

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

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 4410 OF 1999

BHARAT VANIJYA EASTERN (P) LTD.

Appellant (s)

VERSUS

STATE OF JHARKHAND & ORS.

Respondent(s)

(With office report )

Date: 14/02/2006 This Appeal was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE RUMA PAL

HON'BLE MR. JUSTICE DALVEER BHANDARI

For Appellant(s)

Mr. Bhaskar P.Gupta,Sr.adv.

Mr. Sarajit Kr. Mitra,adv.

Mr. Deba Prasad Mukherjee,Adv.

Ms. Nandini Mukherjee,adv.

For Respondent(s)

Mr. D.N.Goburdhan,adv.

For State of

Mr. Krishnanand Pandeya,Adv.

Jharkhand

Mr. Rajesh Pathak,adv.

Mr. S.W.A.Qadri,adv.

Mr. Gopal Singh,adv.

UPON hearing counsel the Court made the following

O R D E R

This case has a long history which is stated

briefly in order to give a background of the directions we intend to give. The State had been levying sales tax

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under Sec.25A of the Bihar Finance Act 1981. The appellant challenged the levy as being unconstitutional.

The challenge was upheld by an order dated 25.11.1991.

The assessment orders were quashed and the respondents were directed to pass orders in terms of the Full Bench decision of the High Court in Builders Association of India and Another vs. The State of Bihar (CWJC No.802/90) which had settled the dispute in question on 20.8.1991.

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Alleging that the respondents had violated the order dated 25.11.1991, the appellant filed an application before the High Court for initiating proceedings under the Contempt of Courts Act, 1971, against the respondents for an alleged willful disobedience of that order. In defence to the application, the respondents claimed to have made payment of the deducted amounts on account of sales tax to the appellant. In view of the controversy as to whether the respondents had paid any amount in excess of what was due to the appellants, the contempt application was dismissed. However, the Court directed the concerned Commercial Tax Officer to examine the tax accounts and the bills to find out whether any amount was payable by the appellant to the respondents by way of sales tax or not. If it was found that any amount was due from the appellant on account of sales tax, the amount was to be adjusted against payments made by the appellant to the respondents. If, on the other hand, it was found that any amount was due to be returned to the appellant, the same was to be returned with interest at 12% per annum. The order specifically provided that in case there was any dispute as to the correctness of the finding of the Commercial Tax Officer, the matter could be taken up by

way of appeal or by re-approaching the High Court in the contempt proceedings.

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On 31.5.1995, the Assistant Commissioner of Commercial Taxes, found that an amount of Rs.13,47,570/- had been deducted by the respondents from the appellant's account on account of sales tax on 5.2.1992. It was accordingly opined that the amount was to be returned forthwith to the dealer by the Department which was responsible for the deduction. After various proceedings which are not really relevant, the respondents challenged this order before the Joint Commissioner of Commercial Taxes (Administration). It was contended before the Joint Commissioner by the appellant, inter alia, that revision was not maintainable as the order dated 31.5.1995 was not an order at all. The Commissioner, however, quashed the order dated 31.5.1995 and allowed the revisional application of the respondents. Being aggrieved, the appellant filed a writ petition before the High Court. The only point argued before the High Court was that the revision was not maintainable before the Joint Commissioner. The High Court, in a well reasoned-judgment dismissed the writ petition on 16.11.1998. The appellant has challenged the order of the High Court before this Court. While the matter was pending before this Court an order was passed on 2.12.2004 to the following effect:

"The State of Jharkhand may be substituted as respondent in place of State of Bihar.

The Joint Commissioner of Commercial Taxes of the State of Jharkhand at Ranchi is directed to submit a reasoned report to this Court within 12 weeks from today on the following:-

i) What has been the total and actual deduction made by the Irrigation Department, Government of Bihar (now Jharkhand) towards sales tax in connection with the two contracts in question during the respective assessment years i.e. 1984-1985 to 1991-92 respectively.

ii) Out of such deduction what is the total amount deposited by the Irrigation Department towards remittance of Sales Tax to the Sales Tax Authorities towards the said contracts purporting to be under Section 25A of Bihar Finance Act 1981.

iii) Whether any deduction at the rate of 4% as sales tax between the parties pertaining to the contracts in question has been made by correspondingly adding the amount of tax at the said rate in the running account bills and then deducting the same; if so, during which period it was so added and deducted.

The Joint Commissioner will give an opportunity of hearing at Ranchi to both sides after giving them due notice and will also give an opportunity to the department to produce all documents including running bills and measurement books pertaining to the contracts in dispute and after due hearing submit a report within 12 weeks from the date of the receipt of the order.

The appeal may be placed for further

hearing by this Court after the report is received."

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The Joint Commissioner passed an order pursuant to the order dated 2.12.2004. It appears from the order that the Joint Commissioner was unable to give any firm conclusion as the relevant records were not available. The State of Bihar was again served with a notice of the matter.

It has been contended by learned counsel appearing on behalf of the State of Jharkhand that the only issue before the Court is whether the revisional application was maintainable before the Joint Commissioner from the order dated 31.5.1995. Having regard to the fact that the appellant had itself urged this point before the Joint Commissioner, it is submitted that it was not open to the appellant to raise the issue. In our opinion, the State of Jharkhand 's contention is correct. In addition, the order dated 25.4.1994 disposing of the contempt proceedings filed by the appellant had expressly granted the right to the parties to impugn the order under the relevant statutes in case they were aggrieved. That order has not been challenged by any order.

However, in view of the order dated 2.12.2004, we consider that it would be appropriate to direct the State of Bihar, which admittedly is in possession of the records, to produce the relevant records before that Authority which is to

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decide the issue as to the liability of the respondents to make payment to the appellant. The State of Jharkhand has denied its liability to make payment of any excess amount that may have been deducted by the State of Bihar and not paid to the appellant. We are of the opinion that that issue will be determined later. It may not, in fact, be necessary if the concerned authority decides the issue against the appellant.

Having regard to the nature of the claim, we direct the Secretary, Finance, State of Bihar, to make available all relevant records along with their officers as may be required by the State of Jharkhand for the purpose of enabling a full enquiry to be held in the matter. The Finance Secretary of the State of Jharkhand will take a decision in terms of the order dated 2.12.2004 within a period of 12 weeks from today. In submitting the report the Secretary, Finance, would not in any fashion be influenced by any observations made in this order or by the previous report submitted by the Joint Commissioner.

The matter is adjourned till after twelve weeks.

[SUMAN WADHWA]

COURT MASTER

[OM PRAKASH]

COURT MASTER