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C.A.No. 2394-2395 OF 2001

ITEM No.101(Part-Heard)

Court No. 4

SECTION IIIA

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 NOS. 2394-2395 OF 2001

M/S TATA CUMMINS LTD. & ANR.

APPELLANT (S)

VERSUS

STATE OF BIHAR & ORS.

RESPONDENT (S)

(With appln. for vacating stay and with office report)

Date : 26/03/2003 This/These Appeal(s) was/were listed for hearing today.

CORAM :

HON'BLE MR. JUSTICE M.B. SHAH

HON'BLE MR. JUSTICE ARUN KUMAR

For Appellant (s) Mr. Ashok H. Desai, Sr. Adv.

Mr. F.S. Nariman, Sr. Adv.

Mr. T.R. Andhiyarujina, Sr. Adv.

Mr. Pallav Sishodia, Adv.

Mr. Subhash Sharma, Adv.

Mr. S. Sukumaran, Adv.

Ms. Kavita Dahiya, Adv.

Ms. Padmini Kumar, Adv.

Ms. Puja Sharma, Adv.

Mr. Rajan Narain, Adv.

For Respondent (s) Mr. Mukul Rohtagi, ASG.

Mr. Ashok Mathur, Adv.

For RR No. 6 Mr. B.B. Singh, Adv.

UPON hearing counsel, the Court made the following

O R D E R

Learned counsel for the parties made their submissions for fifteen minutes.

The appeals are disposed of in terms of the signed order. There shall be no order as to costs

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KALYANI (JANKI BHATIA)

COURT MASTER

(SIGNED ORDER IS PLACED ON THE FILE.)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 2394-2395 OF 2001

M/S TATA CUMMINS LTD. & ANR. . . . . APPELLANT (S)

VERSUS

STATE OF BIHAR & ORS. . . . . RESPONDENT (S)

O R D E R

These appeals are from the final judgment and order dated 24.8.2000 in CWJC No. 2689/2000 and the order dated 10.11.2000 in Review Petition No. 91/2000(R) passed by the High Court of Patna at Ranchi. The subject matter of these appeals is the claim of M/s Tata Cummins Ltd.-Appellant No.1 for exemption from payment of sales tax under Bihar Industrial Policy of 1995 for a period of eight years.

The first appellant made an application for sales tax exemption on 25.05.1998. While the said application was under consideration in their communication dated 30.10.1998, the first appellant had stated as follows:

"The ownership of the factory complex lies with Tata Cummins which has been verified and acknowledged by the Commercial Tax Department during the course of the first phase inspection. The fact of ownership of building through assetisation is also revealed in the Audited Accounts of the Company till date. Banks have also acknowledged the same and allowed borrowings.....  
.....

Since we have set up a new industry by putting in substantial amount of investment (more than Rs. 300 crores) in Jamshedpur, Bihar and are holding all Government registrations like Sales Tax, Central Excise, Factory Licence, Pollution Control Board N.O.C., R.B.I., E.E.P.C. we satisfy the spirit of Bihar Industrial Policy 1995. You may note that commercial banks have provided term loan of Rs. 215 crores and working capital of Rs. 70 crores for setting up of the Project. All the above authorities have acknowledged the ownership of factory complex of Tata Cummins before giving registration and loan.

It is hereby submitted that once we are owners of the factory building there is no question of considering the lease sites. The lease sites have to be considered only when the building where the factory is situated is also on lease. Our submission is based on the notification which is absolutely clear in this regard."

Vide order dated 2.11.1998, the Deputy Commissioner purporting to exercise powers under the S.O. Nos. 478 and 479 of 22.12.1995, rejected the application with observation as follows:

"Since you have not obtained title/possession over the land of the factory, therefore, the conditions laid down in the Notification Nos. 478 & 479 dated 22.12.1995 are not fulfilled."

It is the contention of the appellants that in the Scheme the first condition in Clause 6 of S.O. No. 478 is to be read separately from the second condition in the second sentence of Clause 6. The first condition of Clause 6 of S.O. 478 is an independent and distinct condition from the rest of the said Clause 6 and if it is fulfilled the proprietor/entrepreneur is entitled to an exemption without being required to fulfil any other condition in clause 6, that is to say, if the building of an industrial unit is in exclusive ownership of the proprietor/entrepreneur, such proprietor/entrepreneur shall be entitled to avail of the exemption. Similar is the interpretation with regard to Clause 8 of S.O. 479 dated 22.12.1995. It is the contention of the appellants that they fulfil first condition and are, therefore, entitled to the exemption. It is also the contention of the appellants that they fulfil the second condition also if it is required to be fulfilled viz., the factory building is constructed on land which is held by its joint venture partner (viz. TELCO) under a registered lease of more than 15 years.

This contention is not accepted by the learned Additional Solicitor General. He submits that the above contentions based on interpretation of Clause (6) of the Scheme were not raised before the High Court, the High Court has, therefore, rightly not dealt with the same. It appears that when the denial of exemption was challenged before the High Court, the aforesaid contentions in terms were not raised.

However, in the present case, after the above referred order of the Deputy Commissioner, Commercial Taxes denying exemption from Sales Tax to the appellants, an order dated 11.7.2000 was passed by the Joint Commissioner of Commercial Taxes (Administration), being the competent authority for granting exemption. It has been held as under:

"Since both the orders passed by Deputy Commissioner of Commercial Taxes, Jamshedpur Circle are without approval of Joint Commissioner which is a condition precedent in S.O. 478/479, I pro

pose to call for the record of the tax exemption case from the Circle and examine the matter a fresh after issuing notices to the Deputy Commissioner and the dealer Company and pass a reasoned order in accordance with the law. It also requires examination whether the dealer Company is eligible for exemption in the face of the joint venture agreement referred to above for which necessary documents, accounts will be called for and examined from the dealer Company."

In the light of the fact that the Joint Commissioner of Commercial Taxes (Administration), Jamshedpur, as the competent authority, has observed that it is necessary to examine the matter a fresh after issuing notices to the parties, the petition under Article 226 of the Constitution of India was misconceived. However, considering the facts, the proper course in the present appeals would be to set aside the orders of the High Court dated 24.08.2000 and 10.11.2000 and remand the matter to the Joint Commissioner of Commercial Taxes (Administration), Jamshedpur, for his decision in accordance with law.

Accordingly, we direct that in the light of the order dated 11.7.2000 the matter should be decided by the Joint Commissioner, Commercial Taxes (Administration), after affording the appellants an opportunity to make representation and file documents if so desired and after allowing a hearing, within two months hereof. It is made clear that the same shall be decided without being influenced by any observations in both the impugned judgments of the High Court.

In the meanwhile, amount of Rs. 54.5 crores deposited with the respondents on the footing that no tax exemption is available will remain deposited and will be refunded only after it is determined by the Joint Commissioner of Commercial Taxes (Administration), Jamshedpur that sales tax exemption is admissible. Likewise amount of Rs. 42 crores which has been withheld by first appellant on the basis that sales tax exemption ought to have been granted will also be held by the first appellant-Company pending adjudication. Until adjudication no coercive action be taken against the appellants for recovery of sales tax in question.

On 26th March, 2001, while granting leave this Court observed thus:  
"Stay of recovery of sales tax on the condition that in case appeals are ultimately dismissed the appellants will pay such interest on the tax as the court may award."

Considering the dispute involved in the matter, the aforesaid order would continue till the matter is decided by the Joint Commissioner of Commercial Taxes (Administration) with a condition that in case application for exemption is rejected the appellants would pay the withheld amount of tax with interest at the rate of 9% p.a. from the date it became due and payable till payment.

The appeals are disposed of accordingly. There shall be no orders as to costs.

.....J (M.B. SHAH)

.....J  
(ARUN KUMAR)

NEW DELHI;  
MARCH 26, 2003.