
(1998) 03 PAT CK 0040

In the Patna High Court

Case No : S.L.P. (Civil) No. 11256 of 1988 and C.W.J.C. No. 3584 OF 1997 (R)

Amit Coke Industries

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 19-03-1998

Acts Referred:

Bihar Finance Act, 1981 — Section 7(3)

Citation : (2000) 120 STC 67

Hon'ble Judges : R.A. Sharma, J;A.K. Prasad, J

Bench : Division Bench

Advocate : Binod Poddar and A.K. Sahani, for the Appellant; I. Sen Choudhary, S.C.I., for the Respondent

Final Decision : Dismissed

Judgement

1. Being aggrieved by the order dated November 3, 1997 rejecting its application for grant of exemption from payment of tax under the Industrial Policy, 1995 (hereinafter referred to as "the policy") issued, vide notification Nos. S.O. 478 and 479 dated December 22, 1995, u/s 7(3)(b) of the Bihar Finance Act, 1981 (hereinafter referred to as "the Act"), the petitioner has filed this writ application. The said application has been rejected on the ground that the petitioner's unit is not a new unit but an old one purchased from a sales tax defaulter.

2. The respondents have filed counter-affidavit. The petitioner has filed rejoinder in reply thereto. We have heard Mr. Binod Poddar, learned counsel for the petitioner, and Mrs. I. Sen Choudhary, learned S.C.I., for the respondents.

3. Under the Industrial Policy, 1995, an entrepreneur, who has established a new industrial unit, can claim exemption from payment of tax under the Act. The new unit has been defined in the policy as a unit in which production starts between September 1, 1995, and August 31, 2000. The policy has further laid down that an existing unit after change of its ownership or on change of its name cannot be called a new unit.

4. The petitioner, in its writ application, has stated that it has purchased 2.11 acres of land by registered sale deed dated January 17, 1996 from Prakash Rupani and thereafter has established its factory thereon. It has been sanctioned electric connection on July 6, 1996, pursuant to which it has executed agreement with the Bihar State Electricity Board. It has also been stated that it has been granted a permanent registration of small-scale industrial unit by the District Industries Centre and has also been granted a factory licence by the Department of Labour and Employment in June, 1996. It has further been stated that it has been registered both under the Bihar and Central Sales Tax Acts.

5. The petitioner claims to have made an application for exemption along with requisite papers. The Deputy Commissioner of Commercial Taxes, Dhanbad, passed an order recommending for grant of exemption certificate to the petitioner and sent the same to the Joint Commissioner of Commercial Taxes, Dhanbad, for approval/confirmation. The Joint Commissioner has, however, by the impugned order, rejected the proposal sent by the Deputy Commissioner.

6. The grievance of the petitioner is that its unit is a new unit and not an old one and the Joint Commissioner is, therefore, not justified to pass the impugned order. The respondents, in their counter-affidavit, have stated that the petitioner has purchased the plant and machinery of S.K. Fuel on April 11, 1996 for a sum of Rs. 2,50,000 free from all encumbrance. It has also been stated that S.K. Fuel was registered under the Dhanbad Circle for manufacture of the Coal Briquettes since February, 1989, and continued its unit till its transfer to the petitioner. It has further been mentioned that although the petitioner's unit is registered for manufacture of hard coke and the unit in the name of S.K. Fuel was registered for manufacture of coal briquettes but it is one and the same unit. In this connection, paragraph Nos. 12, 13, 14 and 15 of the counter-affidavit are reproduced below :

"12. That it is stated that the petitioner-unit has obtained the registration for manufacturing the hard coke and its predecessor one of S.K. Fuel was manufacturing the coal briquettes. It is relevant to mention herein that the petitioner unit is simply the continuation of the old unit to S.K. Fuel and, therefore, it cannot be said to be the new industrial unit for the purpose of obtaining the benefits and exemption as provided under S.O. Nos. 478 and 479.

13. That it is stated that mere change of name of the firm and partners thereof does not change the nature of the firm and cannot be decided it as new industrial unit.

14. That it is settled principle of law the coal briquettes and hard coke are same and similar part of the coal for the purpose of the Finance Act and also the industrial policies published from time to time. Therefore, it cannot be said that the petitioner-unit has started manufacturing of new product other than the product manufactured by the predecessor-unit, i.e., S.K. Fuel.

15. That it is stated that on examination of the entire records it was found that

the petitioner-unit had purchased everything like land, building, plant and machinery, etc., from S.K. Fuel."

In paragraph 19 of the said affidavit, it has been reiterated that the old unit of S.K. Fuel has simply been transferred to the petitioner. Although the petitioner has filed reply to the said counter-affidavit but the aforesaid averments made in the counter-affidavit have not been denied by it. The rejoinder affidavit (reply to the counter-affidavit) consists of 7 paragraphs. Paragraph Nos. 1 and 7 are of formal nature containing no factual averments. In paragraph No. 2, the vague averments to the effect that the counter-affidavit "contains misleading and irrelevant facts based upon extraneous consideration beyond the documents available on record" have been made. In paragraph No. 3, it has been stated that annexure 9 impliedly shows that the petitioner's unit is a new unit. Paragraph 5 contains a reference to the certificate issued by the District Industries Centre for the petitioner's unit. In paragraph No. 6, only this much has been stated that the aim and object of the notification (industrial policy) have been frustrated by the impugned order on the extraneous ground. The only paragraph which can be said to be relevant paragraph is the paragraph No. 4 of the reply to the counter-affidavit which is reproduced below:

"4. That admittedly the unit of the petitioner produces goods other than that produced by S.K. Fuel. The machinery and equipments for manufacturing briquettes and for hard coke are different. For manufacturing hard coke chimney is essential which is constructed by fire-bricks whereas in briquette manufacturing unit no chimney is required. Process of manufacture is also altogether different. However, electric motor or generator are common equipments which are used practically in all units or even for domestic purposes and thus mere purchase of such equipments cannot fulfil the requirement of the unit for producing hard coke. The electric motor or generator in isolator cannot produce hard coke in absence of other equipments. Besides, the movable purchased from S.K. Fuels, the petitioner had to purchase a number of items/equipments from different sources by investing huge money. The petitioner produced the documents of such purchase before the authority concerned and after scrutiny of the same and after proper enquiry and even by holding local inspection the authorities recommended for grant of reliefs under the aforesaid notifications but the respondent No. 2 sitting in his chamber without looking into all these aspects passed the impugned order and the deponent of the counter-affidavit, under the direction of the respondent No. 2 attempted to justify the impugned order ignoring the annexures 9 and 9/A and 10 of the writ application".

In the aforesaid paragraph the petitioner has tried to make a distinction between the unit of S.K. Fuels and the unit for which it has claimed exemption. According to it, when the unit was with S.K. Fuels, it was registered for manufacturing briquettes for which chimney was not required whereas the petitioner's unit is meant to manufacture hard coke for which chimney is essential. It has also been stated that the petitioner has purchased a number of other items/equipments

from different sources but those items/equipments have not been disclosed.

7. The specific allegations made in various paragraphs of the counter-affidavit reproduced hereinbefore have not, at all, been denied by the petitioner with the result that the same are liable to be taken as correct. Paragraph 4 of the rejoinder affidavit does not contain anything substantial. The distinction made between the petitioner's unit and that of the S.K. Fuels on the basis of chimney is hardly of any substance. The Joint Commissioner refused to approve the proposal of the Deputy Commissioner for grant of exemption to the petitioner on the ground that the petitioner's unit is an old unit purchased from S.K. Fuels from whom a huge amount of sales tax is due. In view of the facts and circumstances of the case, the inference drawn by the Joint Commissioner and the finding recorded by him cannot be said to be bad. No exception can be taken to the impugned order.

8. This application is accordingly rejected. No costs.