

(2000) 11 JH CK 0013
In the Jharkhand High Court
Case No : Civil WJC No. 3159 Of 2000 (R)

Chhotanagpur Refractories

APPELLANT

Vs

State Of Bihar and Ors

RESPONDENT

Date of Decision : 20-11-2000

Acts Referred:

Bihar Finance Act, 2018 — Section 7, 7(3), 14

Citation : (2001) 1 JLJR 17

Hon'ble Judges : S.N. Mishra, J; M.Y. Eqbal, J

Bench : Division Bench

Advocate : Binod Poddar, Biren Poddar, A.R. Choudhary, Ajay Poddar, Binod Poddar, Biren Poddar, A.R. Choudhary, Ajay Poddar, D. Poddar

Final Decision : Allowed

Judgement

1. Heard Mr. B. Poddar, learned counsel for the petitioner and learned Government Advocate.

2. In this writ application the petitioner seeks a declaration that the petitioner's unit is entitled for deferment of the amount of sales tax for a period of 5 years i.e. from 2000-2001 to 2004-2005 and further restraining the respondents from insisting upon and/or from realising the amount of sales tax for the aforesaid period of 5 years inasmuch as the petitioner is entitled to the benefit of deferment of sales tax under the Industrial Policy, 1995.

3. The fact of the case lies in a narrow compass.

The petitioner is a small scale industrial unit and is doing the business of refractories. The case of the petitioner is that it is a registered dealer having registration No. RN (S) 149(R) granted under Section 14 of the Bihar Finance Act. The Government of Bihar came up with an. Industrial Policy known as Industrial Policy 1995. The said policy lays down the provision for removing the sickness in the industrial sector and a policy was formulated by the Government for removing the sickness in the small scale industrial sector. The High Power

Committee was constituted consisting of 12 members under the Chairmanship of Director of Industries with a view to expedite the speedy rehabilitation of sick units and also small scale units. The petitioner's case is that its unit became sick industrial unit due to financial crunch and as such, reference was made to the apex body for declaring the unit a sick industrial unit. The Director of Industries, Government of Bihar, declared and registered the petitioner's unit as a sick industrial unit and the petitioner was directed to submit rehabilitation package. The petitioner accordingly submitted rehabilitation package, which was duly approved in the 14th meeting of the Members of the Apex Committee held on 11.4.2000 in which the Joint Commissioner of Commercial Taxes took part as a representative of Finance Department and a specific resolution was passed in respect of the approval of deferment of sales tax for the period of 5 years. It is contended that inspite of the above fact the respondent No. 4 Deputy Commissioner of Commercial Taxes asked the petitioner to immediately deposit the amount of sales tax for the month of May, 2000, as the petitioner has not forwarded any notification issued by the Commercial Taxes Department to show that the sick unit is entitled for deferment of sales tax. The petitioner said to have filed a detailed petition before the Joint Commissioner of Commercial Taxes but the latter rejected the aforesaid petition on the ground that the same is not in accordance with law.

4. The respondent-Commercial Taxes Department filed a counter affidavit stating, inter alia, that the petitioner cannot avail the facilities of deferment of tax on the ground that such facilities have been approved by a Committee appointed under the Industrial Policy Resolution. It is stated that the resolution of the Apex Committee is not binding on the Commercial Taxes Department and unless notification to that effect is issued by the Government in terms of the resolution, no benefit could be given to the petitioner.

5. Mr. Poddar, learned counsel appearing for the petitioner, drawn our attention to the relevant provision of the Industrial Policy and submitted that once the Apex Body passed the resolution, the respondents have no authority to deny such benefit on the ground that, there is no notification to that effect. In that connection, learned counsel mainly relied upon the decision of the Supreme Court in the case of State of Bihar v. Suprabhat Steel Ltd. and a Full Bench decision of Patna High Court in the case of Tara Steel Industries v. Asst. Commissioner of Commercial Taxes (1986) 61 STC 301.

6. On the other hand, learned Government Advocate mainly relied upon Clause 16-4 of the Industrial Policy and Section. 7(3) of the Bihar Finance Act and submitted that for giving the benefit a notification has to be issued under the aforesaid provisions of the Act.

7. For better appreciation of the submissions made by the learned counsels for the parties, it would be useful to quote the relevant provisions of the Industrial Policy. Clause 16.4 reads as under :--

"16.4. The Commercial Taxes Authorities will prescribe the required procedure and condition for extending aforesaid sales tax incentives to industrial units."

Clause 22.1 reads as under :--

,"22.1. Industrial Sickness in SSI Sector.--The State Government proposes to take the following measures for the revival of SSI Units:

(i) There are scores of medium and small scale units which are sick but have the potential of becoming viable. For such . SSI Units which are outside the purview of the Bureau of Industrial and Financial Reconstruction (BIFR), the State Government proposes to form an apex body on the lines of BIFR with Director of Industries as its Head to consider their revival.

(ii) The State level apex body for rehabilitation of sick industry would be vested with adequate powers so that it can effectively implement management and financial restructuring.

(iii) The sick SSI units would be identified as per guidelines given by RBI/DBI. Appropriate packages of reliefs and concessions for such units would be approved for their rehabilitation.

(iv) Sick units undergoing rehabilitation will not have to take sickness certification every year. The approved-revival package for each sick unit would indicate the period of revival.

(v) The apex body shall monitor the progress of the revival package.

(vi) A sick unit being revived would be entitled to Sales Tax exemption/deferment exemption from Minimum Guarantee etc. as determined in the revival package.

(vii) The State level apex body would besides representatives of Government Department/Organisations/Financial Institutions will also have as its members one representative each of confederation of Indian Industries, Bihar Industrial Association and Bihar Chamber of Commerce.

The rehabilitation package would be implemented within a fixed time frame so that the process of revival is not delayed."

8. From the bare reading of the aforesaid Clauses of the Industrial Policy, it is manifest that for the purpose of giving such benefit the State Government has to form an apex body with Director of Industries as its head to consider the revival of the sick industrial unit. It further provides that the apex body shall approve the cases of such industrial unit which deserves the package of relief and concessions. After the said approval such unit would be entitled to the sales tax benefit in the form of exemption of sales tax/deferment of sales tax etc. No where the policy provides that after such approval is granted by the apex body a notification to that effect has to be issued by the State Government.

9. In the light of the aforementioned fact, the only question falls for consideration is as to whether in absence of any notification the petitioner would

not be entitled to get the exemption even after the decision is taken by the apex body. This question has been considered by the Supreme Court in the case of *State of Bihar v. Suprabhat Steel Ltd.*, (supra), where their Lordships observed :

"Coining to the second question, namely, the issuance of notification by the State Government in exercise of power under Section 7 of the Bihar Finance Act, it is true that issuance of such notifications entitles the industrial units to avail of the incentives benefits declared by the State Government in its own industrial incentive policy. But in exercise of such power, it would not be permissible for the State Government to deny any benefits which in otherwise available to an industrial unit under the incentive policy itself. The industrial incentive policy is issued by the State Government after such policy is approved by the Cabinet itself. The issuance of the notification under Section 7 of the Bihar Finance Act is by the State Government in the Finance Department which notification is issued to carry out the objectives and the policy decisions taken in the industrial policy itself. In this view of the matter, any notification issued by Government order in exercise of power under Section 7 of the Bihar Finance Act, if is found to be repugnant to the industrial policy declared in a Government resolution, then the said notification must be held to be bad to mat extent. In the case in hand, the notification issued by the State Government on 4.4.1994 has been examined by the High Court and has been found, rightly, to be contrary to the Industrial Incentive Policy, more particularly, the policy engrafted in Clause 10.4 (i)(b). Consequently, the High Court was fully justified in striking down that part of the notification which is repugnant to Sub-clause (b) of Clauses 10.4(i) and we do not find any error committed by the High Court in striking down the said notification. We are not persuaded to accepted the contention of Mr. Dwivedi that it would be open for the Government to issue a notification in exercise of power under Section 7 of the Bihar Finance Act, which may override the incentive policy itself. In our considered opinion, the expression "such conditions and restrictions as it may impose" in Sub-section (3) of Section 7 of the Bihar Finance Act will not authorise the State Government to negate the incentives and benefits which any industrial unit would be otherwise entitled to under the general policy resolution itself. In this view of the matter, we see no illegality with the impugned judgment of the High Court in striking down a part of the notification dated 4.4.1994."

10. The learned Government Advocate could not bring to our notice any decision of the Apex Court in support to his contention that without a notification the benefit shall not be given to the petitioner, although the apex committee headed by the Director of Industries, after complying all the formalities, took a decision by a resolution to give the benefit to the petitioner's unit. In that view of the matter, we have no option but to hold that the petitioner is entitled to the deferment of sales tax for a period of 5 years.

11. In the result, this writ application is allowed and it is held that the petitioner is entitled to the deferment of sales tax for 5 years in terms of the resolution of

the apex body.

12. Writ application allowed.