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HIGH COURT OF CHHATTISGARH, BILASPUR

WP No. 1183 of 2005

Shree Baidyanath Aurved Bhavan Ptv.Ltd. Village Bamhni District Seoni, MP, Depot : Durga Chowk Ward No.31, Rajnandgaon (CG)

---- Petitioner

Versus

1. State Of Chhattisgarh, through Secretary Department of Commercial Taxes DKS Bhawan Mantralaya Raipur (CG)

2. Commissioner of Commercial Tax, Vanijyik Kar Bhavan Civil Lines, Raipur

3. Additional Commissioner of Commercial Tax (legal) Vanijyik Kar Bhavan, Civil Lines, Raipur (CG)

4. State of Madhya Pradesh, through Secretary, Department of Commercial Tax, Vallabh Bhavan Bhopal (MP)

5. Assistant Commissioner of Commercial Tax Rajnandgaon (CG)

---- Respondents

WPT No. 14 of 2012

M/s Jaypee Bela Plant (Unit/o M/s.) Jaiprakash Associates Ltd. Registered Office at Sector-128, Noida-201304 Vill. Madhepur/ Sonra Tah. Huzur Distt. Rewa By Autho. Signatory SB Singh 51 Year S/o Sh. Ram Gopal Singh R/o E 69 Jaypee Nagar Rewa

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Commercial Tax Deptt., DKS Bhawan, Mantralaya, Raipur.

2. The Commissioner, Commercial Tax, Vikraya Kar Bhavan, Civil Lines, Raipur.

3. Assistant Commissioner, Commercial Tax, Division-I, Bilaspur CG

---- Respondents

WPT No. 24 of 2018

M/s Jaypee Bela Plant (Unit / O M/s. Jaiprakash Associates Ltd. Benaras Chowk, Ambikapur Chhattisgarh By Auth Signatory - S B Singh, 55 Years S/o Shri Ramgopal Singh, Benaras Chowk Ambikapur Chhattisgarh **---- Petitioner**

Versus

1. State Of Chhattisgarh Through Secretary, Commercial Tax Department Mantralaya Naya Raipur Chhattisgarh

2. The Commissioner, Commercial Tax, Vikraya Kar Bhavan Civil Lines Raipur Chhattisgarh

3. Assistant Commissioner, Commercial Tax Raigarh Chhattisgarh., **---- Respondents**

WPT No.80 of 2015

1. Shree Baidyanath Aurved Bhavan Private Limited, Village Bamhni District Seoni M.P. Depot Durga Chowk Ward No.1, Rajnandgaon Chhattisgarh

2. Rajesh Thakre, S/o Ramchand Thakre, Aged About 47 Years, Chief Factory Manager Baidyanath Aurved Bhavan Private Limited Great Nag Road Nagpur M.H. **---- Petitioners**

Versus

1. Assistant Commissioner of Commercial Tax Rajnandgaon, Chhattisgarh

2. State Through Secretary Department Of Commercial Taxes D.K.S. Mantralaya Bhavan Raipur Chhattisgarh **---- Respondents**

WPT No. 81 of 2015

1. Shree Baidyanath Aurved Bhavan Private Limited, Village Bambni District Seoni Madhya Pradesh Depot Durga Chowk Ward No. 1 Rajnandgaon Chhattisgarh

2. Rajesh Thakre, S/o Ramchand Thakre, Aged About 47 Years, Chief Factory Manager Baidyanath Aurved Bhavan Private Limited Great Nag Road Nagpur Maharastra **---- Petitioners**

Versus

1. Assistant Commissioner Of Commercial Tax Rajnandgaon, Chhattisgarh

2. State Through Secretary Department Of Commercial Taxes D.K.S. Mantralaya Bhavan Raipur Chhattisgarh **---- Respondents**

WPT No. 82 of 2015

1. Shree Baidyanath Aurved Bhavan Private Limited, Village Bamhni District Seoni M.P. Depot Durga Chowk Ward No.1, Rajnandgaon Chhattisgarh

2. Rajesh Thakure, S/o Ramchand Thakre, Aged About 47 Years, Chief Factory Manager Baidyanath Aurved Bhavan Private Limited Great Nag Road Nagpur M.H. **---- Petitioners**

Versus

1. Assistant Commissioner Of Commercial Tax Rajnandgaon, Chhattisgarh

2. State Through Secretary Department Of Commercial Tax, DKS Bhawan Mantralaya, Raipur Chhattisgarh **---- Respondents**

WPT No.83 of 2015

1. Shree Baidyanath Aurved Bhavan Private Limited, Village Bamhni District Seoni M.P. Depot Durga Chowk Ward No.1, Rajnandgaon Chhattisgarh

2. Rajesh Thakre, S/o Ramchand Thakre, Aged About 47 Years, Chief Factory Manager Baidyanath Aurved Bhavan Private Limited Great Nag Road Nagpur Maharashtra **---- Petitioners**

Versus

1. Assistant Commissioner Of Commercial Tax Rajnandgaon, Chhattisgarh

2. State Through Secretary Department Of Commercial Tax, DKS Bhawan Mantralaya, Raipur Chhattisgarh **---- Respondents**

WPT No. 85 of 2015

1. Shree Baidyanath Aurved Bhavan Private Limited, Village Bamhni District Seoni M.P. Depot Durga Chowk Ward No.1, Rajnandgaon Chhattisgarh

2. Rajesh Thakre, S/o Ramchand Thakre, Aged About 47 Years, Chief Factory Manager Baidyanath Aruved Bhavan Private Limited Great Nag Road Nagpur Maharashtra **---- Petitioners**

Versus

1. Assistant Commissioner Of Commercial Tax Rajnandgaon Chhattisgarh

2. State Through Secretary Department Of Commercial Taxes D.K.S. Mantralaya Bhavan Raipur Chhattisgarh **---- Respondents**

WPT No. 86 of 2015

1. Shree Baidyanath Aurved Bhavan Private Limited, Village Bamhni District Seoni M.P. Depot Durga Chowk Ward No.1, Rajnandgaon Chhattisgarh

2. Rajesh Thakre, S/o Ramchand Thakre, Aged About 47 Years, Chief Factory Manager Baidyanath Aruved Bhavan Private Limited Great Nag Road Nagpur M.H. , District : Nagpur, Maharashtra

---- Petitioners

Versus

1. Assistant Commissioner Of Commercial Tax Rajnandgaon, Chhattisgarh

2. State Through Secretary Department Of Commercial Taxes D.K.S. Mantralaya Bhavan Raipur Chhattisgarh **---- Respondents**

WPT No. 87 of 2015

1. Shree Baidyanath Aurved Bhavan Private Limited, Village Bamhni District Seoni Madhya Pradesh Depot Durga Chowk Ward No.1 Rajnandgaon Chhattisgarh

2. Rajesh Thakre, S/o Ramchand Thakre, Aged About 47 Years, Chief Factory Manager Baidyanath Aurved Bhavan Private Limited Great Nag Road Nagpur Maharashtra **---- Petitioners**

Versus

1. Assistant Commissioner Of Commercial Tax Rajnandgaon, Chhattisgarh

2. State Through Secretary Department Of Commercial Taxes D.K.S. Mantralaya Bhavan Raipur Chhattisgarh **---- Respondents**

WPT No.643 of 2011

M/s Jaypee Bela Plant (Unit of M/s. Jaiprakash Associates Ltd. Registered office at Sector – 128, Noida-201304) Village Madhepur/ Sonra, Tehsil – Huzur, District-Rewa Through Authorized Signatory-S.B. Singh, Aged about 50 Years, S/o Sh. Ram Gopal Singh, R/o E-69 Jaypee Nagar Rewa MP 486450

---- Petitioner

Versus

1. State Of Chhattisgarh, Through Secretary, Deptt. Of Commercial Taxes, DKS Bhavan, Mantralaya Raipur (CG)

2. The Commissioner, Commercial Tax, Vikraya Kar Bhavan, Civil Lines, Raipur

3. Assistant Commissioner, Commercial Tax, Division-I, Bilaspur CG

---- Respondents

WPT No. 644 of 2011

M/s Jaypee Bela Plant (Unit of M/s. Jaiprakash Associates Ltd. Registered office at Sector – 128, Noida-201304) Village Madhepur/ Sonra, Tehsil – Huzur, District-Rewa Through Authorized Signatory-S.B. Singh, Aged about 50 Years, S/o Sh. Ram Gopal Singh, R/o E-69 Jaypee Nagar Rewa MP 486450

---- Petitioner

Versus

1. State Of Chhattisgarh, Through Secretary, Deptt. Of Commercial Taxes, DKS Bhavan, Mantralaya Raipur (CG)

2. The Commissioner, Commercial Tax, Vikraya Kar Bhavan, Civil Lines, Raipur

3. Dy. Commissioner (Appeal), Commercial Tax, Bilaspur

4. Assistant Commissioner, Commercial Tax, Division-I, Bilaspur CG

---- Respondents

WPT No. 5725 of 2008

M/s Deepak Agency, a sole proprietorship through Proprietor Ashok Chhetija at Station Road, Raipur (CG) **---- Petitioner**

Versus

1. Commissioner Tax Officer, Scrutiny Cell Raipur (CG)

2. Appellate Deputy Commissioner, Commercial Tax Raipur (CG)

3. Chhattisgarh Commercial Tax Tribunal through Registrar Raipur (CG)

4. Commissioner, Commercial Tax Raipur (CG) **---- Respondents**

For respective petitioners	:	Mr. Anand Mohan Tiwari, Advocate appears under instruction from Mr. Neelabh Dubey, Advocate and Mr. Raja Sharma, Advocate
For State/Respondents	:	Mr. Amrito Das, Additional A.G. alongwith Mr. Ankur Kashyap, Ms. S. Harshita and Mr. Vaibhav Singh, Panel Lawyers

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Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

26/09/2019

Heard.

1. In this batch of petitions, the petitioners have assailed legality and validity of orders passed by the authorities in the departments of Commissioner Tax whereby petitioners' claim for exemption from payment of sales tax on the basis of exemption notification and certificates issued in favour of petitioners has been rejected.

2. The petitioners are claiming exemption from payment of sales tax on the basis of exemption notifications in the matter of sale of goods which, after reorganization of State of Madhya Pradesh, have converted

into inter-State trade between the successor State of Madhya Pradesh and Chhattisgarh, upon reorganization of State of Madhya Pradesh vide Madhya Pradesh Reorganization Act, 2000.

3. At the outset, learned Additional Advocate General, relying upon recent judicial pronouncement of the three judges Bench of the Supreme Court resiling conflict of views, submits that the issue raised in this petition is no longer res integra and authoritative pronouncement, the Supreme Court has clearly laid down that upon reorganization of State, both in the State of Madhya Pradesh as well as in the State of Bihar, the sale transaction taking place across the boarders of the State, can no longer be treated as intra-State trade for the purposes of continuing exemption as the legal effect of such reorganization would be that the two States have to be treated as different entities and any transaction of State across the boarder of the State will have to be treated only as inter-State trade and not the intra-State trade.

4. Learned counsel for the petitioners appearing in the aforesaid batch of petitions would, however, submit that the petitioners in all these cases were enjoying exemption under various exemption notifications issued prior to reorganization of State and those exemptions have continued even after reorganization of State. It is argued that those exemptions which were being enjoyed could not be taken away by the fiction of inter-State trade under the Reorganization Act of 2000. According to them, these sale transactions would always enjoy exemption because that the time when exemption was granted, State authorities did not dispute the entitlement of the petitioners to seek such exemption.

5. After having heard learned counsel for the parties, I am of the view that the issue raised in this petition is squarely covered by the larger Bench judgment of the Supreme Court in the case of **State of Madhya Pradesh and others Vs. Lafarge Dealers Association, 2019(7) SCC 584.** Overruling observation and ratio recorded in para 29 & 30 in *Swarn Rekha Cokes and Coals (P) Ltd., 2004 (6) SCC 689*, it was held as below :

> **"27.**We have quoted the relevant portions of the judgment in the case of *Swarn Rekha Cokes and Coals (P) Ltd.* and have no difficulty in agreeing to the dictum as enunciated in paragraphs 26, 27 and 28, but find it difficult to agree with the ratio recorded in para 29. The effect of Sections 84 and 85 of the Bihar Reorganisation Act, 2000 was to ensure continuity of laws enacted by the unified State of

> Bihar in the new State of Jharkhand which had been created by transfer of territories which earlier formed part of the State of Bihar. These sections incorporating a deeming fiction were to ensure that the new State of Jharkhand would continue to be governed by the pre-existing laws as, otherwise, there would be a disorderly and chaotic situation where the new State would not be governed by any law. This is the true effect of the legal fiction created by Section 84 of the Bihar Reorganisation Act, 2000, i.e., the reorganisation of the State would not affect the applicability of the existing laws in the State to all territories included within it before and even after the reorganisation. The said fiction does not postulate and cannot be extended to imagine that for the purpose of sale transactions or even for other purposes, the new State did not have any political and constitutional existence as a separate State and that till a new law was enacted, the two States were to be treated as one political State as it was before the reorganisation. The sale transactions which were hitherto intra-state sales being within the unified State of Bihar, would become inter-state transactions once the two new States had come into existence. The provisions do not stipulate that such transactions would continue to be treated as intra-state transactions notwithstanding creation of the new State.
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> **28.** With respect to reasoning given in para 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."

6. The aforesaid view taken by the Supreme Court, resolving conflicting views and overruling observation recorded in paras 29 & 30 in Swarn Rekha Cokes and Coals (P) Ltd. puts an end to the dispute raised by the petitioners before this Court, of course, against them and in favour of the Revenue that the petitioners are not entitled to exemption as claimed, in the matter of Inter-State trade between the State of Madhya Pradesh and Chhattisgarh.

7. Before parting with the case, on attention of this Court being drawn to the observations made in para 29 of the aforesaid decision it is made

clear that the petitioners, herein, would also enjoy the same liberty has been granted by the Supreme Court and observed in para 29 of its judgment in the case of State of Madhya Pradesh and others Vs. Lafarge Dealers Association and others.

8. The observation made by the Supreme Court in the case of Lafarge Dealers Association (supra) in para 29 of the aforesaid judgment is reproduced as below :

> "**25**. 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)*."

9. In the result, all these petitions are dismissed and interims orders are vacated.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Rekha