(1997) 04 PAT CK 0062

In the Patna High Court

Case No : Tax Case No. 2 of 1982

Gayatriji Mills APPELLANT

Vs

The State of Bihar RESPONDENT

Date of Decision : 30-04-1997

Acts Referred:
Bihar Sales Tax Act, 1959 — Section 16, 33(1), 4(3)

Citation : (1997) 2 PLJR 386

Hon'ble Judges : P.K. Sarkar, J;N. Pandey, J

Bench : Division Bench

Advocate : J.N. Sahay and S.K.P. Sinha, for the Appellant; O.P. Agrawal, for the Respondent

Judgement

N. Pandey, J.—This is a reference by the Commercial Taxes Tribunal, Bihar u/s 33(1) of the Bihar Sales Tax Act, 1959 (in short ''the Act'') to this Court for a determination of the following question of law:

Whether the Assessee''s mill was entitled to exemption from payment of tax on the sale of Dal manufactured by it from the date of its start of production i.e. 11.4.73 as claimed by the mill, or from 4.12.73 on which it was admittedly registered as a Small Scale Industrial Unit by the Industries Department as allowed by the Tribunal?

2. The facts of this case are not in dispute and, therefore, lie within a narrow compass. The applicant M/s Gayatriji Mills was subjected to levy of sales tax u/s 16 of the Act for the assessment year, 1973-74 by the Assistant Commissioner, Commercial Taxes, Patna vide order dated 28.8.1974. On appeal, the Deputy Commissioner of Commercial Taxes by his order dated 11.3.1975 also upheld the decision of Assessing Officer regarding the rejection of the claim as it related to the averred sales as a Small Scale Industrial Unit (in short ''S.S.I. Unit''). But of course with regard to Anr. question, he remanded the case to the Assessing Officer to examine the claim regarding necessary deduction as admissible in law. The Assessee being aggrieved, moved the Commercial Taxes Tribunal under

revision, which was disposed of with its findings as recorded in the order dated 4.9.1979. Against this order of Tribunal, the Assessee filed an application on 12.11.1979 u/s 33(1) of the Act before the Tribunal with a request to refer the question of law, as quoted above, to this Court.

3. As the controversy herein centers around the language of the notification of the State Government bearing A. No. STCL-E-1013/69-9924 F.T. dated 19.9.1969, it seems apt to quote the same at the very outset:

In exercise of the powers conferred by Clause (b) of Sub-section (3) of Section 4 of the Bihar Sales Tax Act, 1959 (Bihar Act XIX of 1959) the Government of Bihar is pleased to exempt from the levy of both ''general sales tax'' and ''special sales tax'', sales of finished products by the newly set up small-scale industries at the first stage of sale after production for a period of five years from the date of industry starts its production.

4. Since the benefit of exemption in terms of the aforesaid notification was available only for a period of five years from the date the unit starts production, therefore, the State Government after expiry of such a period, issued different notification for a similar benefit from time to time. But in the instant case, since I am only required to examine the effect and applicability of the notification of 1969, it is not necessary to notice other notifications.

5. A plain reading of the aforesaid notification would show that an exemption from levy of general sales tax and special sales tax was given "on sales of finished products by the newly set up small scale industries at the first stage after production for a period of five years from the date the industry starts its production". As per Explanation (i) of the said notification ''Small-scale industry'' means an industrial unit with an investment up to Rs. 7.5 lacs on plant and machinery, excluding the value of land and building, approved and registered by the Industries Department of the State Government.

6. A bare reference to the aforesaid Explanation would indicate that an industrial unit, which has been approved and registered by the Industries Department of the State Govt., can only be called as "Small-scale industries", as contemplated under the said notification. In other words, to claim exemption for a period of five years, the industrial unit must be approved and registered by the Industries Department of the State Govt. In the case before me admittedly the unit started its first production on 11.4.1973 and was finally approved and registered as a small-scale industrial unit by the Industries Department with effect from 8.12.1973.

7. Mr. Sahay, Sr. Counsel, submitted that in the facts and circumstances of the case, since the Government had already recognised and registered the unit as one of the small-scale industries, the benefit of exemption was available from the date of production itself, even it got registration on a later date. In support of his contention, Mr. Sahay placed reliance on a Division Bench decision of this Court in the case of Ganpati Indhan Udyog v. State of Bihar and Ors. (1989) 75 STC

158. In the instant case certificate of registration to the unit was granted on October 17, 1985 and it had started production with effect from July 17, 1984. But the certificate of exemption by the Assistant Commissioner, Commercial Taxes, was granted from July, 1984, the day on which the unit had started production. It was brought to the notice of the Court that such a certificate was neither withdrawn nor cancelled, therefore, in such a circumstance it was presumed that certificate of registration was intended to give retrospective effect. Accordingly, it was held that in the facts and circumstances of the case, the Petitioner was entitled to claim exemption under the notification from the date of production. In support of the submission, a reference was also made to a Full Bench decision of this Court in the case of Tara Steel Industries v. Assistant Commissioner of Commercial Taxes and Ors. (1986) 61 STC 301 : 1986 PLJR 256 (FB). But in the case before me, no material has been produced to show that such an exemption was granted by the Commercial Taxes Department prior to registration nor a provisional permission by the Industries Department to start production in capacity of S.S.I. Unit.

8. Therefore, apart from distinguishing features of the aforementioned cases, it would be useful to notice that Anr. Full Bench of this Court, while examining the case of Gupta Brick Works v. Commercial Taxes Tribunal, Bihar, Patna and Ors. (1985) 58 S.T.C. 267 : 1985 PLJR 791 (FB), has, in fact, disapproved the blanket theory of exemption for five years to all the newly set up small-scale industrial units, irrespective of the date of registration with the Industries Department and the period intervening from the date of production. It has held that in order to be eligible and entitled to exemption from sales tax under the notifications, a twin test is always necessary. Firstly, there must be approval and registration by the Industries Department as a small-scale industry. Secondly, such an industry must be newly set up, i.e. not older than five years from the date of starting production. If aforementioned two conditions are fulfilled, the commencing limit of the period would be from the date of approval and registration by the Industries Department.

9. Undisputedly, as contended by Mr. Sahay, and the object underlying behind the relevant notification, any provisions or taxing statute, granting incentives for promoting growth and development, should be construed liberally. In other words restriction on such a provision should be construed, so as to advance and promote the objective of the provision and not to frustrate it. Reference in this regard can usefully be made to a decision of the Apex Court in the case of Bajaj Tempo Ltd., Bombay Vs. Commissioner of Income Tax, Bombay City-II, Bombay, .

10. But to my mind such a liberal interpretation should be subject to the satisfying test of the interpretation of a particular notification or statute. I have already noticed that a plain reading of the notification would show that before starting production, the unit must be approved and registered by the Industries Department as a small-scale industry. In the instant case, admittedly the unit was registered on 8.12.1973 whereas it had started production from 11.4.1973.

It has also been noticed that no provisional permission, either by the Industries Department or any certificate of exemption by the Commercial Taxes Department were granted, prior to the date of registration.

11. Therefore, having regard to the views expressed by the Full Bench of this Court in the case of Gupta Brick Works v. Commercial Taxes Tribunal, Bihar, Patna and Ors. (supra), in my view, such an unit would not be eligible for exemption from the date it had claimed. For the reasons, stated above, the question is, thus, answered in favour of the Revenue and against the Assessee. But in the circumstances of the case, there shall be no order as to costs.

P.K. Sarkar, J.

12. I agree.

