
(2004) 01 JH CK 0098

In the Jharkhand High Court

Case No : Writ Petition (T) No's. 1684 and 2144 of 2003

Beekay Steel Ltd.

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 29-01-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 1 BLJR 767 : (2004) 1 JCR 504 : (2005) 141 STC 263

Hon'ble Judges : P.K. Balasubramanyan, C.J;R.K. Merathia, J

Bench : Division Bench

Advocate : M.S. Mittal and A.R. Choudhary, for the Appellant; Pradeep Modi, GP I, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Merathia, J.—Heard the parties.

2. Both the cases involve common questions of fact and law and thus they are being disposed of by this common judgment.

3. In WP (T) 1684 of 2003, the petitioner has prayed for a declaration that it is entitled to exemption from payment of sales tax on purchase of raw materials under S.O. No. 478, dated 22.12.1995 read with S.O. No. 57, dated 2.3.2000 both Issued under Bihar Industrial Policy, 1995, even in absence of any formal document regarding prior approval issued under Notification dated 2.3.2000. Similarly, in WP (T) No. 2144 of 2003, petitioner is claiming exemption from payment of sales tax on sale of finished goods under S.O. No. 479, dated 22.12.1995 read with S.O. No. 58, dated 2.3.2000.

4. The case of the petitioner in short is as follows. In the year 1995, the State of Bihar with a view to promote industries in the State, assured the entrepreneurs to give all possible help. For this purpose, a Single Window System was started. An Industrial Policy was announced granting various incentives including the sales tax exemptions. The said Industrial Policy, 1995 was made operative from

1.9.1995 to 31.8.2000. Petitioner and other entrepreneurs who proposed to invest to set up new industrial projects in Bihar were invited in a meeting. Pursuant to the said policy, the State Government, inter alia, issued two Notifications being S.O. 478 and 479, both dated 22.12.1995 in exercise of its power u/s 7(3)(b) of the Bihar Finance Act, 1981 granting exemption from payment of Sales tax on purchase of raw materials and on sale of finished goods respectively to new Industrial Units which satisfied the terms and conditions, for ten years and eight years from the date of production depending upon their respective locations in the specified categories. The petitioner decided to set up a new Industrial unit and made huge investment of more than 22 crores of rupees in land, building, plant and machinery. Petitioner's industry fall under the thrust industry and is a medium scale industrial unit. A licence was obtained from Government of India, Ministry of Industries on 18.10.1995. Petitioner applied for sanction of electricity on 4.10.1995. Ultimately on 15.5.1998, an agreement was entered into with the Electricity Board for commencement of the electricity supply and the petitioner deposited the security amount but the electricity could not be supplied to the petitioner till 22.12.2000 due to negligence and/or inaction on the part of the Electricity Board. As the plant was lying idle for about two years, the petitioner could start production only on 19.7.2001. In the meantime, Industrial Policy, 1995 expired on 31.8.2000 but before expiry, the State Government issued two Notifications being S.O. Nos. 57 and 58, both dated 2.3.2000 amending the earlier notifications dated 22.12.1995. By this amendment, the benefits were extended to those new industrial units also who are granted a prior permission before the expiry of the policy i.e. 31.8.2000 but starts production within five years from the issue of such permission. As soon as the petitioner knew about the aforesaid notifications dated 2.3.2000, it requested the Industries Department to issue Certificate/prior permission by letters dated 21.6.2000, 21.7.2000, and 2.8.2000, but the petitioner did not get any response to the said requests. The petitioner then applied for grant of exemption certificate under the said Notifications. An inspection was made by the Commercial taxes officials, who recommended the grant of exemption to the petitioner on 31.5.2002. However, the Deputy Commissioner of Commercial Taxes refused to further recommend the case of the petitioner by his order dated 22.11.2002, solely on the ground that there was no prior permission in terms of the said Notifications, though he found the Unit of the petitioner otherwise eligible for exemption.

The petitioner was served with a notice dated 23.11.2002 issued by the Joint Commissioner of Commercial Taxes (Administration) affording an opportunity of hearing about the said order dated 22.11.2002 rejecting the petitioner's application for grant of exemption certificate. After hearing the petitioner, the Joint Commissioner, Commercial Taxes (Administration) by order dated 19.2.2003 directed the circle-in-charge, to hold a thorough enquiry and send a clear report for further action.

The petitioner further submitted that the authorities of the Sales Tax Department

are not taking any final decision and the matter is being passed on by one authority to another. The matter was adjourned on thirty occasions between 29.9.2001 to 7.5.2003. Ultimately, on 7.5.2003 the Deputy Commissioner, Commercial Taxes stayed the hearing on the ground of pendency of the present writ petition.

5. The petitioner's contention, therefore, is that whatever was possible, was done by the petitioner at its end but due to the action/inaction on the part of the Electricity Board, the production could not be started before the expiry of the Policy and the prior permission was also not granted inspite of repeated requests made before the expiry of the policy. Thereafter the matter of grant of exemption certificate is being delayed by the Commercial Taxes Department, due to which the petitioner is suffering great loss every day and a substantial period of exemption about two and half years has passed in the meantime. Thus the petitioner is entitled for direction upon the respondents to pass appropriate orders exempting the petitioner from payment of sales tax in terms of exemption notifications even in the absence of a formal prior permission issued in its favour. No procedure or method has been prescribed in the Notifications regarding obtaining prior permission. Even then the petitioner made several representations before the expiry of the policy, for grant of such prior permission.

6. Petitioner's further case is that Clause 1(ka) of S.O. Nos. 478 and 479 is applicable to the new Industrial Units like the petitioner and in terms of the said clause a licence dated 18.10.1995 was obtained from the Government of India. Clause 15 of S.O. 478 and Clause 12 of S.O. No. 479 are not applicable to the new industries and they are applicable to the existing Industries proposing expansion/diversification/ modernization, which inter alia provides for obtaining a prior permission. Thus, learned counsel for the petitioner contended that the requirement and procedure for obtaining prior permission is only provided in the case of expansion etc. and not in the case of a new industrial unit, like the petitioner. Lastly, he relied on Hitech Electrothermics and Hydropower Ltd. Vs. State of Kerala and Others, , in support of his contention that the petitioner should not suffer for the actions/inactions on the part of the Government departments/Electricity Board.

7. Learned counsel for the State submitted that the provision for obtaining prior permission is also applicable in case of a new Industrial Unit, though he fairly admitted that the placing of the provisions in the Notifications is not proper. He submitted that Clause 1(ka) applicable to the new industrial Unit, contemplate a prior permission "PURWANUMATI" whereas the provisions in case of expansion/diversification contemplates, a prior approval "PURWANUMODAN" Clause 2(a) of SO 57 and 58 further provides that in case of Medium Scale Industries like the petitioner, a committee consisting of the Commissioner of Commercial taxes, Director of Industries and Director of Technical Development is competent to grant "PURWANUMATI", the prior permission. So far as prior approval, regarding expansion/ diversification is concerned it could be issued by the officer of the

Industries Department. He further submitted that although the said Notification was published in the Gazette in March, the petitioner made its application only on 21st June, 2000 and that too before the Director of Industries, who was not the competent authority as per the Notification. Application for prior permission was to be made before the aforesaid Committee. The petitioner was not vigilant. If electric connection was not given to him after he applied for it in the year 1995, petitioner should have initiated appropriate proceedings in this regard before a Court within a reasonable time. Again if prior permission was not granted, the petitioner could move a Court before expiry of the policy, even if it was waiting for the electricity connection and the production. There is nothing in the Notification that only after start of production, a Unit can apply for exemption. Prior permission is to be given on case to case basis and not as a matter of course.

Learned State counsel finally submitted that the present case is fully covered by a decision reported in 2003 (4) JCR 416 , Mittal Polpacks Pvt. Ltd. v. State of Jharkhand and Ors.

8. Two questions arise in this case. Whether prior permission was required for a new industrial unit also and whether, even in the absence of such prior permission, the petitioner is entitled to the sales tax exemptions.

9. Regarding the first question, we are satisfied that if the Notification No. 57 and 58 are read properly even the new industrial unit, was required to obtain prior permission before the expiry of the Policy. It could not be intended by the Government that the said Industrial Policy 1995 and the exemption notifications issued thereunder, would continue for indefinite period. Admittedly, the petitioner did not have the required prior permission. We adopt the reasoning given in Mittal Polpack's case (supra), which reads as follows :

"10.We are of the view that this could not be the object and intention to continue the provisions for an indefinite period. For example, if, as per the prayer of the petitioner, the respondents are directed to take a decision on the application of the petitioner, independent of the expiry of the policy; and if a prior permission is granted, then the petitioner will be entitled to commence production within next five years, and for eight years therefrom, the petitioner will be entitled to the benefit of exemption.

In our considered view, such interpretation cannot be given even if the policy and the notifications are construed liberally and harmoniously as submitted by Mr. Poddar.

Whatever may be the reasons, the fact remains that the petitioner was not granted prior permission before the expiry of the policy, may be due to acts/omission on the part of the petitioner or the concerned authorities.

11.The said notifications were necessarily issued to carry out the Industrial Policy, 1995 and in fact, they referred to the Industrial Policy, 1995.

Clause 3 of the Notification S.O. Nos. 57 and 58 provided that the concerned provisions will come into effect from the date of enforcement of the Industrial Policy, 1995. Therefore, it is clear that the said notifications are related and dependent on the Industrial Policy, 1995.

15.There is no provision dealing with a situation where an application for prior permission was made diligently in terms of the notifications SO Nos. 57 and 58, but no decision was communicated either by the specified authorities within sixty days and by the higher authorities within the next sixty days. Neither it is treated a deemed grant or deemed refusal. This position was known to the entrepreneurs. Therefore, it appears that the pending applications also lapsed on the expiry of the policy on 31.8.2000. Probably this amendment was introduced to save those units, who inspite of their best efforts were not in a position to start production before the expiry of the policy."

10. Regarding the second question, we are satisfied that the petitioner was not quite diligent. It applied for electric connection in September, 1995 but the same was given on 22.12.2000 i.e. after a delay of about five years but it did not take this delay seriously. Even after the said Notification was published in March, 2000, the petitioner applied for prior permission for the first time in June, 2000 and that too not before the proper authority. In Hitech Electrothermics & Hydropower Limited, case (supra), the Supreme Court exercised its power under Article 142 of the Constitution of India, which we cannot. The said Notifications were issued under the said Industrial Policy of 1995. As already noted, there was no prior permission in favour of the petitioner, prior to expiry of the policy.

11. After considering the case from different angles, we are of the view that no relief can be granted to the petitioner, as prayed for. In the result, these writ petitions are dismissed. No costs.