vanijyik Kar Vighag Vallabh Bhawan Bhopal, Madhya Pradesh
3. Commissioner, Commercial Tax Raipur, Chhattisgarh
4. South Eastern Coal Fields Limited Through Its Chairman Seepat Road Bilaspur, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Ashish Shrivastava, Advocate
For State	:	Mr. Chandresh Shrivastava, Dy. AG
For Respondent/s	:	Mr. B. D. Guru, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

22/10/2019

1. All these bunch of writ petitions have been filed challenging the imposition of 4% CST charge on all the bills raised in respect of dispatch of coal from collieries lying in the State of Chhattisgarh. The relief sought for by the petitioner is for restraining from charging the said CST on such coal dispatch made from the State of Chhattisgarh in terms of the exemption certificate issued by the erstwhile State of Madhya Pradesh.

2. While the writ petitions were pending before this Court, the State of Madhya Pradesh as well as the State of Chhattisgarh along with set of writ petitions had approached the Supreme Court which subsequently stood referred to a larger Bench. The leading petition of which being Civil Appeal No.5302/19 arising out of the said SLP (Civil Appeal No.2359 of 2014) and other analogous civil appeals all of which were heard together and decided on 09.07.2019. The Hon'ble Supreme Court in the aforesaid civil Appeal has allowed the appeal preferred by the two State Governments and have at the same time dismissed the appeals preferred by the private parties/Assesses.

3. It is relevant at this juncture to take note of the operative part of that order in which the Hon'ble Supreme Court has held as under :-

> "28. With respect to reasoning given in paragraph 30 in Swarn Rekha Cokes and Coals Pvt. Ltd. (supra), we would acknowledge that creation of a new State was an unforeseen event and could give rise to unusual situations, but this cannot be a ground and reason to treat inter-state sales between the two successor states as intra-state sales. This would be contrary to the Constitution and even the Statute i.e. the Reorganisation Act. Whenever a new State is created, there would be difficulties and, issues would arise but these have to be dealt within the parameters of the constitutional provisions and the law and not by negating the mandate of the Parliament which has created the new state in terms of Article 3 of the Constitution. Creation of the new political State must be given full legal effect. We would, therefore, respectfully overrule the contrary observations and ratio recorded in paragraphs 29 and 30 in Swarn Rekha Cokes and Coals Pvt. Ltd. (supra) in light of the legal position elucidated and explained above.
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> 29. In the end, we must take note of one of the submissions made by the private parties/Assessee that under the exemption clauses even the inter-state transactions were entitled to some benefits. This contention was not raised in the writ petition or even in the pleadings before us and has been urged and argued for the first time. We would not like to comment and decide this contention in vacuum and leave it open to the private parties/Assessee to raise this plea before the authorities in appropriate proceedings under the statute. In other words, the authorities would examine whether the inter-state transactions were entitled to any benefit and if so, whether the private parties/Assessee herein fulfil and meet the requirements to claim such benefit. We have not expressed any opinion either way on this contention. It was pointed out that in several cases adjudication orders may have been passed and the private parties/Assessee may not have preferred appeals in view of the

> writ petitions filed by them and the present proceedings. As recorded above, some of the private parties/Assessee had succeeded before the High Court. We would observe that it will be open to the private parties/Assessee to challenge the adjudication orders in accordance with law and if required, by filing application Under Section 14 of the Limitation Act, 1963, or other applicable provisions of the state enactments for exclusion of time during which the proceedings have remained pending before the High Court and this Court. In such cases, it would be appropriate for the authorities to exclude such time period as we are overruling the ratio laid down in paragraphs 29 and 30 in Swarn Rekha Cokes and Coals Pvt. Ltd. (supra)."

4. Given the aforesaid facts and circumstances of the case, this Court is of the opinion that all these writ petitions in the light of the judgment of the Supreme Court deserves to be rejected and are accordingly rejected. However, in terms of the paragraph 29 of the judgment of the Supreme Court right of each of the petitioners stands reserved for approaching the appropriate authorities/forums in respect of their individual claim that they may have as has been directed by the Hon'ble Supreme Court.

5. It is expected that the authorities concerned/forums shall duly consider and shall pass appropriate order as and when the petitioner approach them.

6. With the aforesaid observations, all these writ petitions stand disposed of.

Sd/-
(P. Sam Koshy)
Judge

Rohit