(1992) 12 PAT CK 0006

In the Patna High Court

Case No : Civil Writ Jurisdiction case No. 622 of 1992

Kumar Distributors (P) Limited APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 16-12-1992

Acts Referred:

Citation : (1992) 12 PAT CK 0006

Judgement

Binod Kumar Roy, J.—Since common questions of law and facts are involved in. these cases, which have also been heard together, they are being disposed of by this common judgment.

2. The Facts:

3. Petitioners are ''Company'' incorporated under the Indian Companies Act. Petitioner of C.W.J.C. No. 622 of 1992 is a dealer effecting sales of Television sets, Watches and Mixers. Petitioner of C.W.J.C. No. 1113 of 1992 manufactures Television sets in this State.

4. The State Government with an object to accelerate the growth of industries in the State from time to time made various incentives to the industries established in various sections. A notification bearing No. S.O. 92 dated 18.1.1988, as contained in Annexure-2, in exercise of powers conferred u/s 7(3) of the Bihar Finance Act was published exempting from levy of sales tax on sale of electronic goods manufactured by an Electronic Industrial Unit approved and registered by the Department of Industry, Government of Bihar with effect from 1.9.1986 for a period of 5 years from the date of production of such goods. A further Notification bearing No. S.O. 94 dated 18.1.1988, as contained in Annexure-1, was also published exempting from the levy of sales tax or purchase tax on the sales of electronic raw materials to the owners of the electronic industrial units with effect from 1.9.1986 for a period of 5 years.

5. Petitioners assert that they acted upon the aforementioned notification and filed returns claiming such exemptions before the Commercial Taxes Officer

(Respondent No. 4) who, however, refused to exempt ''Additional tax'' and Surcharge on their sales. The State Government had made unequivocal promise to the Petitioner and all other industries, who had set up electronic industries, that exemption shall be granted on purchase of raw-materials and sales of finished products both and acting upon such promise the Petitioners have established the industries in the State of Bihar and, accordingly, they are entitled to exemption on the principle of Promissory estoppel.

6. It was the duty of Respondent No. 4 to pass a reasoned order staling the grounds showing his non-satisfaction but he in most cryptic manner and without assigning any reason directed the Petitioners for payment of additional tax.

7. The Petitioners moved the Commissioner of Commercial Taxes (Respondent No. 2) in revision. In the meantime, the Assistant Commissioner of Commercial Taxes (Respondent No. 3) served notices as contained in Annexure-A, for payment of the outstanding clues of taxes giving threats that if they fail to make payments, coercive steps will be taken.

8. The Petitioners assert that in the definition of ''tax'' ''sales tax'' ''purchase tax'', or ''additional tax'' have been included and u/s 7 of the Bihar Finance Act the State of Bihar grant exemption from the levy of purchase tax or sales tax from which it is clear that if the goods were exempted from levy of sales tax or purchase tax there was a general exemption and as such, there was no question of imposing any additional tax; and that according to Section 21 of the Bihar Finance Act taxable turn over for the purpose of levying taxes as to that part of turn over which remained after deducting therefrom in the case of works contract the amount of labour charges in the manner and to the extent prescribed and sale price u/s 7 of the Act.

9. The Petitioners have been advised to file these writ petitions since the matter relate to interpretation of the provisions of the Bihar Finance Act which can be decided by this Court alone and the court of the Commissioner, Commercial taxes is not functioning due to the strike of non-gazetted employees.

10. During hearing of these writ petitions, a supplementary affidavit was filed in C.W.J.C. No. 1113 of 1992 stating that the Bihar Electronic Manufacturers Association, Patna had asked for clarification from the Director of Industries as to whether sales tax will also include additional tax on which the Director of Industries sent a reply through his letter No. 23, Patna, dated 9.4.92, as contained in Annexure-6, that additional tax is included in the sales tax.

11. These writ petitions were admitted on 10th February, 1992 and the Petitioners were directed to deposit 50% of the tax amounts and for the remaining 50% amount security bonds within one month in terms of Section 5 of the Bihar Finance Act making them subject to the decision of these applications.

12. In the counter-affidavits it has been asserted, inter alia, to this effect, that Additional tax is chargeable over and above the exemption granted u/s 7(3) of

the Act. Exemption if any, from the additional tax is to be given only u/s 6(2) of the Bihar Finance Act. If the Petitioners incurred any liability because of misreading of the provisions of law they are not entitled to any concession for their own fault. Sections 3, 4, 5, 6 and 7(3) of the Act deal separately with the exemption from sales tax, purchase tax, sur charge and additional tax respectively and thus, the Petitioners wrongly contemplated the exemption from tax under one head would imply exemption under other heads too. The perusal of the aforementioned sections highlights that all the charging sections are independents in their imposition on the grounds of (i) circumstances of imposition (ii) quantum of imposition and (iii) the exemption from imposition. The Commissioner of Commercial taxes had correctly rejected the prayer of the Petitioners and these writ petitions are fit to be dismissed with cost.

The Submissions:

13. The learned Counsel appearing for the Petitioners contended as follows: (i) Section 2(x) of the Bihar Finance Act defines ''Tax''. which includes the sale tax or purchase tax levied u/s 6. Section 3 of the Act is a charging section which puts charge on the sale or purchase of the goods in the State of Bihar when the turnover exceeds the specified quantum. Section 6 of the Act imposes additional tax on every dealer having a gross turnover exceeding the quantum laid down in Section 3 of the Act. Section 7 of the Act grants exemption from the payment of tax on the sale or purchase of goods. u/s 7(3) of the Act notifications were made granting exemption by the State Government. Section 21 of the Act defines taxable turnover which shall be the part of the gross turnover which remains after deduction therefrom Since entire sale tax was exempted there was no question of imposition of any additional tax. (ii) The State Government had promised to exempt payment of sales tax which was noted upon by the Petitioners and accordingly, the State Government and its Officers are bound by the principle of promissory estoppel, more so as they have not collected any amount of additional tax from the customers. (iii) With reference to the decision of the Supreme Court in Filter Co. and Anr. v. Commissioner of Sales Tax, Madhya Pradesh 1986 (2) S.C.C. 111, it was alternatively submitted that the State Government be directed to consider Sympathetically to waive the entire or substantial part of payment of tax to save the Petitioners as they are suffering economic crisis.

14. He placed reliance on (i) Deputy Commissioner of Sales Tax Vs. Aysha Hosiery Factory (P) Ltd. and Others, (ii) The State of Gujarat v. Meghdoot Laminite Ltd. 86 S.T.C. 295 (iii) Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes) Vs. K.P. Paper Products, (iv) Ashok Service center and Others Vs. State of Orissa, (v) Om Flour Mills (P.) Ltd. and Another Vs. State of Bihar and Others (vi) M/s. Motilal Padamput Sugar Mills Co. Ltd. v. The State of uttar Pradesh and Ors. AIR 1979 S.C. 62l (vii) State of Bihar and Another Vs. Usha Martin Industries Ltd., and (viii) Commissioner of Sales Tax Vs. Chhogalal and Sons,

15. Learned Counsel for the Respondents reiterates the facts stated in the counter-affidavit distinguished the decision cited on behalf of the Petitioners and submitted that there is no merit in either of the writ petitions. and they be dismissed with costs.

My findings:

16. Section 2(x) of the Bihar Finance act runs as follows:

"Tax" includes the sales or purchase tax levied u/s 3 as also additional tax levied u/s 6 of this part.

(Emphasis supplied)

17. Section 7 of the Bihar Finance Act runs as follows:

Exemption --(1) No tax shall be payable under this part on sales or purchases of goods which have taken place --

(a) in the course of inter-State trade or commerce,

(b) outside the state;

(c) in the course of import of goods into, or export of the goods out of the territory of India.

(2) The provisions of the Central Sales Tax Act, 1956 (LXXIV of 1936) shall apply for determining when a sale or purchase of goods shall be deemed to have taken place in any of the ways mentioned in Clauses (a), (b) or (c) of sub-Section (1).

(3) The State Government may, by notification and subject to such conditions or restrictions as it may impose, exempt from the sales tax or purchase tax --

(a) sale of any goods or class or description of goods;

(b) sales of any goods or class or description of goods to or by any class of dealers;

(c) any sale or category or description of sales; and

(d) purchase of any goods by any class of dealers or any purchase or category or description of purchases of such goods.

(4) Where exemption from the levy of tax tinder this part on any sale or purchase of goods is claimed by a dealer under the provisions of this section or Section 21, the burden of proof shall lie on such dealer and prescribed authority may require the dealer to substantiate the claim in the prescribed manner.

18. Section 6 of the Bihar Finance Act runs as follows:

Notwithstanding anything contained in Sub-section (3) of Section 7 or Sections 11, 12, and 21 or in any notification issued there-under every dealer having a gross turnover exceeding the specified quantum as laid down in Section 3 shall with effect from a date to be specified by the State Government by a notification published in official gazette, pay an. additional tax at such rate, not exceeding two percentum of his gross turnover (exceeding the sales or purchase of goods which have been taken place either in the course of inter-State trade or commerce, or out-side the State or in the course of import of goods into, or export of goods out of the territory of India) as the State Government may, from time to time by notification in the official Gazette, fix:

(emphasis added)

19. Notification No. S.O. 92 dated 18.1.1988 runs as follows:

In exercise of the powers conferred by clause (b) of Sub-section (3) of Section 7 of the Bihar Finance Act, 1981 (Bihar Act No. 4, 1981) Part-I, the Governor of Bihar is pleased to exempt from the levy of sales tax or purchase tax on sales of electronic raw materials to the owner of electronic Industrial Unit approved and registered by the Department of Industry, Government of Bihar or the competent authority of Government of India for a period of five years with effect from the 1st September, 1986 on the following conditions:

(a) This exemption shall be admissible only for those raw materials which have been approved and notified as electronic raw materials by the Electronic Department of Government of India and are required for manufacture of electronic products approved and notified by the said Department;

(b) The exemption shall be admissible only on these raw materials which are specified in Form ''B'' (approved hereto) which has been obtained after filing application in Form ''A'' (appended hereto) to the concerned circle incharge;

(c) The owner of industry furnishes to the registered dealer from whom goods are purchased a declaration in Form ''E'' (Appended hereto) which shall be issued from a bound book duly certified by the officer-in-charge of concerned circle bearing printed book number and declaration number with counterfoils.

(d) The owner of the industry shall maintain a separate account of all the purchase and the use of goods purchased on the strength of declaration form ''E'' and shall render accounts on demand by the authorities appointed u/s 9 of the Bihar Finance Act, 198l

(e)The selling dealer shall produce before the assessing authority along with necessary evidence, a declaration containing all the particulars in Form ''E'' received by him from the owner of the industry, for every such sale: and

(f) in case of misuse of declaration Form ''E'' the concerned circle in charge shall be competent to cancel the exemption certificate.

Explanation. -- For an unit going into production after the 1.9.86, this exemption shall be admissible only upto the 31st ''August, 1991.

(Emphasis supplied)

20. Notification No. S.O. 94 dated 18.1.1988 runs as follows:

In exercise of the powers conferred by clause (b) of Sub-section (3) of Section 7 of the Bihar Finance Act, 1981 (Bihar Act No. 5, 1981) part-I, the Governor of Bihar is pleased to exempt from levy of "Sales Tax" on sales of elect ionic goods manufactured by an electronic industrial unit approved and registered by the Dept. of Industry, Govt. of Bihar or the competent authority of Government of India for a period of five years with effect from the 1st Sep. 1986 on the following conditions:

(a) This exemption shall be admissible for those electronic goods only which have been approved and notified by the Electronic Deptt. of Govt. of India;.

(b) The owner of the industry shall issue cash/credit memo for sale of finished goods which will contain the name and address of the purchaser description of goods and its prices the exemption certificate number with date of its validity and dated signature of the seller;

(c) The owner of the industry shall maintain separate sale and purchase accounts as also stock register for sale and purchase of such goods;

(d) The owner of the industry shall render account on demand by authorities appointed u/s 9 of the Bihar Finance Act, 1981;

(c)(i) A dealer, claiming exemption on sale of electronic goods under this notification at the stage of sale sub sequent to the stage of sale by the owner of the industry, shall obtain a declaration in the prescribed form appended hereto, from the selling dealer of the preceding stage and file the original counter-foil thereof with his return. He shall also produce either necessary documents such as purchase order if any and cash memo/bill or invoice to substantiate his claim before the assessing authority;

(ii) The declaration mentioned in Clause (i) shall be issued from a bound book bearing printed serial number and shall be authenticated by the circle officer;

(iii) The dealer issuing the declaration shall also maintain in a register. authenticable by the circle officer, particulars of all declarations issued serially and chronologically which shall contain the name of the purchaser, cash memo/ bill/invoice number and date, particulars of the goods, quantity and its value.

(iv) This declaration shall be signed by the dealer himself or his declared manager.

Explanation.-- For an unit going into production after the 1st September, 1986, the exemption shall be admissible only up to 31st August, 1991

(Emphasis supplied).

21. A bare perusal of the notifications Nos. S.O. 92 and 94 shows that the exemptions from payment of sales tax or purchase tax only were made u/s 7(3) (b) of the Act and not in regard to the Additional tax u/s 6 of the Act. Section 6 is

an independent Charging provision imposing obligations. It is not permissible for me to nullify the express intention of the Legislature on the ground of hardship.

22. The definition of the word ''Tax'' as defined in Section 2(x) of the Act does not go in favour of the Petitioners rather it shows that sales tax or purchase tax or additional tax are not one though mean and stand included as tax. In this view of the matter, no wrong was committed by Respondent No. 4 in charging Additional tax. The decisions cited by the learned Counsel for the Petitioners relate to provisions of different States which are not pari materia with the provisions of our State. In this regard I am reminded of the following observations of the Apex Court in Nathia Agarwalla and Another Vs. Musst. Jahanara Begum and Others, . "The method of construing a Section in a State legislation by comparing and contrasting it with similar enactment of other States, although some-times instructive is not to be commended because similarity or variation in the laws of different States is not necessarily indicative of a kindred or a changed intention. Enactments drafted by different hands, at different limes and to satisfy different requirement of a local character, seldom afford tangible or sure aid in construction." The Apex Court earlier in The Union of India (UOI) Vs. The Commercial Tax Officer, West Bengal and Others, had laid down to the effect that an exemption is the creation of Statute and must be construed strictly and cannot be extended except to the subjects specially mentioned in the section.

23. There is yet Anr. difficulty in the way of the Petitioners. Respondents assert that the Commissioner, Commercial Taxes has dismissed the prayers of the Petitioners. That fact has not been disputed by the Petitioners. If the dismissals were on merits, by principle of merger the impugned orders merged in the orders of the Commissioner but his orders have not been impugned, before us.

24. Since there was no promise by the State the doctrine of promissory estoppel cannot be invoked by the Petitioners.

25. Coming to the alternative submission of the learned Counsel for the Petitioners, I am of the view that it is for the Petitioners to make such a request before the State Government and it will be for the latter to consider such a request, if made, in accordance with law, and not for this Court to opine in regard to which no request was made in these writ petitions.

26. In the result, these writ petitions are dismissed. The Petitioners are directed to pay the balance amount within one month from today failing which the Respondents shall proceed in accordance with law. However, in the peculiar facts and circumstances, I make no order as to cost. Ram Nandan Prasad, J. -- I agree. However, I wish to highlight as follows in regard to the submissions of Mr. Kumar:

27. Section 6 of the Act is a non-obstante clause, which says that even though the notification of exemption under Sub-section (3) of Section 7 of the Act is made, Additional tax shall be payable by the dealer having gross turnover

exceeding the specified quantum u/s 3 of the Act. Thus, it is obvious that Section 6 of the Act has overriding effect and the said tax is payable by the dealer, unless it is specifically exempted by a notification by the State Government.

28. Section 6 of the Act is also a charging provision with regard to the additional tax. Notification Nos. S.O. 92 and S.O. 94 do not speak of exemption of the additional tax. Thus, the exemption, as made in the aforesaid notifications, has to be construed strictly for the purpose they stand for, and cannot be allowed to extend beyond the subject specifically mentioned in the notifications.

29. The decision in Ashok Service center and Others Vs. State of Orissa, has no application on the facts and in the circumstances of the present case, as there was separate Act, namely, Orissa Additional. Tax Act, 1975, in which there was a specific provision to the effect that the provisions of this Act shall mutatis mutandis apply in relation to the additional tax. That apart, there was no such non-obstante clause in the Orissa Additional Tax Act. Thus, there is no substance in the submission of learned Counsel.

