

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1860 OF 2005

M/S. J.K. OIL INDUSTRIES ... Appellant

VERSUS

STATE OF JAMMU & KASHMIR & ORS. ... Respondents

O R D E R

The Government of Jammu and Kashmir, i.e., respondent herein came out with an industrial policy for grant of incentives and subsidies to new industries for five years or the existing units for a specified period. This industrial policy was promulgated vide Government's Order No. 202/1998 dated 27.05.1998. The Government of India also issued SRO 252 regarding exemption from payment of toll tax by the industrial units and later issued another SRO 139 inserting minor deviation to the first SRO 252. On 30.03.2000, the State of Jammu and Kashmir issued another SRO 80 which levied additional toll on the goods entering into the State of Jammu and Kashmir and taken out of the State, on *ad-valorem* basis. Challenging this action of the State of Jammu and Kashmir, the appellant herein filed the writ petition before the High Court of Jammu and Kashmir. Vires of Sub-section (5) of Section 3 of the Jammu and Kashmir Levy of Tolls Act, 1995 whereunder the aforesaid notification dated 30.03.2000 was issued, was also

challenged. This writ petition was allowed by the High Court vide its judgment dated 22.07.2004 following the judgment of this Court in '*Hans Raj and Sons v. State of Jammu and Kashmir and others*' [2002 (6) SCC 227]. The case was thus decided in favour of the appellant herein. The operative portion of the said judgment reads as under: -

"In the result, the writ petitions as well as the letters patent appeals are allowed. The impugned notification SRO 80 dated 30.03.2000 is quashed and the respondents are restrained from giving effect to the provisions of Section 3(5) of the Levy of Tolls Act. The impugned order of learned Single Judge is also set aside. There will be no order as to costs."

The respondent herein filed the review petition thereafter, being Review Petition No. 10 of 2004 seeking review of orders dated 22.07.2004 on the ground that there was an amendment in the aforesaid provision which was carried out on 17.07.2002 and in view of this amendment, the position in law stood changed. This Review Petition came up for hearing before the High Court on 20.12.2004 and was allowed by the High Court on the same day holding that the order quashing SRO 80 dated 30.03.2000 and restraining the State and its officials from giving preference to Section 3(5) of Levy of Tolls Act, will not apply to the subsequent period, i.e., after amendment dated 17<sup>th</sup> July, 2002. It is this order which is under challenge in the present appeal. The submission which is made by Mr. Pramod Kohli, learned senior counsel appearing for the appellant, is that the aforesaid review petition has been allowed

without even issuing any notice to the appellant herein. This fact is not disputed by the learned counsel for the respondent. Therefore, on this ground alone, the impugned order becomes unsustainable as it was passed behind the back of the appellant and to its prejudice. We thus, allow this appeal and set aside the impugned order and remit the case back to the High Court to decide the Review Petition No. 10/2004 afresh after giving due notice to the respondent as well as an opportunity to the appellant to file its reply to the same and after according hearing to both the parties.

....., J.  
[ A.K. SIKRI ]

....., J.  
[ ROHINTON FALI NARIMAN ]

New Delhi;  
May 08, 2015.

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 1860/2005

M/S. J.K. OIL INDUSTRIES

Appellant(s)

VERSUS

STATE OF J.&amp;K. &amp; ORS.

Respondent(s)

(with appln. (s) for exemption from filing c/c of the impugned judgment and office report)

Date : 08/05/2015 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Appellant(s)

Mr. Pramod Kohli, Sr. Adv.  
Mr. Jasbir Singh Malik, Adv.  
Ms. Ammu Suresh, Adv.  
Mr. S. K. Sabharwal, Adv.

For Respondent(s)

Mr. Ashok Mathur, Adv.  
  
Mr. D. P. Mohanty, Adv.  
Ms. Sanjana Ramachandran, Adv.  
M/s. Parekh & Co.UPON hearing the counsel the Court made the following  
O R D E R

The appeal is allowed in terms of the signed order.

(Nidhi Ahuja)  
COURT MASTER(Suman Jain)  
COURT MASTER

[Signed order is placed on the file.]