

THE COMMISSIONER OF COMMERCIAL TAX,
RANCHI AND ANR.

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v.

M/S. SWARN REKHA COKES AND COALS PVT. LTD. AND ORS.

MAY 7, 2004

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[N. SANTOSH HEGDE AND B.P. SINGH, JJ.]

Constitution of India, 1950:

Article 226(2)—“Cause of action”—“Wholly or in part”—State of Bihar, before its bifurcation, issued a notification granting exemption from sales tax—Patna High Court issued mandamus to State of Jharkhand to grant sales tax exemption to the petitioner—Correctness of—Held: The notification issued by the State of Bihar formed the basis on which the petitioner founded its claim—Hence, it cannot be said that the entire cause of action accrued in the State of Jharkhand—However, it necessarily formed a part of the cause of action—In the circumstances of the case, the State of Jharkhand ought to have been made a party-respondent.

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Bihar Reorganization Act, 2000:

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Sections 84 and 85—Continuation and applicability of—State of Jharkhand was created out of the erstwhile State of Bihar—Applicability of Ss. 84 and 85 to State of Jharkhand—Held: The language of Ss. 84 and 85 is clear and unambiguous—These Sections provide that the laws which were applicable to the undivided State of Bihar would continue to apply to the new State of Jharkhand.

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Sections 84 and 85—Sales tax—Exemption from—In respect of intra-State sale transactions—Applicability of—In respect of inter-State sale transactions on bifurcation of the State—Held: Court must not permit its mind to boggle by imagining that what was one State earlier has now become two and consequently what were intra-State sale transactions earlier are now inter-State sale transactions—If as per Ss. 84 and 85 of the Act, any law in force before the appointed day must have effect in the absence of its modification or repeal, the benefit under that law must flow

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A *notwithstanding that in reality intra-State sale transactions have become inter-State sale transactions.*

Section 2(f)—“Law”—Territorial references—Meaning of—Held: The territorial references mean the territories within the existing State of Bihar before the appointed day.

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Bihar Finance Act, 1951:

Section 7(3)(b)—Industrial Policy—Sales tax—Exemption from—State of Bihar issued a notification granting exemption from sales tax in respect of purchase of raw materials by new industrial units—Availability of benefits to newly created State of Jharkhand—Held: Said notification is law within the meaning of S. 2(f) of the Bihar Reorganization Act, 2000—Hence, it applies to State of Jharkhand also unless it is modified, altered or repealed—As a natural consequence thereof industrial units are entitled to the benefits and incentives granted in the notification—Such benefits also available to industrial units located in the State of Jharkhand since non-extension of the same would result in arbitrary results inasmuch as industrial units that operate in Bihar would get said benefit on purchase of raw materials in Jharkhand, but their counterparts in Jharkhand would not be entitled to such benefit.

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Section 7(3)(b)—Industrial Policy—Sales tax—Exemption from—State of Bihar issued a notification granting exemption from sales tax in respect of purchase of raw materials to new industrial units situated in that State—State of Jharkhand, on its creation, announced its own Industrial Policy—Applicability of Notification to State of Jharkhand—Held: There is nothing in the Industrial Policy of the State of Jharkhand which alters, amends or repudiates the said notification—Hence, said notification is applicable to the State of Jharkhand.

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Interpretation of Statutes:

Legal fiction—Subsidiary Rules—Interpretation of—Held: In interpretation of a provision creating a legal fiction court must ascertain the purpose for which the fiction is created and having done so, to assume

H *all those facts and consequences which are incidental or inevitable*

corollaries to giving effect to the legal fiction.

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The Bihar Reorganization Act, 2000 was enacted by Parliament, which on and from the appointed day i.e. 15-11-2000 created the new State of Jharkhand from the erstwhile State of Bihar.

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The Industrial Policy of 1995 of the then State of Bihar which was issued under Section 7(3)(b) of the Bihar Finance Act, 1981 provided for exemption of sales tax to new industrial units on purchase of raw materials and similar benefits were extended to units undertaking expansion/diversification.

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The State of Jharkhand, after it came into existence, issued a notification by which the Acts and the Rules specified therein were extended to the newly created State of Jharkhand and they were deemed to be effective from 15-11-2000 with necessary changes. The Acts included the Bihar Finance Act, 1981 and Clause (2) of the notification adopted all the notifications under the Rules and Acts, including the Central Sales Tax Act, 1956.

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The State of Jharkhand announced its own industrial policy granting certain incentives to the entrepreneurs in the State of Jharkhand. However, the incentives granted under the said Industrial Policy of the state of Jharkhand did not deal with the incentives already granted under the Industrial Policy of the State of Bihar before the creation of the State of Jharkhand.

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The respondent filed a writ petition before the High Court in the State of Bihar claiming that it was entitled to exemption from sales tax under the Industrial Policy of 1995. The writ petition was allowed. Hence the appeal.

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On behalf of the appellants, it was contended that the earlier exemption was granted under the Industrial Policy of the erstwhile State of Bihar; that the State of Jharkhand had announced its own Industrial Policy which did not give to the respondent any such exemption and, therefore, the Industrial Policy of 1995 of the State of Bihar was no longer applicable; that the exemption granted to the

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A respondent was limited in its application to the State of Bihar and, therefore, could not be enforced in the State of Jharkhand; that the writ petition filed before the High Court in the State of Bihar was not maintainable and that the said Court could not issue a writ of mandamus to the State of Jharkhand.

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The following question arose before the Court:-

C Whether on bifurcation of the existing State of Bihar, and creation of the State of Jharkhand from the appointed day i.e. 15.11.2000, the benefits flowing from the Industrial Policy of 1995 of the then State of Bihar enured to the benefit of the beneficiaries under the Policy after the appointed day?

Dismissing the appeal, the Court

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HELD: 1. It cannot be said that the entire cause of action was in the State of Jharkhand because the notification of the State of Bihar issued under Section 7(3)(b) of the Bihar Finance Act, 1981 formed the basis on which the respondent founded its claim. This, therefore, necessarily formed a part of the cause of action. However, in these circumstances the State of Jharkhand ought to have been made a party-respondent. [651-F-G]

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A.B.C. Laminart Pvt. Ltd. v. A.P. Agencies, [1989] 2 SCC 163, referred to.

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2.1. The language of Sections 84 and 85 of the Bihar Reorganization Act, 2000 is clear and unambiguous. These Sections provided that the laws, which were applicable to the undivided State of Bihar, would continue to apply to the new States created by the Act. The laws that operated in the erstwhile State of Bihar continue to operate in the State of Jharkhand notwithstanding the bifurcation of the erstwhile State of Bihar and creation of the new State of Jharkhand. They continue in force until and unless altered, repealed or amended. [653-A-B]

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2.2. There is nothing in the Industrial Policy of 2001 announced **H** by the State of Jharkhand which alters, amends or repudiates the

notification issued by the State of Bihar under Section 7(3)(b) of the Bihar Finance Act, 1981. [655-C-D] A

3.1. The notification of the State of Bihar issued under Section 7(3)(b) of the Bihar Finance Act, 1981 is law as defined by Section 2(f) of Act. The said notification must continue to operate in the State of Jharkhand till such time as it is modified, repealed or altered in the manner prescribed by Section 85 of the Act. As a natural consequence, the industrial units are entitled to the benefits and incentives provided in the said notification. [653-G; 655-F] B

3.2. The industrial units situated in the State of Jharkhand would also get the exemption from sales tax as non-extension of the said benefits would result in arbitrary results inasmuch as the entrepreneurs whose industrial units operate in the State of Bihar will get the benefit of exemption from payment of sales tax on purchase of raw materials in the state of Jharkhand, but their counterparts in the State of Jharkhand would not be entitled to such benefit. [657-D-E] C D

State of Punjab v. Balbir Singh, [1976] 3 SCC 242, followed.

Sher Singh v. Financial Commissioner of Planning, [1987] 2 SCC 439 and *Dhayanand v. Union of India*, [1996] 7 SCC 47, relied on. E

Har Shankar v. Dy. Excise and Taxation Commissioner, [1975] 1 SCC 737; *Premji Bhai Parmar v. Delhi Development Authority*, [1980] 2 SCC 129, referred to. F

Rattan Lal v. The Assessing Authority, [1969] 2 SCR 544; *State of Mysore v. P.B. Hussain Kunhi*, (1967) 19 STC 215 and *CIT v. Minerva Minerals*, (1970) 25 STC 64, held inapplicable. G

4. A conjoint reading of Sections 2(f) and 84 of the Bihar Reorganization Act, 2000 makes it abundantly clear that the territorial references in any law in force immediately before the appointed day must be construed as meaning the territories within the existing State of Bihar before the appointed day. Till such time the law is so repealed H

A or amended in accordance with law, it shall have effect. After its amendment or alteration, they shall have effect subject to the adaptations and modifications made. [653-E-F]

B 5. Sections 84 and 85 of the Act created a legal fiction. It is well settled that in interpreting a provision creating a legal fiction, the Court must ascertain the purpose for which the fiction is created and having done so, to assume all those facts and consequences which are incidental or inevitable corollaries to giving effect to the fiction. [655-G-H; 656-A]

C *East End Dwelling Co. Ltd. v. Finsbury Borough Council*, [1951] All ER 587, referred to.

D 6. The Court must not lose sight of the fact that an unforeseen event may give rise to unusual situations. Faced with such situations, the Legislature has to find appropriate methods and solutions to deal with them. When the State of Bihar announced its Industrial Policy in the year 1995, it could not foresee that the State would be divided five years later. But when the division of the State became a reality, Parliament had to make appropriate provisions to carry on the administration in the two States. If the laws in force were to lapse on the day the division was effected, a chaotic situation would have emerged inasmuch as the newly created State would be rendered a State without laws. Therefore, provisions like Sections 84 and 85 of the Act are enacted to maintain continuity, and at the same time authorize the States to make such modifications and adaptations as are considered necessary by mere issuance of orders within two years, and thereafter by Legislation or exercise of power by the competent authority. Such provisions have necessarily to be incorporated in legislations relating to reorganization of States. It is, therefore, appropriate that such legislations must be construed in the light of the unusual situation created by the creation of a new State and the object sought to be achieved. [657-F-H; 658-A-B]

H 7. The Court must not permit its mind to boggle by imagining that what was one State earlier has now become two and consequently what were intra-State sale transactions earlier are now inter-State sale

transactions. If any law in force before the appointed day must have effect in the absence of its modification or repeal, the benefit under that law must flow notwithstanding the fact that in reality intra-State sale transactions may have become inter-State sale transactions. [656-F-G] A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7798 of 2002. B

From the Judgment and Order dated 2.4.2002 of the Patna High Court in L.P.A. NO. 240 of 2002.

WITH C

C.A. Nos. 2450, 3765/2003; 3035 of 2004.

Mukul Rohtagi, Additional Solicitor General, M. L. Verma, R.F. Nariman, Dr. G.C. Bharuka, Dr. A.M. Singhvi, K. Parasaran, Rakesh Dwivedi, Mahendra R. Anand, M.N. Krishnamani, Sr. Advs., Ashok Mathur, Arup Banerjee, Rajiv Shakdhar, U.A. Rana, Arvind Kumar, S.D. Sanjay, Devashish Bharuka, Prakash Srivastava, R.C. Kohli, Saket Singh, B.B. Singh, Aditya Kumar Choudhary, Neeraj Kumar Jain, Sanjay Singh, U.S. Prasad, Ajit K. Sinha and Satya Mitra for the appearing parties. E

The Judgment of the Court was delivered by

B.P. SINGH, J. : Leave granted in S.L.P. (c) No. 13401 of 2003.

In this batch of appeals by special leave, common questions of law arise for determination which for their answer depend on the interpretation of sections 2(f), 84 and 85 of the Bihar Re-Organization Act 2000 (Act 30 of 2000) enacted by the Parliament (hereinafter referred to as the "said Act") which on and from the appointed day created the new State of Jharkhand comprising the districts specified in section 3 thereof which formed part of the erstwhile State of Bihar. It is undisputed that the Central Government by Notification published in the Official Gazette appointed the 15th of November 2000 as the appointed day. F G

The core question which arises in these appeals is whether on H

A bifurcation of the existing State of Bihar, and creation of the State of Jharkhand comprising territories which before the appointed day comprised the territories of the State of Bihar, the benefits flowing from the Industrial Policy 1995 of the then State of Bihar crystallized in the Notification of the Government of Bihar issued under section 7(3)(b) of the Bihar Finance Act 1981 published in the Official Gazette on 22.12.1995, enures to the benefit of the beneficiaries under the Policy and under the Notification after the appointed day. In the cases in hand, we are primarily concerned with the benefit of exemption from payment of sales tax on purchase of raw materials extended to new units, and similar benefits to units, undertaking expansion/diversification for their expanded/diversified capacity and incremental production.

Civil Appeal No.7798/2002 arises out of the judgment of a Division bench of the High Court in a writ petition filed by the respondents, namely, *M/s Swarn Rekha Cokes and Coals Pvt. Ltd. and Others*. The respondent claimed that it was entitled to the incentive promised in the Industrial Policy 1995 and the Notification issued pursuant thereto granting exemption from payment of sales tax on purchase of raw materials. It had fulfilled all the necessary requirements regarding registration and certification whereafter under S.O. 478 dated 22nd December 1995 and pursuant to the exemption certificate, it was entitled to purchase coal from the Bharat Coking Coal Ltd. ('BCCL' for short) up to 22nd December 2006 with the benefit of exemption from payment of sales tax. However, since their claim of exemption from payment of sales tax was being disputed, it was compelled to file a writ petition before the High Court of Judicature at Patna. The aforesaid writ petition was allowed by a learned Single Judge of the High Court. The Commissioner, Commercial Taxes, Ranchi, however impugned the judgment of the learned Single Judge by filing Letters Patent Appeal No. 204 of 2002. According to him after bifurcation of the erstwhile State of Bihar, the benefit of exemption from payment of sales tax on the purchase of raw materials (coal in this case) was not permissible since BCCL which supplied coal was located at Dhanbad within the Jharkhand State. The exemption granted to the respondent was limited in its application to the State of Bihar and, therefore, could not be enforced in the State of Jharkhand. According to the appellant unless and until, the State of Jharkhand granted a similar exemption, the respondent was bound to pay tax and remit the same to the State of Jharkhand. The Letters Patent

Appeal was dismissed by the High Court by its judgment and order of April 2, 2002 upholding the contention of the respondent and finding them entitled to the said benefit. A

In the appeal arising out of S.L.P. (C) No. 13401 of 2003, the facts are similar and a learned Single Judge of the Patna High Court following the aforementioned judgment of the High Court in Swarn Rekha Cokes and Coals Pvt. Ltd., allowed the batch of writ petitions by his judgment and order of July 18, 2002. The said judgment of the learned Single Judge was challenged in a Letters Patent Appeal preferred by the State of Jharkhand being L.P.A. No.102/2003. A Division Bench of the High Court dismissed the same by its order of 10th February 2003 finding no error in the judgment which followed an earlier binding precedent. The State of Jharkhand has preferred S.L.P.(c) No.13401/2003 challenging the judgment and order of the High Court in the Letters Patent Appeal. B C

Civil Appeal No.2450/2003 has been preferred by the Associated Cement Companies Ltd. which was the writ petitioner before the High Court in CWJC No.15620/2001. In this writ petition, the appellant-Company had prayed for quashing of an order of 20th November, 2001 passed by the Assistant Commissioner, Commercial Taxes Incharge, Patna Special Circle, Patna holding that the appellant was liable to pay sales tax after 15.11.2000 on the sale of goods earlier exempted by exemption certificate dated 20th December 1995 granted in favour of it under Section 7(3)(b) of the Bihar Finance Act 1981 in terms of the Industrial Policy of the State of Bihar for the period from 1.4.1998 to 31.03.2007. The appellant-Company had been granted such exemption in view of the fact that pursuant to the policy decision of the Government of Bihar it had expanded its cement works located at Sindri and had applied for exemption certificate on the sale of its incremental production as envisaged by the aforesaid industrial policy. Its claim had been accepted and an exemption certificate granted to it for the period from 1.4.1998 to 31.3.2007. It had been availing of the said benefit, but by the impugned order of the Assistant Commissioner, Commercial Taxes, it was held not entitled to the exemption from payment of sales tax on sale of its incremental production. Another Division Bench of the High Court noticed the earlier decision in *Swarn Rekha's* case, but distinguished the same on the ground that the industrial D E F G H

A unit of the appellant was situated in the State of Jharkhand which had adapted notification granting exemption, and as such the earlier exemption notification issued by the erstwhile State of Bihar could not operate, and only the exemption notification of the State of Jharkhand was applicable in the territories comprising the State of Jharkhand.

B Civil Appeal No. 3765/2003 has been preferred by *Bhagwati Coke Industries Pvt. Ltd. and Others* which had filed a writ petition before the High Court of Jharkhand at Ranchi for similar relief. The High Court has by its judgment and order of January 8, 2003 dismissed the writ petition holding that the statutory notifications issued pursuant to the Industrial Policy of 1995 and the notification issued under Section 7(3) being S.O. No. 478 dated 22.12.1995 provided for exemptions in the matter of payment of sales tax related only to intra-State sale transactions and not to inter-State sales. Consequently on coming into existence of two States, the benefit thereof could not be claimed in respect of inter-State sale transactions and, therefore, such benefits could not be claimed in respect of raw materials purchased in the State of Jharkhand for consumption in the production of finished goods in the State of Bihar.

At the threshold, we may notice the relevant provisions of the Act. Part II of the Act consists of only 4 sections and out of them Sections 3 and 4 are relevant. Under Section 3, on and from the appointed day, a new State known as the State of Jharkhand is created. Sections 3 and 4 read as follows:-

F “3. On and from the appointed day, there shall be formed a new State to be known as the State of Jharkhand comprising the following territories of the existing State of Bihar, namely:

G Bokaro, Chatra, Deogarh, Dhanbad, Dumka, Garhwa, Giridih, Godda, Gumla, Hazaribagh, Kodarma, Lohardaga, Pakur, Palamau, Ranchi, Sahebganj, Singhbhum (East) and Singhbhum (West) districts;

and thereupon the said territories shall cease to form part of the existing State of Bihar.

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4. On and from the appointed day, the State of Bihar shall comprise the territories of the existing State of Bihar other than those specified in section 3.” A

Sections 84 and 85 of the Act which are crucial for determination of the questions involved in these appeals are reproduced below: B

“84. The provisions of Part II of this Act shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to the State of Bihar shall, until otherwise provided by a competent Legislature or other competent authority be construed as meaning the territories within the existing State of Bihar before the appointed day. C

85. For the purpose of facilitating the application in relation to the State of Bihar or Jharkhand of any law made before the appointed day, the appropriate Government may, before the expiration of two years from that day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority.’ D E

Explanation—In this section, the expression “appropriate Government” means as respects any law relating to a matter enumerated in the Union List, the Central Government, and as respects any other law in its application to a State, the State Government.” F

The term ‘law’ has been given a wide definition under section 2(f) of the Act which is as follows: G

“2(f) “law” includes any enactment, ordinance, regulation, order, bye-law, rule, scheme, notification or other instrument having, immediately before the appointed day, the force of law in the whole or in any part of the existing State of Bihar.” H

- A A few additional facts may also be noticed at this stage. The Industrial Policy 1995 of the State of Bihar has been in force from September 1, 1995. This was followed by notification published in the Bihar Gazette of 22.12.1995 in exercise of power conferred by section 7(3)(b) of the Bihar Finance Act, 1981. The said notification has been referred to in the various
- B judgments as S.O. No. 478 dated 22.12.1995. By the said notification, the Governor of Biḥār was pleased to specify that such Industrial Unit which commenced its production between 1.9.1995 to 31.8.2000, and which had made an application under Form-Ka of the notification before the Competent Authority of the Finance (Commercial Taxes) Department, and had been
- C granted the certificate of exemption will be entitled for exemption from payment of sales tax on purchase of their direct raw materials required for manufacturing subject to the terms and conditions laid down therein. The notification provided that the benefit of exemption from payment of sales tax on purchase of raw materials will be available for a period of 10 years from the date of production to the Units situated in Class-A Districts and
- D for a period of 8 years to those Units situated in Class-B Districts classified in Industrial Policy 1995. Clause 14 of the notification provided for exemption from payment of sales tax on purchase of direct raw materials to such Industrial Units which commenced its production on extended capacity after having undergone expansion/diversification/modernization.
- E The conditions which they are required to fulfill for grant of exemption have been laid down in clause 15 thereof.

- F After the State of Jharkhand came into existence with effect from November 15, 2000, it issued a notification No. 17 dated 15.12.2000. The said notification is reproduced below for ready reference:

“Govt. of Jharkhand
Department of Finance (illeg.)
NOTIFICATION

- G Dated 15.12.2000

Ranchi, No. 17

- H In exercise of power under part (2) of section 283 of the Constitution of India and under Section 85 of the Bihar Re-

organization Act, 2000 (Act No. 30 of 2000), the Governor, Jharkhand, hereby order that the following Acts/Rules effective immediately before 15th Nov. 2000 in Bihar State shall be extended to the State of Jharkhand constituted under provisions of Bihar Re-organization Act, 2000 (Act No. 30 of 2000) from the period of the said date and they shall be deemed effective from dt. 15 (fifteen) November, 2000 with necessary changes.

I. (1) Bihar Finance Act, 1981 - Part I/Bihar Sales Tax Rules, 1983.

(2) Bihar Advertisement Tax Act, 1981/Bihar Advertisement Tax Rules, 1983.

(3) Bihar Entertainment Tax Act, 1948/Bihar Entertainment Tax Rules, 1984.

(4) Bihar Electricity Duty Act, 1948/Bihar Electricity Duty Rules, 1949.

(5) Bihar's Hotel, Luxury Goods Taxation Act, 1988/Bihar's Hotel, Luxury Goods Taxation Rules, 1988.

(6) In the entry of goods for utility or sales in Bihar Taxation Act, 1943/Taxation Rules on the entry of goods in Bihar, 1993.

(7) Central Sales Tax (Bihar) Rules, 1957.

(8) Bihar Commerce Tax Tribunal Regulations, 1979.

2. Legal_____ / Circulars, notifications issued under all the said Acts/Rules, (including) Central Sales Tax Act, 1956, are hereby adopted.

3. This notification shall be deemed to be effective for the areas under the State of Jharkhand with necessary changes.

A

By the order of the Governor,

Sd/-

Special Secretary”

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It will be seen that by the said notification the Acts and the Rules specified therein which were effective immediately before 15th November, 2000 in Bihar State are extended to the newly created State of Jharkhand and they are deemed to be effective from November 15, 2000 with necessary changes. The Acts include the Bihar Finance Act 1981-Part I of the Bihar Sales Tax Rules 1983. It also includes the Central Sales Tax (Bihar) Rules 1957. Clause (2) of the Notification adopts all the notifications under the Rules and Acts, including the Central Sales Tax Act 1956.

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On 25.8.2001, the State of Jharkhand announced its own industrial policy granting certain incentives to the entrepreneurs in the State of Jharkhand. However, the incentives granted under the said Industrial Policy of the State of Jharkhand did not deal with the incentives already granted under the Industrial Policy of the State of Bihar before the creation of the State of Jharkhand.

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On June 1, 2002, a Circular was issued by the Commissioner of Commercial Taxes, Jharkhand, the relevant portion whereof has been produced before us as Annexure P-7 in Civil Appeal No. 3765/2003. The relevant part of the Circular reads as follows:

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“Jharkhand Government Finance (Commercial Taxes) Department letter No.1259/Ranchi, dated 1.6.02 issued by Shri Rahul Sarin, Secretary cum Commissioner Commercial Taxes, Jharkhand, Ranchi, addressed to All Joint Commissioners Commercial Taxes (Administration), All Circle Incharge.

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Subject:- Notifications S.O. 478, 479, 480 and 481 dated 22.12.95 issued in terms of the Industrial Policy of 1995 and S.O. 57, 58, 59 and 60 dated 02.03.2000 relating to grant of exemption certificates for continuance of the incentives in the State of Jharkhand.

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Following clarifications were sought from the Regional Offices of the Commercial Tax Department. A

(i) Those industrial units in whose favour Exemption Certificates have been issued under S.O. 478, 479, 480 and 481 dated 22.12.95 in terms of the Industrial Policy, 1995 will continue to get the exemption and other benefits for the remaining period after constitution of the State of Jharkhand or not? B

(ii).....

(iii)..... C

(iv).....

This matter was under consideration before the State Government. After taking legal opinion in this matter, the State Government has taken the following decisions: D

1. So far as the question no. (i) is concerned, the units mentioned therein who were granted Exemption Certificates prior to the constitution of the State of Jharkhand will continue to get the benefit in terms of the Exemption Certificates for the remaining period after constitution of the State of Jharkhand also. E

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3.....” F

Counsel appearing on behalf of the private parties have placed considerable reliance on the adaptation Notification of 15th December 2000 as well as the Circular issued by the Commissioner of Commercial Taxes, Jharkhand dated 1st of June 2002 to support their contention that in fact S.O. 478 dated 22.12.1995 was adopted by the State of Jharkhand and it became apparent that the Governor had taken a decision to continue to grant the benefit in terms of the Exemption Certificates for the remaining period after constitution of the State of Jharkhand. G

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A Shri M.L. Verma, learned senior counsel appearing on behalf of the appellant in Civil Appeal No. 7798/2002 advanced three main submissions. He submitted; firstly, that the earlier exemption was granted under the Industrial Policy of the erstwhile State of Bihar. On 25.8.2001, the State of Jharkhand had announced its own Industrial Policy for the State of Jharkhand which did not give to the opposite party any such exemption. B Consequently, the Industrial Policy of the State of Bihar of the year 1995 was no longer applicable and, therefore, the exemption from payment of sales tax on purchase of raw materials was not available to them in respect of sales tax which had now become payable to the State of Jharkhand. C Secondly, in view of the creation of two States out of the territories comprising the erstwhile State of Bihar, the sales really became inter-State sales which were not covered by the earlier policy decision which envisaged only intra-State sales. Lastly, he submitted that in any event, a writ petition filed before the High Court of Judicature at Patna was not maintainable and the said Court could not issue a Writ of Mandamus to the State of Jharkhand. D Shri Verma, however, did not dispute the legal position that in view of the definition of the term 'law' under section 2(f) of the Act, the exemption granted by the erstwhile State of Bihar by issuance of notification under section 7(3)(b) of the Bihar Finance Act 1981 must be deemed to be "law" for the purpose of sections 84 and 85 E of the Act.

Shri Rakesh Dwivedi, appearing for the State of Bihar in Civil Appeal No. 2450/2003 submitted that in this appeal exemption was not granted from payment of sales tax on the sale of finished goods. The benefit of exemption was granted to tax payable on the purchase of raw materials for the incremental production. According to him, the erstwhile State of Bihar gave certain benefits to the new Units which were set up in the State of Bihar or which had invested in the expansion/ diversification of existing industries, because the ultimate benefit-direct or indirect-accrued to the State of Bihar. After the State of Jharkhand was created, such Units, as they fell outside the territories of State of Bihar as reconstituted, did not provide any benefit to the State of Bihar and, therefore, there was no justification for the State of Bihar to extend any such benefit of exemption to such Units. The basis of exemption was really the premise that the Unit would continue its manufacturing processes within the State of Bihar with all consequential H benefits both direct and indirect accruing to the State of Bihar. That is why

Industrial Policy of the Bihar Government of the year 1995 made it a condition for grant of exemption that the Unit existed and continued its manufacturing processes in the State of Bihar. He referred to the notifications and the Forms and submitted that the Scheme postulated that the Unit existed in the State of Bihar. Once the Unit ceased to be so located within the State of Bihar, the notification could have no application to it.

So far as Section 84 of the Act is concerned, he submitted that it could not be doubted that it was intended to provide for continuity of laws to avoid a vacuum situation in the State of Bihar. He submitted that the provision should not be given a literal and liberal construction as advocated by the appellant in the appeal, but the same must be construed as a part of the overall scheme. Two States had come into existence with their own Executive, Legislative and Judicial establishments and each was authorized to enact its own laws and execute them in the manner considered appropriate. He, therefore, submitted that once it is found that the Industrial Unit is outside the State, the State is not bound to extend to it any benefit of exemption from payment of sales tax. Exemptions already granted when the Unit was within the territorial limits of the State, must cease to operate after the industrial unit fell outside the territorial limit of the State.

He further submitted that the same Act in force in two different States must in law be deemed to be two separate Acts and for this he relied upon the decision of this Court in *Rattan Lal & co. & Anr. v. The Assessing Authority & Anr.*, [1969] 2 SCR 544. He also placed reliance on two other decisions of this Court in *The State of Mysore v. P.B. Hussain Kunhi & Co.* reported in (1967) 19 STC 215 and *Commissioner of Sales Tax, Madhya Pradesh v. Minerva Minerals* reported in (1970) 25 STC 64. He, therefore, concluded that section 84 should be given a narrower interpretation so as to sub-serve the purpose for which it was enacted and should not be literally and liberally construed as advocated by the appellant.

Mr. K. Parasaran, appearing on behalf of the respondent in Civil Appeal arising out of S.L.P.(c) No. 13401/2003 submitted that the objection taken as to the jurisdiction of the Patna High Court to issue a writ against the State of Jharkhand was misconceived. He submitted that the notification of the State of Bihar which was sought to be enforced in the instant case was a part of the cause of action and, therefore, even if it was necessary

A that the adjudication must be in the presence of both the parties, they could approach either of the High Courts for relief. It cannot be said that the entire cause of action was solely in the State of Jharkhand. He relied upon the decision of this Court in *A.B.C. Laminart Pvt. Ltd. and Another v. A.P. Agencies, Salem* reported in [1989] 2 SCC 163. He further submitted that

B in any case the objection was merely academic because it was the Commissioner of Commercial Taxes, Ranchi of the State of Jharkhand who preferred a Letters Patent Appeal before the High Court and never raised an objection before the Division Bench which heard the Letters patent Appeal on the ground of lack of jurisdiction. He further submitted that the

C objection raised on the ground of inter-State sales being not covered by the Industrial Policy of 1995 and the notification issued pursuant thereto, was based on a complete misconception of Section 84 of the Act. Though Sections 3 to 8 comprised in Part II of the Act divided the territories of erstwhile State of Bihar and constituted two separate States of Jharkhand and Bihar, for the purpose of Section 84, they were not to be so treated

D because Section 84 in explicit terms provided that the provisions of part II shall not be deemed to have affected any change in the territories to which any law in force immediately before the appointed day applied until otherwise provided by a competent Legislature or other competent authority.

E Mr. Abhishek Manu Singhvi, senior Advocate appearing on behalf of the appellants in Civil Appeal No. 3765/2003 referred to the notifications/circulars issued by the State of Jharkhand on 15.12.2000 and 1.6.2002 and submitted that there was no question of the State of Jharkhand repealing the notification either expressly or impliedly because of express adaptation

F by the State of Jharkhand as envisaged under the said notification/circular. He submitted that the State of Jharkhand could choose to exercise its power of repeal of laws in force which included the notification issued pursuant to the Industrial Policy of the State of Bihar of the year 1995. Section 85 also empowered the State of Jharkhand to adapt, modify etc. the laws, but the State chose to continue the notification and the laws in existence

G without taking any action to repeal or modify them. He relied upon two decisions of this Court in *Har Shankar and Others v. The Dy. Excise and Taxation Commissioner and Others* reported in (1975) 1 SCC 737 and *Premji Bhai Parmar v. Delhi Development Authority* reported in [1980] 2 SCC 129.

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Mr. Mahendra R. Anand, senior advocate appearing for the respondents in Civil Appeal No.7798/2002 adopted the submissions advanced by Shri Parasaran. He also drew our attention to section 91 of the Act and submitted that any objection raised on the basis of the provisions of the Central Sales Tax Act did not survive since Section 91 of the Act gave the provisions of this Act overriding effect.

Mr. R.F. Nariman, senior advocate appearing on behalf of the appellants in Civil appeal No. 2450/2003 submitted that the factory of the appellant is situated at Sindri in the State of Jharkhand. In effect, the State of Bihar is seeking to tax, goods transferred from the factory to its establishment in Patna. The sales that are affected from Patna are naturally intra-State sales and, therefore the State of Bihar cannot be permitted to resile from the exemption granted by it. He submitted that the assessment of sales tax is done at Patna and these facts have not been adverted to by the High Court while dismissing the petition of the appellant.

We shall first dealt with the submission urged on behalf of the appellant in Civil Appeal No.7798/2002 that the High Court of Judicature at Patna had no jurisdiction to entertain the writ petition and issue a Writ of Mandamus to the State of Jharkhand. We have earlier noticed that though the State of Jharkhand was not a party in the writ petition filed before the High Court at Patna, after a learned Single Judge of the High Court allowed the writ petition and granted the relief prayed for, the Commissioner of Commercial Taxes, Ranchi, Jharkhand State preferred a Letters Patent Appeal impugning the judgment and order of the learned Single Judge. In the Letters Patent Appeal, no objection was taken to the jurisdiction of the Patna High Court to entertain the writ petition. Moreover, as submitted by Mr. Parasaran, it cannot be said that the entire cause of action was in the State of Jharkhand because the notification of the State of Bihar issued under section 7(3)(b) of the Bihar Finance Act 1981 formed the basis on which the respondents founded their claim. This, therefore, necessarily formed a part of the cause of action and the respondents had to satisfy the Court that the aforesaid notification supported their claim for exemption from payment of sales tax on the purchase of raw materials. No doubt, in these circumstances the State of Jharkhand ought to have been made a party-respondent. This, however, is of no consequence now in view of the fact that the State of Jharkhand itself sought to prefer an appeal

A against the order of the learned Single Judge and in fact preferred a Letters Patent Appeal and contested the claim of the respondents. It did not object to the jurisdiction of the High Court at Patna to entertain the writ petition. Since a part of the cause of action lay in the State of Bihar, it cannot be disputed that the High Court at Patna also had the jurisdiction to entertain the writ petition. The objection that the State of Jharkhand was not a party in the said writ petition is not of much significance now since the State itself preferred an appeal and contested the case of the writ petitioners. Moreover, this objection as to the jurisdiction cannot be raised in Civil Appeal No.2450/2003 since in that case the State of Bihar itself had refused to grant the benefit of exemption to the appellant therein. So far as Civil Appeal No.3765/2003 is concerned, the judgment has been rendered by the High Court of Jharkhand at Ranchi. Since common questions arise in all these appeals, we consider it appropriate to decide the questions that arise in all these appeals, particularly, when we find that a part of the cause of action lay in the State of Bihar and consequently, the High Court at Patna had jurisdiction to entertain the writ petition and grant relief. We, therefore, reject the objection raised by the State of Jharkhand on the ground of lack of jurisdiction of the High Court at Patna to entertain the writ petition.

E The question then arises—as to what is the true meaning and import of sections 84 and 85 of the Act?

F We have earlier reproduced Sections 84 and 85 of the Act. As earlier noticed, sections 3 to 6 which form part of Part II of the Act provide for the formation of new States to be known as the State of Jharkhand and the State of Bihar. The territories specified in Section 3 constitute the new State of Jharkhand and the remaining territories fall within the territory of the State of Bihar. However, Section 84 in express terms, provides that the provisions of Part II shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extended or applied and the territorial references in any such law to the State of Bihar shall, until otherwise provided by a competent Legislature or other competent authority, be construed as meaning the territories within the existing state of Bihar before the appointed day. Section 85 provides that for the purpose of facilitating the application in relation to the State of Bihar or Jharkhand of any law made before the appointed day, the appropriate Government may, before the expiration of two years from that

day, by order, make such adaptations and modifications of the law, whether
by way of repeal or amendment, as may be necessary or expedient, and
thereupon every such law shall have effect subject to the adaptations and
modifications so made until altered, repealed or amended by a competent
Legislature or other competent authority. The language in these sections
is clear and unambiguous. These sections provide that the laws which were
applicable to the undivided State of Bihar would continue to apply to the
new States created by the Act. The laws that operated continue to operate
notwithstanding the bifurcation of the erstwhile State of Bihar and creation
of the new State of Jharkhand. They continue in force until and unless
altered, repealed or amended. It is not disputed before us and indeed it
cannot be disputed in view of the wide definition given to 'law' in section
2(f) of the Act that the notification issued under section 7(3)(b) of the Bihar
Finance Act 1981 is law within the meaning of sections 84 and 85 of the
Act. Thus, the notification published in the Bihar Gazette on 22.12.1995
bearing S.O. 478 continues to operate in the State of Jharkhand till such
time as it is altered, repealed or amended. By virtue of Section 84, the
territorial references in any such law (which includes the notification in
question), to the State of Bihar shall be construed as meaning the territories
within the existing State of Bihar before the appointed day, until otherwise
provided by a competent Legislature or other competent authority. A
conjoint reading of both these provisions makes it abundantly clear that
the territorial references in any law in force immediately before the
appointed day must be construed as meaning the territories within the
existing State of Bihar before the appointed day. To facilitate their
application in respect of the State of Bihar or Jharkhand, the appropriate
Government may, before the expiration of two years from that day, by
order, make such adaptations and modifications of the law as it may
consider necessary or expedient by way of repeal or amendment. Till such
law is so repealed or amended in accordance with law, it shall have effect.
After their amendment or alteration, they shall have effect subject to the
adaptations and modifications made. We, therefore, find no difficulty in
holding that the notification of the Government of Bihar issued under
Section 7(3)(b) of the Bihar Finance Act 1981 and published in the gazette
on 22.12.1995 being S.O. No. 478 is law as defined by section 2(f) of the
Act. The said notification holds the field and applies to all the territories
which comprised the undivided State of Bihar. The States of Bihar and
Jharkhand have been vested with power to make such adaptations and

- A modifications of the law as they may consider necessary or expedient. This they can do by issuance of order before the expiration of two years from the appointed day. After the adaptations and modifications of the law, the law shall have effect as so modified or adapted till such time as a competent Legislature or other competent authority further alters, repeals or amends such law.
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- This is not the first time that a provision such as Section 84 of the Act has come up for interpretation by this Court. Section 88 of the Punjab Re-organization Act 1966 is also identically worded as Section 84 of the Act. That provision came up for consideration before this Court in at least three decisions which have been brought to our notice, namely, *State of Punjab and Others v. Balbir Singh and Others* reported in (1976) 3 SCC 242, *Sher Singh and Others v. Financial Commissioner of Planning, Punjab and Others* reported in [1987] 2 SCC 439 and *Dhayanand Etc. v. Union of India and Others* reported in [1996] 7 SCC 47. In the first of these cases, i.e. in *State of Punjab and Others v. Balbir Singh and Others* (supra), this Court was concerned with an Administrative order and not a law with which we are concerned in the instant case. Section 88 of the Punjab Re-organization Act was noticed as also the definition of law under section 2(g) of that Act. Section 2(g) of that Act did not define law as widely as it has been defined under section 2(f) of the Act. This Court agreed with the High Court that the impugned administrative orders in question were not law within the meaning of section 2(g) of that Act and hence, were not saved by Section 88. However, this Court held that when there is no change of sovereignty and it is merely an adjustment of territories by reorganization of a particular State, the administrative orders made by the government of the erstwhile State continue to be in force and effective and binding on the successor States until and unless they are modified, changed or repudiated by the governments of the successor States. This Court observed that no other view is possible to be taken as that will merely bring about chaos in the administration of the new States. Their Lordships found no principle in support of the stand that administrative orders made by the Government of erstwhile State automatically lapsed and were rendered ineffective on the coming into existence of the new successor States. Their Lordships further distinguished a case where there was no change of sovereignty and there was merely an adjustment of territories by the reorganization of a particular State, from a case of absorption of one State
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in another by accession, conquest, merger or integration. The same view A
 was taken by this Court in the other two judgments referred to earlier. We
 are of the view that the principles laid down in the *Balbir Singh's* case
 (supra) fully apply to the facts of this case having regard to the identical
 legislative provision and, particularly so when the notification in question
 is by definition law and not a mere administrative order. B

The next question which arises is whether the aforesaid notification
 has been altered or modified by the State of Jharkhand? It was sought to
 be argued before us that the State of Jharkhand has announced its own C
 Industrial Policy of 25th August, 2001 and, therefore, the Industrial Policy
 of 1995 and the notification bearing S.O. 478 dated 22.12.1995 issued
 under Section 7(3)(b) of the Act will have no legal force in the State of
 Jharkhand. The High Court in Swarn Rekha's case has considered this
 aspect of the matter and we find ourselves in complete agreement with the
 view taken by the High Court. There is nothing in the Industrial Policy of
 2001 which alters, amends or repudiates the notification dated 22.12.1995. D
 It deals with new Industrial Units set up after 15.11.2000 and, therefore,
 whatever benefits or incentives are provided for in the said policy are
 applicable to new industrial units set up after 15th November, 2000. In the
 instance case, we are concerned with industrial units set up before
 15.11.2000 and which were found eligible for grant of exemption certificate E
 under the Industrial Policy of the State of Bihar of the year 1995. Moreover,
 the Industrial Policy of the State of Jharkhand will not apply to the units
 already existing before that date. In these circumstances in the absence of
 anything in the Industrial Policy 2001 of the Government of Jharkhand or
 in the notification or order issued by the Government of Jharkhand, the F
 notification No. S.O. 478 dated 22.12.1995 must continue to operate in the
 State of Jharkhand and the concerned appellants or respondents, as the case
 may be, must be held entitled to the benefits and incentives envisaged by
 the said notification. The submission which found favour with the High
 Court of Jharkhand at Ranchi in Civil appeal No.3765/2003 is that the G
 statutory notification issued by the erstwhile State of Bihar envisaged only
 intra-State sale transactions and not inter-State sale transactions. With the
 coming into existence of two States, incentive by way of exemption from
 payment of sales tax, cannot be claimed in respect of transactions which
 can now be categorized as inter-State sale transactions. The submission
 overlooks the provisions of Sections 84 and 85 of the Act, which create H

A a legal fiction. It is well-settled that in interpreting a provision creating a legal fiction, the Court must ascertain the purpose for which the fiction is created and having done so, to assume all those facts and consequences which are incidental or inevitable corollaries to the giving effect to the fiction. When the law requires that an imaginary state of affairs should be

B treated as real, then unless prohibited from doing so, one must also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. As Lord Asquith in *East End Dwelling Co. Ltd. v. Finsbury Borough Council*, [1951] 2 All ER 587, p. 589 (HL) observed that having done so,

C you must not cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs. Section 84 bids us to imagine that despite the division of the erstwhile State of Bihar into two States any law in force immediately before the appointed day, notwithstanding territorial references in them, shall, until otherwise provided by the competent Legislature or other competent authority, be construed

D as meaning the territories within the existing State of Bihar before the appointed day. In simple words, though the law may refer to the State of Bihar, and though the State of Bihar has been bifurcated into two by creating the State of Jharkhand, the laws in force before the appointed day must continue to operate to the territories which formed the erstwhile State

E of Bihar. This, of course, is subject to amendment, alteration or repudiation by a Legislature or other competent authority. The statutory notification relied upon, therefore, continues to operate throughout the territories which earlier constituted the State of Bihar. Under Section 85, they shall continue to operate until repealed or amended in the manner provided. As a natural

F consequence, the entrepreneurs are entitled to the benefits and incentives provided in the said notification. Having regard to the overriding provisions of this Act, as envisaged under Section 91, the statutory notifications must prevail and the benefits flowing therefrom must accrue to the beneficiaries. We must not permit our mind to boggle by imagining that what was one

G State earlier has now become two and consequently what were intra-State sale transactions earlier are now inter-State sale transactions. If any law in force before the appointed day must have effect in the absence of its modification or repeal, the benefit under that law must flow notwithstanding the fact that in reality intra-State sale transactions may have become inter-State sale transactions. Law gives authority to the concerned State to bring

H about a change in the state of affairs, if it so considers necessary or

expedient by modifying, or amending the law or by altering, repealing or amending it by legislation. We have, therefore, no doubt that the High Court of Jharkhand at Ranchi was wrong in dismissing the writ petition on the ground that the notification of 22.12.1995 could not apply to inter-State sale transactions. A

We have carefully considered the decisions relied upon by Shri Rakesh Dwivedi in *Rattan Lal and Co. and Anr. v. The Assessing Authority and Anr.* reported in 1969 (2) SCR 544, *The State of Mysore v. P.B. Hussain Kunhi & Co.* reported in (1967) 19 STC 215 and *Commissioner of Sales Tax, Madhya Pradesh v. Minerva Minerals* reported in [1970] 25 STC 64 and we find that none of those decisions in any manner advance the case of the State. The decisions in those cases depended on the interpretation of the provisions of the Acts concerned which were not at all similar to the provisions with which we are concerned in the instant appeals. In Civil Appeal No.2450/2003, the High Court of Patna on a similar ground has rejected the claim of the appellants. It noticed the earlier decision of the High Court, but distinguished the same on the ground that in the case in hand, the Industrial Unit was situated in the State of Jharkhand while the benefit was being claimed in the State of Bihar. In view of our earlier findings, this would not be a relevant consideration for rejecting the writ petition. Moreover, if this principle were to be upheld, it would result in arbitrary results inasmuch as the entrepreneurs whose industrial units operate in the State of Bihar will get the benefit of exemption from payment of sales tax on purchase of raw materials in the State of Jharkhand, but their counter-parts in the State of Jharkhand would not be entitled to such benefit. We must not lose sight of the fact that an unforeseen event may give rise to unusual situations. Faced with such situations, the Legislature has to find appropriate methods and solutions to deal with them. When the State of Bihar announced its Industrial Policy in the year 1995, it could not foresee that the State will be divided five years later. But when the division of the state became a reality, the Parliament had to make appropriate provisions to carry on the administration in the two States. If the laws in force were to lapse on the day the division was effected, a chaotic situation would have emerged inasmuch as the newly created State would be rendered a State without laws. It is, therefore, that provisions like Sections 84 and 85 of the Act are enacted to maintain continuity, and at the same time authorize the States to make such B
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A modifications and adaptations as are considered necessary by mere issuance of orders within two years, and thereafter by Legislation or exercise of power by the competent authority. Such provisions have necessarily to be incorporated in legislations relating to reorganization of States. It is, therefore, appropriate that such legislations must be construed in the light of the unusual situation created by the creation of a new State and the object sought to be achieved. "

We, therefore, find ourselves in agreement with the view of the Patna High Court in Civil Appeal No. 7798/2002. We hold that the benefit of exemption from payment of sales tax on purchase of raw materials in respect of new units or the benefit envisaged for units which have undertaken diversification or expansion are available to those units, if eligible under S.O. 478 dated 22.12.1995 notwithstanding the fact that the erstwhile State of Bihar has been divided into two States by creation of the new State of Jharkhand. We are also satisfied that the said S.O. 478 has not been either modified, amended or altered by the State of Jharkhand and, therefore, it must continue to operate in the State of Jharkhand till such time as it is modified, repealed or altered in the manner prescribed by Section 85 of the Act.

E In the result, Civil Appeal No. 7798/2002 and Civil Appeal arising out of S.L.P. (c) No. 13401/2003 are dismissed. Civil Appeal Nos. 2450/2003 and 3765/2003 are allowed. There shall be no order as to costs.

V.S.S.

C.A. No. 7798/2002 dismissed.

C.A. No. 3035/04 dismissed.

C.A. No. 2450/2003 allowed.

C.A. No. 3765/03 allowed.