

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.14 of 2023

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M/S ACC Limited (Previously known as M/S Associated Cement Companies Ltd.), a Company incorporated under provisions of the Indian Companies Act, 1913, having its office at Samridhi Complex, S.P. Verma Road, P.S. Gandhi Maidan, District- Patna (Bihar) through its Chief Manager Finance and authorised signatory Debjyoti Adhikary (Male) aged about 44 years, son of Late Birendra Nath Adhikary, Resident of Flat No. 1B, Block- 3, Katyayani Complex, 31, Italgacha Road, Kolkata- 700079, P.O. Italgachan, P.S Dumdum and District North 24 Parganas.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Commercial Taxes Department, Bihar, Patna.
2. The Joint Commissioner of Commercial Taxes (Appeals), Central Division, Patna.
3. The Deputy Commissioner of Commercial Taxes, Special Circle, Patna.

... .. Respondent/s

with

Miscellaneous Appeal No. 8 of 2023

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M/s. ACC Limited (Previously known as M/s. Associated Cement Companies Ltd.), a Company incorporated under provisions of the Indian Companies Act, 1913, having its Office at Samridhi Complex, S.P. Verma Road, P.S. Gandhi Maidan, District- Patna (Bihar) through its Chief Manager Finance and authorised signatory Debjyoti Adhikary (Male) aged about 44 years, son of Late Birendra Nath Adhikary, resident of Flat No. 1B, Block- 3, Katyayani Complex, 31, Italgacha Road, Kolkata- 700079, P.O. Italgacha, P.S. Dumdum and District- North 24 Parganas

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Versus

1. The State of Bihar through the Principal Secretary, Commercial Taxes Department, Bihar, Patna.
2. The Joint Commissioner of Commercial Taxes (Appeals), Central Division, Patna.
3. The Deputy Commissioner of Commercial Taxes, Special Circle, Patna.

... .. Respondent/s

with



Miscellaneous Appeal No. 10 of 2023

M/S. ACC LIMITED (Previously known as M/s. Associated Cement Companies Ltd.), a Company incorporated under provisions of the Indian Companies Act, 1913, having its Office at Samridhi Complex, S.P. Verma Road, P.S. Gandhi Maidan, District- Patna (Bihar) through its Chief Manager Finance and authorised signatory Debjyoti Adhikary (Male) aged about 44 years, son of Late Birendra Nath Adhikary, resident of Flat No. 1B, Block- 3, Katayani Complex, 31, Italgacha Road, Kolkata- 700079, P.O. Italgacha, P.S.- Dumdum and District- North 24 Pargans.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Commercial Taxes Department, Bihar, Patna.
2. The Joint Commissioner of Commercial Taxes (Appeals), Central Division, Patna.
3. The Deputy Commissioner of Commercial Taxes, Special Circle, Patna.

... .. Respondent/s

with

Miscellaneous Appeal No. 11 of 2023

M/s. ACC Limited (Previously known as M/s. Associated Cement Companies Ltd.), a Company incorporated under provisions of the Indian Companies Act, 1913, having its Office at Samridhi Complex, S.P. Verma Road, P.S. Gandhi Maidan, District- Patna (Bihar) through its Chief Manager Finance and authorised signatory Debjyoti Adhikary (Male) aged about 44 years, son of Late Birendra Nath Adhikary, resident of Flat No. 1B, Block- 3, Katayani Complex, 31, Italgacha Road, Kolkata- 700079, P.O. Italgacha, P.S. Dumdum and District- North 24 Parganas

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Commercial Taxes Department, Bihar, Patna.
2. The Joint Commissioner of Commercial Taxes (Appeals), Central Division, Patna.
3. The Deputy Commissioner of Commercial Taxes, Special Circle, Patna.

... .. Respondent/s

with

Miscellaneous Appeal No. 15 of 2023



=====

M/S ACC Limited (Previously Known as M/S. Associated Cement Companies Ltd.), a Company incorporated under provisions of the Indian Companies Act, 1913, having its Office at Samridhi Complex, S.P. Verma Road, P.S. Gandhi Maidan, District- Patna (Bihar) through its Chief Manager Finance and authorised signatory Debjyoti Adhikary (Male) aged about 44 years, son of Late Birendra Nath Adhikary, resident of Flat No. 1B, Katyayani Complex, 31, Italgacha Road, Kolkata- 700079, P.O. Italgacha, P.S. Dumdum and District North 24 Parganas.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Commercial Taxes Department, Bihar, Patna.
2. The Joint Commissioner of Commercial Taxes, Special Circle, Patna.
3. The Deputy Commissioner Taxes, Special Circle, Patna.

... .. Respondent/s

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Appearance :

(In Miscellaneous Appeal No. 14 of 2023)

For the Appellant/s : Mr. Ramesh Kumar Agrawal, Advocate
Mr. Sanjeev Kumar, Advocate

For the Respondent/s : Mr. Vikash Kumar, SC-11

(In Miscellaneous Appeal No. 8 of 2023)

For the Appellant/s : Mr. Ramesh Kumar Agrawal, Advocate

For the Respondent/s : Mr. Vivek Prasad, GP-7
Mrs. Manisha Singh, AC to GP-7

(In Miscellaneous Appeal No. 10 of 2023)

For the Appellant/s : Mr. Ramesh Kumar Agrawal, Advocate
Mr. Sanjeev Kumar, Advocate

For the Respondent/s : Mr. Vikash Kumar, SC-11

(In Miscellaneous Appeal No. 11 of 2023)

For the Appellant/s : Mr. Ramesh Kumar Agrawal, Advocate

For the Respondent/s : Mr. Vivek Prasad, GP-7
Mrs. Manisha Singh, AC to GP-7

(In Miscellaneous Appeal No. 15 of 2023)

For the Appellant/s : Mr. Ramesh Kumar Agrawal, Advocate

For the Respondent/s : Mr. Vivek Prasad, GP-7
Mrs. Manisha Singh, AC to GP-7

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

and

HONOURABLE MR. JUSTICE DR. ANSHUMAN

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE DR. ANSHUMAN)

Date : 16-12-2025

Heard Mr. Ramesh Kumar Agrawal, learned Advocate, assisted by Mr. Sanjeev Kumar, learned Advocate, for the appellant in all the Miscellaneous Appeals mentioned above; Mr. Vikash Kumar, learned SC-11, in Miscellaneous Appeal No. 14 of 2023 and Miscellaneous Appeal No. 10 of 2023; and Mr. Vivek Prasad, learned GP-7, assisted by Mrs. Manisha Singh, AC to GP-7, in Miscellaneous Appeal No. 8 of 2023, Miscellaneous Appeal No. 11 of 2023, and Miscellaneous Appeal No. 15 of 2023, for the respondent.

2. All the present Miscellaneous Appeals have been filed against the common judgement dated 29.09.2022, passed by the Commercial Taxes Tribunal, Bihar, Patna. Miscellaneous Appeal No. 14 of 2023 arises out of Revision Case No. PT-264/2004 for the period 1998-99 (Appeal value Rs. 2,30,37,023/-). Miscellaneous Appeal No. 8 of 2023 relates to Revision Case No. PT-199/2006 for the period 2000-01 (Appeal value Rs. 84,10,189.14). Miscellaneous Appeal No. 10 of 2023 arises out of Revision Case No. PT-191/2004 for the period



1996-97 (Appeal value Rs. 84,24,092.56). Miscellaneous Appeal No.11 of 2023 pertains to Revision Case No. PT-192/2004 for the period 1997-98 (Appeal value Rs. 48,68,338.40). Miscellaneous Appeal No. 15 of 2023 has been filed against the judgement dated 29.09.2022 relates to Revision Case No. PT-197/2006 for the period 1999-2000 (Appeal value Rs. 97,92,738/-).

3. In all the appeals, a common question is involved, and therefore, this Court deems it fit and proper to hear the aforesaid five appeals together.

4. The brief facts of the present appeals are that the appellant, M/s ACC Limited, is a company incorporated under the provisions of the Indian Companies Act, 1913, and is represented through its Chief Manager (Finance). The appellant company is engaged in the business of manufacture and sale of cement. Its three manufacturing units are located in the State of Bihar at Sindri, Chaibasa, and Khalari, and it has a network of warehouses situated throughout the State for the distribution and sale of cement received from its factories located within Bihar as well as from various factories located outside the State. The appellant's factories and warehouses are registered under the provisions of the Bihar Finance Act, 1981 and the rules framed



thereunder, in different circles of the Commercial Taxes Department. The respondent, Commissioner of Commercial Taxes, Bihar, Patna, granted permission to the appellant to file consolidated returns in respect of sales of cement from all the warehouses and factories at the Special Circle, Patna.

4.1 According to the appellant, the rate of tax on different goods is fixed under Section 12 of the Bihar Finance Act, 1981. Sales tax at the rate of 4% on gunny bags (packing material), 7% on HDPE bags (packing material), and 11% on cement was payable during the period under consideration. The appellant duly paid the said tax on packing material and cement under Section 12 of the Act. It is further submitted that, the appellant paid the taxes at the prescribed rates from time to time, no dues remained outstanding against the appellant.

4.2 Learned counsel for the appellant further submits that no adverse material or entry was found against the company by the tax authorities either during inspection or during the examination of the appellant's books of account. It is submitted that the assessment was completed under Section 17(2)(b) of the Bihar Finance Act, 1981. The assessing authority disallowed the entire claim of the appellant on account of trade discount and held that the same would be subjected to the



normal rate of tax at 11%. The assessing authority also rejected the appellant's contention with regard to the applicable rate of tax on packing materials, namely gunny bags and HDPE bags. The appellant filed appeals before the Joint Commissioner of Commercial Taxes (Appeal), Central Division, Patna, against the respective assessment orders, but the same were dismissed insofar as the issues of trade discount and packing material were concerned. Thereafter, the appellant preferred revisions against the appellate orders, which were also dismissed on the issues of disallowance of trade discount and the claim for separate taxation of packing materials.

4.3 Learned counsel for the appellant further submits that the statute prescribes separate rates of tax for packing materials and cement, and therefore the disallowance of a separate tax on packing materials, resulting in the enhancement of the appellant's Gross Turnover (GTO), is contrary to law. It is further submitted that Section 12 of the Bihar Finance Act, 1981 is clear and unambiguous.

4.4 Learned counsel further submits that, in the Schedule of the notification issued under the Bihar Sales Tax fifth Ordinance, 1977, the rate of sales tax fixed for cement is 11%, whereas the rate on gunny bags is 4% and on HDPE bags



is 7%, both being packing materials. It is therefore submitted that the decisions of the Assessing Authority, the Appellate Authority, and the Revisional Authority are wholly contrary to the provisions of the Bihar Finance Act, 1981.

5. In support of his argument, learned counsel for the appellant relied on the judgment rendered in ***Mathuram Agrawal v. State of Madhya Pradesh***, reported in ***(1999) 8 Supreme Court Cases 667***, and submits that in this judgment the Hon'ble Supreme Court of India has clearly held that the intention of the Legislature in a taxation statute is to be gathered from the language of the provisions, particularly where the language is plain and unambiguous. It has further been held that, in a taxing Act, it is not permissible to assume any intention or governing purpose of the statute beyond what is stated in the plain language.

5.2 Learned counsel for the appellant has also relied on another judgment rendered in ***M/s Govind Saran Ganga Saran v. Commissioner of Sales Tax & Ors.***, reported in ***AIR 1985 Supreme Court 1041***, and submits that in this case the Hon'ble Supreme Court held that when the language of the statute is clear and admits of no ambiguity, recourse to the Statement of Objects and Reasons for the purpose of construing



a statutory provision is not permissible.

5.3 Learned counsel for the appellant further relied on the judgment rendered in ***Raj Steel & Ors. v. State of A.P. & Ors.***, reported in ***(1989) 3 SCC 262***, and submits that the issue as to whether packing material has been sold or merely supplied without consideration depends upon the contract between the parties. The Court held that the fact that the packing material is of insignificant value in relation to the value of the contents may imply that there was no intention to sell the packing; however, where any packing material is of significant value, it may imply an intention to sell the packing material. In a case where the packing material is an independent commodity and both the packing material and the contents are sold independently, the packing material is liable to tax on its own footing.

6. Learned counsel for the appellant further submits that cement and bags are two different commodities which have been sold independently. Therefore, in consonance with Section 12 of the Bihar Finance Act, 1981 and in view of the decisions of the Hon'ble Supreme Court of India, it becomes evident that the invoices prepared by the appellant company paying tax at 11% on cement and 4% / 7% on bags are absolutely in accordance with law, and there was no occasion for any



interference. Hence, it is submitted that a pure substantial question of law has arisen, namely that the finding of the Tribunal disallowing the claim of tax on packing material and cement separately at separate rates is wholly contrary to law.

7. Learned counsel for the respondent submits that under the Bihar Finance Act, 1981, the term “sale price” has been expressly defined in Section 2(u). The said provision clearly stipulates that “sale price” means the amount payable to a dealer as valuable consideration in respect of the sale or supply of goods. In support of this submission, learned counsel for the respondent has placed reliance on the judgment of the Hon’ble Supreme Court in ***Commissioner of Sales Tax, U.P. v. Rai Bharat Das and Bros.***, reported in ***(1989) 1 SCC 143***, particularly paragraph 7, which is relevant for the present controversy, is extracted as under :-

7. We are of the opinion, in view of the facts found by the Tribunal which must be taken to be conclusive, and in the light of Section 2 (h) of the Act, the High Court was in error. In the facts of this case such packing charges could be included. There was an agreement to sell the gunny bags, as found by the Tribunal. The price of silica was shown separately and the cost of packing was also shown separately. In view of the definition of Section 2(h) of the Act, anything which was an integral part included (sic including) any sum charged for



anything done by the dealer in respect of the goods, may form part but anything supplied separately pursuant to a separate order, directions or specifications to the purchaser, could not form part of the sale price of the gunny bags. This was done in order to putting them in deliverable state and incidental to the same.

8. Upon hearing the parties, this Court is of the view that the substantial question of law arising in this appeal is **“whether, under the Bihar Finance Act / Bihar Sales Tax Act, sales tax can be charged separately on gunny bags and HDPE bags and on cement at different rates namely 4%, 7%, and 11% respectively as contended by the appellant, or whether the “sale price” on which sales tax is to be levied must be treated as a consolidated amount @ 11 % irrespective of the separate prices shown in the invoices ?.**

9. For deciding this substantial question of law, it is necessary to examine the statutory scheme. The present matter is fully governed by the Bihar Finance Act, 1981, as amended from time to time. It is evident that the levy of sales tax has always been on the sale price of the goods in question and ‘sale price’ has been separately defined in Section 2(u) of the Act. Therefore, the statutory definition of “sale price” contained in Section 2(u) of the Act assumes central importance and is reproduced below:



“(u) ‘sale price’ means the amount payable to a dealer as valuable consideration respect of the sale or supply of goods.

Explanation. I – Sale price shall include any amount charged by the dealer for anything done in respect of the goods at the time of or before delivery thereof to the buyer.

Explanation II- Sale price shall not include the cash discount allowed by the dealer according to the ordinary trade practice, if shown separately. It shall also not include the cost for transport of the goods from the seller to the buyer, provided such cost is separately charged to the buyer.”

10. It has been held that the packing of cement in gunny/HDPE bags was carried out by the dealer either at the time of, or prior to, the delivery of the goods. Consequently, there existed an implied agreement of sale to sell the packing material along with the contents therein. Although this is essentially a question of fact, no such contract or agreement was ever placed on record or argued either before the Assessing Authority or before the Tribunal by the appellant.

11. A bare reading of Section 2(u) makes clear that the definition of “sale price” applies in the present case. Under Section 2(u), the sale price on which tax is liable to be paid is



the amount payable to a dealer as valuable consideration in respect of the sale or supply of goods. In the present matter, the term “goods” includes cement along with its packing material.

12. With regard to the judgments cited by learned counsel for the appellant *Mathuram Agrawal (supra)*, *Govind Saran Ganga Saran (supra)*, and *Raj Steel & Ors. v. State of A.P. & Ors.* (supra) it is to be noted that these decisions merely reiterate that, in commercial law, statutory language must be interpreted plainly. Here, Section 2(u) clearly defines the sale price, and its plain meaning must prevail.

13. Therefore, we are of the considered view that the substantial question whether cement and packing material should be taxed separately does not arise, nor would such a position be legally correct, particularly when the appellant has brought no factual material on record. The plain reading of Section 2(u) governs the issue.

14. Accordingly, the substantial question of law is answered against the appellant and in favour of the respondent, and it is held that the order passed by the Assessing Authority, the Appellate Authority, and the Revisional Authority are fully in accordance with law and calls for no interference.

15. In view of the above, all the appeals referred



above stand dismissed.

16. Any interlocutory application pending in these matters shall stand disposed of accordingly.

(Dr. Anshuman, J)

Bibek Chaudhuri, J : I agree.

(Bibek Chaudhuri, J)

Ashwini/-

AFR/NAFR	
CAV DATE	05.12.2025
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