(1985) 04 PAT CK 0011

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 528 of 1980

Malpani Chemical Works — APPELLANT

Vs

The State of Bihar and Another — RESPONDENT

Date of Decision : 09-04-1985

Acts Referred:

Citation : (1986) 61 STC 193

Hon'ble Judges : B.P. Jha, J

Bench : Single Bench

Advocate : B.P. Rajgarhia, Pawan Kumar and S.K. Saran, for the Appellant; Indu Prabha Singh, Government Pleader No. VI, for the Respondent

Final Decision : Allowed

Judgement

B.P. Jha, J.—In this writ petition, the petitioner prays for quashing annexure 3.

2. The petitioner is a registered partnership firm. The petitioner was registered as a small-scale industrial unit, bearing registration No. 1974/239. The production in the factory started on 11th December, 1974.

3. On the basis of annexure 1, the petitioner claims exemption from payment of both general sales tax and special sales tax for a period of five years from the date of production, that is, from 11th December, 1974, to 10th December, 1979. It is for this reason it is contended by the learned counsel for the petitioner that the petitioner is entitled to exemption from payment of sales tax for the period claimed by it.

4. By annexure 3, the sales tax authority, Madhepura, issued a notice to it to show cause as to why penalty should not be levied for non-payment of admitted tax for the quarter ending 30th of June, 1979.

5. Learned counsel for the petitioner contends that the petitioner is entitled to exemption in view of annexure 1. Annexure 1 is a notification dated 14th March, 1974, issued by the Special Secretary to Government, Commercial Taxes

Department. It is mentioned in annexure 1 that a newly set-up industry will be exempted from both the general sales tax and special sales tax for a period of five years since after it starts production. This has also been held by a Division Bench of this Court in Bihar Udyog v. State of Bihar 1981 RLJ 103 that the period of five years shall be counted from the date the industry starts its production and the industry will be entitled to exemption for a period of five years from the date it starts its production even if that period may go beyond the life of the notification.

6. In this view of the matter, the sales tax authority had no authority in law to issue the notice as contained in annexure 3. The petitioner is entitled to exemption for the period from 11th December, 1974, to 10th December, 1979.

7. In the result, the petition is allowed and annexure 3 is hereby quashed. The parties shall bear their own costs.