IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.143 of 2011

The State of Bihar through Principal Secretary, Commercial Taxes, Bihar, Patna.

... ... Appellant/s

Versus

M/S New Swadeshi Distillery, Narkatiyaganj, West Champaran, Bettiah.

... ... Respondent/s

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with

Miscellaneous Appeal No. 168 of 2011

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1. The State of Bihar through Principal Secretary, Commercial Taxes, Bihar, Patna.
2. The Joint Commissioner of Commercial Taxes, Tirhut Division, Muzaffarpur.
3. The Assistant Commissioner, Commercial Taxes, Bettiah.

... ... Appellant/s

Versus

MS New Swadeshi Distillery, Narkatiyaganj, West Champaran, Bettiah.

... ... Respondent/s

Appearance :

(In Miscellaneous Appeal No. 143 of 2011)

For the Appellant/s	:	Mr.Vikash Kumar, Advocate
For the Respondent/s	:	Mr. R.K.Agrawal, Advocate
		Mr. Sanjeev Kumar, Advocate

(In Miscellaneous Appeal No. 168 of 2011)

For the Appellant/s	:	Mr.Vikash Kumar, Advocate
For the Respondent/s	:	Mr. R.K.Agrawal, Advocate
		Mr. Sanjeev Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 11-01-2024

The assessment years are 1997-98 and 1998-99. The respondent, the assessee, is a registered dealer carrying on manufacture and sale of methylated spirit. In the subject assessment years, the assessment was completed on 08.03.2021 under Section 17(2)(a) of the Bihar Finance Act, 1981 (in short the 'Act'). The sale of methylated spirit to one M/s Waxpol Industry Ltd., duly registered under Section 13(1) of the Act, against supply of statutory Form-IX, was assessed at the rate of 2% under Section 13 of the Act. Wherever the statutory forms were not produced, assessment was @ 25%. A re-assessment was initiated under Section 19(1) (b) of the Act and completed, resulting in a demand of additional tax for the subject assessment years, assessing the entire sale of methylated spirit at the rate of 25% under Section 12 of the Act. The assessee was unsuccessful in first appeal, which orders of the first appellate authority and the original authority were overturned by the Tribunal. The order of the Tribunal is challenged before us by the State.

2. The learned Government Advocate points out from Section 13 that the proviso enables any goods or category of goods to be removed from the purview of Section 13. Such goods removed from the purview of Section 13 even if sold as a raw material would be assessed at the higher rate under Section 12, as notified by the State Government. The relevant notifications were pointed out to buttress the contention.

3. The learned counsel appearing for the assessee before us argued on the basis of the notifications issued under Section 12 and 13 that the assessee had sold the methylated spirit as a raw material and had also obtained the statutory forms from the purchaser, which enables the assessee to be assessed at the rate of 2% under Section 13 of the Act. It is pointed out that the subsequent notifications removing ‘Spirit, including rectified spirit’, does not change the character of the levy since it is an admitted position that the goods were sold as a raw material enabled assessment at the concessional rate under Section 13 of the Act.

4. The question that arises from the order of the Tribunal is framed as follows:-

> (i) Whether the sale of methylated spirit to the purchaser for the purpose of use as a raw material, based on the notifications issued under the Act, would be covered under Section 13 or under Section 12 and if it is covered under Section 12, what would be the rate applicable to its sale?

5. The assessee had also, in the appeal before the Tribunal, raised the question as to whether a re-assessment could have been carried out under Section 19(1), especially

since it is a mere change of opinion, for reason of there being no additional material available with the assessing officer to carry out such re-assessment. The assessment having been carried out levying tax at the lower rate; without any additional material, there could not be a re-assessment carried out, which if carried out would amount to a mere change of opinion. The Tribunal has considered the issue elaborately and found that correcting a human error would not come within the definition of a mere change of opinion.

6. In the present case, the Assessing Officer had, without adverting to the notifications, assessed it on the basis of the statutory form produced, enabling the concessional rate for the goods sold by the assessee as a raw material to the purchaser. Later, the under assessment was noticed and this falls squarely within the ambit of Section 19(1) was the finding. The Tribunal though went ahead and found the concessional rate to be proper, rejected the claim of the assessee that re-assessment in the facts and circumstances would not be possible. We do not find any cross-appeal from the above finding and we find no reason to enter into the said controversy. We are also *prima facie* satisfied that the findings of the Tribunal on that count is perfectly legal and in order.

7. The question of law raised would require examination of the various provisions of the Bihar Finance Act. The rate of tax to be levied under Section 3 or 4 is at the rate of 8% of the taxable income as per Section 12. The proviso to Section 12(1), however, enables the State Government to fix a higher rate of tax, not exceeding 25% or a lower rate of tax not below 2%, for any class of dealers or goods, *inter alia* for any goods, which rates are to be notified from time to time by the State Government. Section 13, however, speaks of a special rate of tax on certain sales and purchases, *inter alia* for goods sold or purchased by a registered dealer, which is required by him directly for use in the manufacture or processing of any goods for sale.

8. The principle behind Section 13 is that the goods purchased as raw material and used in the manufacture, bring forth manufactured goods for sale, which would in any event procure tax to the State Government on the sale of such manufactured goods. This levy of tax would take in the value of the raw materials too. This is a concession made available to the dealers of such raw materials but, only on the terms specified therein; which terms include the production of the statutory form and also the continued concession extended to such goods

by the State Government. The continued concession is not a mandate under Section 13 for all goods sold as a raw material, especially looking at the proviso to sub-section 13(1) which is extracted herein:

> "Provided that the State Government may, from time to time by notification in official gazette, exclude any goods or class of description of goods from the operation of this Section".

9. Hence, any goods or class of description of goods, if notified, under the proviso as excluded under Section 13 would attract the tax at the higher rate as notified by the State Government.

10. With these legislative provisions in the background we have to examine the notifications as produced in the case. We specifically refer to the affidavit of the respondent dated 28.04.2016, wherein the various notifications are produced.

11. Annexure-R/4 is notification no. Bikrikar/San.-10266/77-14549 dated 26.12.1977 which is one in exercise of the proviso to sub-section (1) of Section 12, excluding eleven goods from the operation of the said section. Later by Annexure-R/8, S.O. 94 dated 21.05.1997, exercising

the powers under Section 12(1) of the Bihar Finance Act, 1981, the following was added as taxable under Section 12 at the rate of 25%:-

> Molasses, Potable Spirit, Methylated Spirit, Rectified Spirit, Wine, Indian Made Foreign Liquor, Foreign Liquor, Country Liquor, Spiced Country Liquor, whether imported or manufactured inside India, Opium and Narcotics.

12. On the same day subsequent to the above notification, by S.O. 98 dated 21.05.1997 (Annexure-R/6), an exercise of power conferred by Section 13(1) of the Bihar Finance Act, 19811; 'Spirit including rectified spirit' was included in the notification dated 26.12.1997 (Annexure-R/4) thus excluding it from Section 12.

13. Hence, what has transpired on 21.05.1997 is that a number of goods including potable spirit, methylated spirit, rectified spirit etc., were included under Section 12 with the rate of tax specified in the schedule at 25%.. On the same day, subsequent to such inclusion, 'Spirit including rectified spirit' alone was included in the notification under Section 13. Hence the intention of the Government was to include the goods as specified in S.O. 94 under Section 12(1), to be taxed at 25% and exclude only 'Spirit including rectified spirit' from the levy

of 25%; by reason of the inclusion under Section 13 by a later notification on the same date (S.O. 98-R/6).

14. Hence, 'Spirit including rectified spirit' can only be considered as taxable under Section 13 at the rate of 2%.

15. We find no reason to interfere with the order of the Tribunal but we make it clear that the same shall be applicable only with respect to the quantum for which the statutory forms as prescribed under Section 13 were produced before the assessing authority.

16. We reject the appeal, answering the question of law in favour of the assessee, finding the levy for methylated spirit which would be within the words employed, of 'Spirit including rectified spirit' as excluded from Section 12 and included under Section 13 by S.O. 98 dated 21.05.1997.

17. The appeals stand dismissed.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

Sujit/Aditya

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	16.01.2024
Transmission Date	