

PETITIONER:
M/S NATHPA JHAKRI JT. VENTURE

Vs.

RESPONDENT:
STATE OF HIMACHAL PRADESH & ORS.

DATE OF JUDGMENT: 14/03/2000

BENCH:
S.N.Phukan, S.R.Babu

JUDGMENT:

RAJENDRA BABU, J. :

CIVIL APPEAL NO. 8468 OF 1997

The appellant before us called in question the validity of Section 12-A of the Himachal Pradesh General Sales Tax Act, 1968 [hereinafter referred as the Act] and Rule 31-A of the Himachal Pradesh General Sales Tax Rules [for short the Rules] before the High Court of Himachal Pradesh. The said provisions provided for deduction of an amount from the bills or invoices of the works contractors purporting to be tax payable towards transfer of goods involved in works contract. The High Court took the view that the relevant amount is the valuable consideration payable for the transfer of property in goods and not the entire value or consideration for the entire works contract and what was directed to be deducted is only an amount not exceeding 4 per cent as may be prescribed purporting to be a part or full of the tax payable on such sales which would necessarily mean tax payable under the charging provisions of the Act. The charging provision was not in challenge before the High Court. The High Court held that the State Legislature has not exceeded its competence in enacting Section 12-A of the Act. As regards Rule 31-A of the Rules, the High Court stated that the crucial part of the Section is repeated in the Rule and if all the sub-rules are read together there could be no doubt that the expression all payments being made in respect of all works contract executed means and refers only to the payments on account of valuable consideration payable for the transfer of property in goods and not other payments. The High Court further noticed that the Rule also does not enable any person to deduct any amount other than what is contemplated by the Section and, therefore, it does not suffer from any invalidity. On that basis, the High Court dismissed the writ petitions.

As was contended before the High Court, it is submitted on behalf of the appellant that provision for compulsory deduction from payment to works contractor does not provide for exclusion of cases where the transaction may not amount to a sale at all and there is no mechanism by which the contractor can claim that a transaction does not amount to sale so that no deductions may be made under the

aforesaid provision. It is also submitted that the recovery is on events which do not attract tax at all, for example, Section 6 of the Act, which is the charging Section, excludes from taxable turn over, the turn over of a dealer on sales to any undertaking supplying electrical energy to the public under a licence or sanction granted under the relevant law of goods for use by it in the generation or distribution of such energy subject to production of a duly signed form by an authorised officer in that regard and the Rule provides for deduction of 4 per cent amount on all payments in similar terms to deduct an amount equal to 4 per cent. The said provisions in Section 12-A and Rule 31-A are identical to those considered by this Court in Steel Authority of India Ltd. v. State of Orissa & Ors. etc. etc., 2000 (2) SCALE 98. The relevant portion of Section 13-AA of the Orissa Sales Tax Act considered by this Court in Steel Authority of India (supra) and Section 12-A of the Act is as under :-

13-AA. Deduction of tax at source from the payment to works contractor (1) Notwithstanding anything contained in Section 13 or any other law or contract to the contrary, any person responsible for paying any sum to any contractor (hereinafter referred to in this section as the deducting authority) for carrying out any works contract which involved transfer of property in goods, in pursuance of a contract between the contractor and (a) Central Government or any State Government, or (b) Any local authority, or (c) Any authority or Corporation established by or under a statute, or (d) Any Company incorporated under the Companies Act, 1956 (1 of 1956) including any State or Central Government undertaking, or (e) Any Co-operative Society or any other Association registered under the Societies Registration Act, 1860 (21 of 1860) Shall, at the time of credit of such sum of the account of the contractor or at the time of payment thereof in cash or by issue of a cheque or draft or any other mode, whichever is earlier, deduct an amount towards sales tax equal to (four per centum) of such sum in respect of the works contract, if the value of the works contract exceeds rupee one lakh.

12-A. Notwithstanding anything to the contrary contained in Section 13, every person making any payment or discharge of any liability on account of valuable consideration payable for the transfer of property in goods, whether as goods or in some other form, involved in the execution of works contract shall deduct an amount not exceeding four per centum, as may be prescribed, purporting to be a part or full of the tax payable on such sales, from the bills or invoices raised by the works contractor as payable by the person:

Provided that no such payment or discharge of any bill raised by the works contractor shall be made without deduction: Provided further that if the State Government is satisfied that it is necessary to do so in the interest of the State revenue, it may notify the names/posts of such persons who shall be competent persons to make such deductions.

Rule 31-A of the Rules reads as under :-

Rule 31-A. Deduction of tax from the bills/invoices of work contractor: (1) For the purpose of Section 12-A of

the Act, every person in a department of any Government, a Corporation, Government Undertaking, a Co-operative Society, a local body, a Trust or a Private or Public Limited Company or any other concern responsible for making any payment or discharge of any liability on account of valuable consideration payable for the transfer of property in goods whether as goods or in some other form involved in the execution of works contract or for carrying out any works shall at the time of:-

(i) Payment thereof in cash or by issue of a cheque or bank draft or any other mode; or (ii) credit of such sum to the account of the works contractor; or (iii) discharging liability on account of the said valuable consideration to the works contractor, deduct an amount equal to two per centum of such sums towards the tax under Section 12-A of the Act.

(2) The deduction under sub-rule (1) shall be made from all payments being made in respect of all works contract executed, whether in part or in full.

However, Shri B. Dutta, the learned senior advocate appearing for the State, very valiantly emboldened himself to submit that he can distinguish the decision of this Court in Steel Authority of India case (supra) and stated that the provisions of Section 13-AA and Section 12-A are not in pari materia. A bare perusal of the two provisions will make it clear that in either provision there is an obligation to deduct from transactions relating to works contract on bills or invoices raised by the work contractor an amount not exceeding 4 per cent or 2 per cent, as the case may be. Though the object of the provision is to meet the tax in respect of the transactions on all works contract on the valuable consideration payable for the transfer of property in goods involved in the execution of the work contract, the effect of the provision is that irrespective of whether the sales are inter-State sales or outside sales or export sales which are outside the purview of the State Act and those transactions in respect of which no tax can be levied even in terms of the enactment itself such deductions have to be made in the bills or invoices of the contractors. To say that if a person is not liable for payment of tax inasmuch as on completion of the assessment refund can be obtained at a later stage is no solace, as noticed in *Bhawani Cotton Mills Ltd. v. State of Punjab & Anr.*, 1967 (3) SCR 577. Further, there is no provision for certification of the extent of the deduction that can be made by the authority. Therefore, we must hold that arbitrary and uncanalised powers have been conferred on the concerned person to deduct upto 4 per cent from the sum payable to the works contractor irrespective whether ultimately the transaction is liable for payment to any sales tax at all. In that view of the matter, we have no hesitation in rejecting the contention advanced on behalf of the State.

The learned counsel drew our attention to the decision in a case arising under the Bihar Sales Tax Act and the earlier decision under the Orissa Sales Tax Act, but in view of the decision of this Court in Steel Authority of India (supra) it is wholly unnecessary to refer to the same. Following the decision in Steel Authority of India (supra) case, we allow this appeal and set aside the order made by the High Court by allowing the writ petition and quashing the aforesaid provisions as being beyond the purview of the

Himichal Pradesh State Legislature. Such amount as has been collected from the appellant under provisions of Section 12-A read with Rule 31-A shall forthwith be refunded by the State. If any amount has been deposited in any Bank pursuant to orders passed by this Court or the High Court, it shall be refunded to the appellant with interest accruing thereon. In the circumstances of the case, there shall be no orders as to costs.

CIVIL APPEALS NOS. 8470/1997, 8471/1997, 8469/1997, 8472/1997 AND WRIT PETITION (CIVIL) NO. 552/1999

Following the judgment just delivered in CIVIL APPEAL NO. 8468 OF 1997, these appeals and writ petition are allowed and the orders under appeal are set aside. Such amount as has been collected from the appellants under the provisions of Section 12-A shall forthwith be refunded by the State. If any amount has been deposited pursuant to orders passed by this Court or the High Court, the same shall be refunded to the appellants with interest accruing thereon. No orders as to costs.