(2004) 11 JH CK 0026

In the Jharkhand High Court

Case No : Writ Petition (T) 3132 of 2001 and CWJC No. 1038 of 2001

Iris Electronics (India) Pvt. Ltd. — APPELLANT

Vs

State of Jharkhand and Others
 Eastern Food Industries Pvt. Ltd., its though Managing Director Vs State of Jharkhand and Others — RESPONDENT

Date of Decision : 25-11-2004

Acts Referred:
Bihar Reorganisation Act, 2000 — Section 84, 85

Citation : (2005) 1 BLJR 581 : (2005) 1 JCR 130

Hon'ble Judges : S.J. Mukhopadhaya, Acting C.J.;Narendra Nath Tiwari, J

Bench : Division Bench

Advocate : S.D. Sanjay, S.K. Chaturvedi and P.K. Mishra, [in WP T No. 31342/2001], Biren Poddar, B.P. Sinha, Ajay Poddar and A.R. Choudhary, [in CWJC No. 1038/2001], for the Appellant; B.S. Lall, AAG and A. Allam, for the Respondent

Final Decision : Allowed

Judgement

N.N. Tiwari, J.—The principal question which falls for consideration in both of the writ applications is no longer res Integra. As also admitted at the Bar, the instant cases are covered by the decision of the Apex Court rendered in The Commissioner of Commercial Tax, Ranchi and Another Vs. Swarn Rekha Cokes and Coals Pvt. Ltd. and Others, .

2. In writ application WP (T) No. 31342/2001, the petitioner has prayed :-

(i) For a declaration that the Bihar Finance Act, 1981 and the relevant rules framed therein and the notification issued in exercise of powers under the Act will continue to operate in the State of Jharkhand till any amendment is made under the provisions of Section 84 of the Bihar Reorganization Act, 2000.

(ii) For a declaration that the benefit conferred to the industries by virtue of the Industrial Policy Resolution, 1995 and the notification issued pursuant to the

Industrial Policy Resolution to carry out the objects of the said resolution will continue with full force for the remaining period in the State of Jharkhand as well ''in view of the provisions contained in the Bihar Reorganization Act.

(iii) For issuance of appropriate writ, order or direction commanding upon the respondents-Sales Taxes Authorities of the State of Jharkhand to allow exemption on the products of the industry of the petitioner and in relation to its sales in the State of Jharkhand in view of the same being products of exempted industry under S.O.. No. 96, dated 4.4.1994 which is also binding on the State of Jharkhand in terms of the Bihar Reorganization Act, 2000.

(iv) For a declaration that the provisions of the Bihar Reorganization Act, 2000 will have overriding effect over the provisions of the Central Sales-Tax Act, 1956 in case of inconsistency for the purpose of achieving the objects of the Bihar Reorganization Act, 2000 which is an Special Act for achieving special purpose.

3. Briefly stated, case of the petitioner in WP (T) No. 31342/2001 is that it is a private limited company incorporated under the provisions of Companies Act, 1956 having its place of business at 786/B, Block-V, Patlipurtra Area, Patna (Bihar) and is engaged in assembling and- manufacturing of B/W T.V. sets. The petitioner is a small scale industrial unit and registered as such having permanent registration certificate granted by Memo No. 2353, dated 20.12.1997. The petitioner is also a registered dealer under the provisions of Bihar Finance Act, 1981 as well as the Central Sales Tax Act, 1956 under the Patlipurtra Circle, Patna and the said registration is operative with effect from 14.9.1997. The then State of Bihar in order to accelerate the industrialization and economic developments in the State had announced an industrial policy in the year 1993 being Industrial Policy Resolution, 1993 (Annexure 3). It was provided, inter alia, that a new industrial unit which has commenced its commercial production shall be entitled for various types of incentives for a period of 7, 8, 10 years depending upon the location of the industrial units in the different categories of districts specified in Clause 10.1 of the policy. The districts specified in the said clause also fall within the State of Jharkhand after the reorganization of a separate State of Jharkhand under the provisions of Bihar Reorganization Act, 2000.

4. In the said industrial policy resolution various incentives were provided which included exemption from sales tax on sale of finished products by the new industrial units under Clause 10.2. The then State of Bihar in accordance with the said policy issued a notification bearing S.O. No. 96, dated 4.4.1994 in exercise of power conferred u/s 7(3)(b) of the Bihar Finance Act, 1981 whereby procedures and the conditions were laid down for grant of exemption from payment of tax on the products of the new industrial units possessing exemption certificate in Form ''Khha- I. The notification dated 4.4.1994 is Annexure-4 to this writ application.

5. The petitioner in accordance with the said industrial policy set up its unit which

after a delayed gestation commenced its production from 1.11.1997 and applied for grant of exemption from payment of sales tax on its finished products before the Circle- in-charge of Patlipurtra Circle, Patna, After necessary enquiry regarding the eligibility the petitioner was granted exemption certificate in Form "Khha-I" dated 4.8.1999 (Annexure-5) valid for the period from 1.11.1997 to 30.10.2005. The petitioner on the basis of the same had been availing exemption from payment of sales tax on its finished products within the territory of the then existing State of Bihar, a part of which has now reorganized as the State of Jharkhand. The Bihar Reorganization Act, 2000 (Act 30 of 2000) which came into force on 15.11.2000, inter alia provides u/s 84 that the provisions of the Act shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies and territorial references in any such law to the State of Bihar shall, until other wise provided by a. competent legislature or other competent authority be construed as meaning the territories within the existing State of Bihar before the appointed day Section 85 of the said Act envisages that for the purpose of facilitating the application in relation to the State of Bihar or Jharkhand of any law made before the appointed day, the appropriate government may, before the expiration of two years from that day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptation and modifications so made until altered, repealed or amended by a competent legislature or other competent authority. Section 91 of the Reorganization Act provides that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law.

6. In exercise of power u/s 85 of the Bihar Reorganization Act, 2000, the State of Jharkhand has adopted various Acts of the then existing State of Bihar including the Bihar Finance Act, 1981''and the Bihar Sales Tax Rules, 1983 by its Notification No. 117, dated 15.12.2000 (Annexure 6 to this writ application).

7. According to the petitioner, under the above provisions its products are exempted from payment of sales tax on the sale of its finished products which the petitioner is entitled on its sale also in the State of Jharkhand in accordance with and for the period mentioned in the exemption certificate. According to the petitioner, the authorities in the State of Jharkhand, contrary to the provisions of law and terms of the exemption certificate have been levying sales tax on the products of the petitioner''s unit and the exemption already granted to it is being denied arbitrarily which is wholly unjust and is .violative of Articles 14, 19(1)(g), 21 and 300A of the Constitution of India.

8. The respondents contested the petitioner''s claim by filing counter affidavit. It has been stated, inter alia, that by virtue of the provisions of the Bihar Reorganization Act, 2000, the State of Bihar and the State of Jharkhand were bifurcated with effect from 15.11.2000 having separate territorial demarcations and jurisdictions and since thereafter any sale of the finished products of the

petitioner in the State of Jharkhand is in the nature of transaction of inter-State sale of goods and the same is not covered by the Industrial Policy Resolution of 1993, or Industrial Policy Resolution, 1995. In the said resolution the provision of exemption of the sales tax is with regard to the intra-State sale and not on inter-State sale and as such no exemption can be claimed by the petitioner under the provisions of the Bihar Finance Act, 1981 or in accordance with the said Industrial Policy Resolution of 1993/1995.

9. In CWJC No. 1038/2001 the petitioner sought similar declarations to the effect that the exemption certificate dated 23.4.1995 (Annexure 4) granting exemption to the petitioner from payment of sales tax on the sale of finished goods from 2.4.1993 to 2.3.2003 issued under Notification No. S.O. 96, dated 4.4.1994 under Industrial Policy, 1993 is operative throughout the territory of the then existing State of Bihar (before creation of new State of Jharkhand) and the same is still operative even after creation of the State of Jharkhand under the provisions of the Bihar Reorganization Act, 2000, in view of the provisions as contained in Section 2(f) read with Sections 84 and 91 of the said Act, further relief was prayed for quashing the order dated 24.2.2001 (Annexure-6) passed by the Deputy Commissioner, Commercial Taxes, East Circle, Ranchi whereby he refused to give benefit on the basis of the aforesaid exemption certificate on the ground of coming into force of the Bihar Reorganization Act, 2000 and bifurcation of the State of Jharkhand from the Slate of Bihar. ''According to the petitioner, it has got its Head Office at Puri Niwas, 6/C Rajendranagar, Patna and its factory at Bellauri, P.O., Ranipatara (Purnea) and its Sales Depot at Meenakshi, Muktisaran Lane, Lalpur, Ranchi. The petitioner has claimed, that he has obtained an exemption certificate in accordance with the Industrial Policy Resolution, 1993 and the Notification No. S.O. 96, dated 4.4.1994 granting exemption from payment of sales tax on sale of finished goods. The said exemption certificate is valid for a period of 10 years form 2.4.1993 to 2.4.2003. But the said benefit is being denied by the authorities of the Commercial Taxes in the State of Jharkhand. The State-respondents filed their counter affidavit in this case also taking almost the similar grounds as in WP (T) No. 31342/2003 and contested the claim of the petitioner.

10. Mr. S.D. Sanjay, learned counsel appearing for the petitioner in WP (T) No. 31342/2001 and Mr. Biren Poddar, learned counsel appearing for the petitioner in CWJC No. 1038/2001, after stating the facts of their respective cases submitted that the points involved in these writ applications have since been decided by the Supreme Court in the case of ''The Commissioner of Commercial Tax, Ranchi and Ors. v. Swarn Rekha Cokes and Coals Pvt. Ltd. and Ors." and urged that these writ applications be disposed of in terms of the said decision of the Apex Court.

11. Mr. Barnwal S. Lal, learned A.A.G. appearing on behalf of the respondents in both the cases, did not deny the same but additionally submitted that while deciding these cases this Court should also consider the fiscal and financial interest of the newly born Jharkhand State. According to the learned counsel,

now the State of Jharkhand has announced its own Industrial Policy in 2001 and if the exemption is granted to the petitioner and other similarly situated industrial units of the bifurcated State of Bihar, the financial/fiscal interest of the State of Jharkhand shall suffer and as such this Court should also safe guard the interest of the State of Jharkhand in that regard.

12. After hearing the learned counsel for the parties and perusing the records and after going through the decision of the Supreme Court rendered in the Commissioner of Commercial Tax Ranchi & Ors. v. M/s. Swarn Rekha Cokes and Coals Pvt. Ltd. & Ors., (supra), we find that the Apex Court has answered almost all the points including the principal issue raised in these writ applications. It has been held, inter alia, in the said decision that there is nothing in the Industrial Policy of 200,1 which alters, amends or repudiates the notification under the Industrial Policy Resolution of the year 1995 and the industrial units set up before 15.11.2000 and which were found eligible for grant of exemption certificate under the industrial policy of the State of Bihar in the year 1995 are entitled to all the benefits and incentives even after 15.11.2000 and the industrial policy of the State of Jharkhand of 2001 will not apply to the units already existing since before the appointed date and the notifications issued under the earlier industrial policy resolution must continue to operate in the State of Jharkhand and the concerned industrial units must be held entitled to the benefits/incentives provided by the said notification. According to the provisions envisaged u/s 84 of the Reorganization Act, despite the division of the then existing State of Bihar into two states and any law in force immediately before the appointed day, notwithstanding territorial references in them, shall, until otherwise provided by the competent legislature or other competent authority, be construed as meaning the territories within the existing State of Bihar before the appointed day. The Supreme Court concluded the main issue as thus :-

"In simple words though the law may refer to the State of Bihar, and though the State of Bihar has been bifurcated into two by creating the State of Jharkhand, the laws in force before the appointed day must continue to operate to the territories which formed the erstwhile State of Bihar. This of course, is subject to amendment, alteration or repudiation by a Legislature or other competent authority. The statutory notification relied upon, therefore, continues to operate throughout the territories which earlier constituted the State of Bihar. u/s 85, they shall continue to operate until repealed or amended in the manner provided. As a natural consequence, the entrepreneurs are entitled to the benefits and incentives provided in the said notification. Having regard to the overriding provisions of this Act, as envisaged u/s 91, the statutory notifications must prevail and the benefits flowing therefrom must accrue to the beneficiaries. We must not permit our mind to boggle by imagining that what was one State earlier has now become two and consequently what were intra-State sale transactions earlier are now inter-State. sale transactions. If any law in force before the appointed day must have effect in the absence of its modification or repeal the benefit under that law must flow notwithstanding the fact that in reality intra-State sale transactions may have become inter-State sale transactions. Law gives authority to the concerned State to bring about a change in the State of affairs, if it so considers necessary or expedient by modifying, or amending the law or by altering, repealing or amending it by legislation. We have; therefore, no doubt that the High Court of Jharkhand at Ranchi was wrong in dismissing the writ petition on the ground that the notification of 22.12,1995 could not apply to inter-State sale transaction."

It is relevant to notice here that this Court and also the Supreme Court have occasions to interpret Sections 84 and 85 and other provisions of Bihar Reorganization Act, 2000 and it has been consistently held that all laws in force immediately before the appointed day i.e. division of the State, became effective and continued to be applicable notwithstanding the change in the territories and that a notification also being law remains valid and binding so far as the territories comprising the succeeding States are concerned until and unless the Jharkhand State modifies the law by repealing or bringing amendment.

13. The conclusion is that the notification under which the petitioners were allowed exemption from payment of sales tax by the erstwhile State of Bihar prior to the appointed day having not either being repealed or amended the effect of the said notification shall continue and the same will be available to the petitioners according to their respective exemption certificates.

14. So far as the plea of the learned A.A.G. regarding the financial/fiscal interest of the State of Jharkhand is concerned. the same is not the subject of investigation of this Court which is mainly concerned with invoking the principle of rule of law with emphasis against arbitrary action of the State or its instrumentalities. We, therefore, refrain from giving any consideration on the said aspect which in our opinion is not the concern of this Court.

15. We, therefore, allow these writ applications and hold that the petitioners are entitled for exemption from payment of sales- tax on the sale of their finished products in the State of Jharkhand during he period prescribed in their respective exemption certificates, in terms of the notification under S.O. No. 96, dated 4.4. 1984 issued under the provisions of the Bihar Finance Act, 1981 and they are also entitled to the benefits conferred by the Industrial Policy Resolution, 1993/1995 and the State of Jharkhand and the concerned authorities ae bound by the said provisions of S.O. No. 96, dated 4.4.1994. The order dated 24.2.2001 passed by the Deputy Commissioner of Commercial Taxes, East Circle, Ranchi (respondent No. 2) as contained in Annexure-6 to CWJC No. 1038/2001 is contrary to the provisions of law and the same is quashed. However, there is no order as to costs.

