(2003) 03 PAT CK 0100

In the Patna High Court

Case No : C.W.J.C. No. 7821 of 2002

Associated Cement Company Limited APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 28-03-2003

Acts Referred:

Bihar Finance Act, 1981 — Section 2
Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale Therein Act, 1993 — Section 3

Citation : (2003) 2 PLJR 874 : (2004) 136 STC 412

Hon'ble Judges : Nagendra Rai, J;Chandra Mohan Prasad, J

Bench : Division Bench

Advocate : Y.V. Giri and Raju Giri, for the Appellant; R.K. Dutta, S.C. IV and Raj Nandan Prasad, J.C. to SC IV, for the Respondent

Judgement

1. The petitioner, a company registered under the Companies Act, has filed the present writ application for quashing the demands dated May 30, 2002 and June 24, 2002 issued by the Deputy Commissioner, Commercial Taxes, Patna Special Circle, Patna, directing the petitioner to deposit the amount of sales tax under the provision of the Bihar Finance Act which he has not paid by claiming the same to be adjusted towards the entry tax already paid by it under the provisions of the Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale Therein Act, 1993 (hereinafter referred to as "the Act").

2. The necessary facts for disposal of the present application are that the petitioner being a company registered under the Companies Act has two manufacturing units one at Sindri and another at Jhinkpani, prior to bifurcation of the erstwhile State of Bihar the units were registered under the Bihar Finance Act and as well as under the Act and the consolidated registration was made at Patna Special Circle. On November 15, 2000 the erstwhile State of Bihar was bifurcated into two States, namely, State of Jharkhand and the State of Bihar and the said two manufacturing units of the petitioner now have fallen in the State of Jharkhand.

3. In the year 1995, the State Government has come out with industrial policy to give incentives to the new units or the existing units having additional/ incremental production with regard to payment of sales tax. In terms of the aforesaid policy the claim of the petitioner is that it invested the money for additional/incremental production of the cement in the unit at Sindri and with regard to aforesaid additional/incremental production the exemption was granted in terms of the aforesaid industrial policy as well as under the provisions of the Bihar Finance Act for the period starting from April 1, 1998 to March 31, 2007. The petitioner also claimed exemption under the provisions of the Bihar Finance Act on the basis of the aforesaid industrial policy which was denied by the State and then he filed a writ application in this Court and the same has been dismissed and the matter is pending before the apex Court.

4. Section 3 of the Act is a charging section and according to the same there is provision for collection of tax under the Act at the rate of 5 per centum of the import value of the scheduled goods. u/s 3 of the Act the State Government issued a notification in the year 1993 containing several provisions. The relevant provision for the present case is paragraph 2 of the aforesaid notification according to which the importer of the scheduled goods is liable to pay tax under the Bihar Finance Act, by virtue of such scheduled goods it is entitled to reduction of its liability under the Bihar Finance Act to the extent of the tax paid under the Act. Now the said provision has become part of Section 3 by the Amendment Act (amendment made in the year 2001). As the demand of the tax under the Bihar Finance Act relates to the period prior to the amendment of the Act the matter will be governed by paragraph 2 of the aforesaid notification which has been stated above.

5. As stated above the petitioner was granted exemption from payment of sales tax with regard to incremental/additional production and in that view of the matter in terms of the aforesaid notification issued under the Bihar Finance Act there is no question of adjustment or reduction of the liability to the extent of the entry tax paid under the Act. It is admitted position that the petitioner has paid entry tax with regard to entry of all the cement including incremental/additional production of the cement. The petitioner appears to have claimed adjustment of the sales tax towards the entry tax paid by it even with regard to cement for which admittedly he has not paid sales tax under the provisions of the Bihar Finance Act by virtue of the exemption being granted to it.

6. The learned counsel appearing for the petitioner submitted that there is liability to pay tax under the Bihar Finance Act with regard to goods which is a cement and once the petitioner is liable to pay tax under the Bihar Finance Act on cement, he is entitled to reduction of the liability of tax to the extent of the tax paid under the Act though it may be that with regard to certain quantity of cement it is not entitled to pay sales tax by virtue of the exemption having been granted.

7. It is difficult for us to accept the aforesaid submission. Subsection (1) of

Section 3 of the Act reads as follows :

"Charge of tax.--(1) There shall be levied and collected a tax on entry of scheduled goods into a local area for consumption, use or sale therein at such rate not exceeding 5 per centum of the import value of such goods as may be specified by the State Government in a notification published in an official gazette subject to such conditions as may be prescribed:

Provided different rates for different scheduled goods and different local areas as may be specified by the State Government."

According to the said section the entry tax under the Act is levied and collected on entry of scheduled goods into a local area for consumption, use or sale therein at such rate specified therein.

8. Paragraph 2 of the aforesaid notification reads as follows:

"Where an importer of scheduled goods liable to pay tax under Sub-section (2) of Section 3 of the Ordinance becomes liable to pay tax under the Bihar Finance Act, 1981 by virtue of sale of such scheduled goods, his liability under the Bihar Finance Act, 1981 shall be reduced to the extent of tax paid under the Ordinance."

9. According to the said provision the reduction of the tax liability under the Bihar Finance Act is only with regard to said scheduled goods with regard to which there is liability to pay tax under the Bihar Finance Act. Admittedly in case of the petitioner there is no liability to pay sales tax with regard to incremental production in terms of the exemption granted under the Bihar Finance Act and relevant notification in this connection. In that situation as there is no liability to pay sales tax under the Bihar Finance Act with regard to incremental production the petitioner is not entitled to adjustment towards the payment of entry tax under the Act.

10. Alternatively, learned counsel for the petitioner submitted that the petitioner is paying additional tax of one per cent u/s 6 of the Bihar Finance Act, 1981 and as such to that extent his liability for payment of additional tax has to be reduced in terms of the aforesaid notification.

11. We find force in the aforesaid submission. The tax has been defined under Clause 2(x) of the Bihar Finance Act, 1981 which includes additional tax also. Clause (2) of the aforesaid notification clearly shows that if there is liability to pay tax under the Bihar Finance Act then that liability shall be reduced to the extent of tax paid under the Ordinance. As additional tax is also a tax the petitioner is entitled to get benefit of the aforesaid notification and its liability for payment of additional tax has to be adjusted towards the payment of tax under the Act.

12. Learned counsel for the petitioner further submitted that prior to bifurcation of the State of Bihar the units were in the State of Bihar itself and as such import

of cement from one place in the same State to other part of the State will not attract the provisions of the Act in view of the subsequent amendment under the Act which according to the learned counsel for the petitioner is clarificatory in nature. This submission in our view has already been advanced before us and the same has been rejected in the case of Hindustan Lever Ltd. and Another Vs. State of Bihar and Others . The said submission is also rejected.

13. Learned counsel appearing for the petitioner also relied upon the judgment of the Supreme Court in the case of State of Bihar v. Bihar Chamber of Commerce reported in [1996] 103 STC 1 in support of the submission that once the entry tax has been paid with regard to scheduled goods no additional burden by way of tax under the Bihar Sales Tax Act is to be created. We do not find any merit in the aforesaid submission. The apex Court in the said judgment upheld the vires of the Act.

14. In the result, the writ application is allowed in part to the extent indicated above.

