(2009) 01 PAT CK 0020

In the Patna High Court

Case No : CWJC No. 15616 of 2004

M/s Hebe Ispat APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 13-01-2009

Acts Referred:

Citation : (2009) 1 PLJR 498

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Advocate : Ram Balak Mahto, Rabindra Prasad and P.C. Agrawal, for the Appellant; Purmendu Singh, for the Respondent

Final Decision : Allowed

Judgement

Ajay Kr. Tripathi, J.—Petitioner is a partnership firm engaged in the business of manufacture of iron and steel situated at Mohalla Rashidachak, Chhoti Pahari Road, Agamkuan at Patna. Their contention in the writ application is that enthused by the industrial policy issued by the State of Bihar and the various incentives, which were provided thereunder they decided to set-up this unit and go into production to avail the benefit, promised by the State of Bihar to the entrepreneurs interested in investment in the State. If the unit gets registered by a specified date and comes into production within five years under the Bihar Industrial Policy of 1995, they were entitled to sales tax relaxation both on the raw material, which is procured, as well as sale of finished goods, for the specified period of time indicated in the policy. These facts are not disputed but the reason for filing the present writ application is that the designated authority, who happens to be the Assistant Commissioner of Commercial Taxes, in his wisdom decided to reject the claim of the petitioner for exemption both under the raw material head as well as under the final sale of products. The orders are identical and dated 8.5.2004 and are contained in Annexures-16 series, which are under challenge in the present writ application. Learned senior counsel appearing on behalf of the petitioner submits that the concerned authority has taken a very narrow view of the matter and has rejected the claim for exemption on a very limited ground, which can never be said to be substantive in nature, denying the benefit of the object of the policy. Attention of the Court has been brought to the reasonings which have been assigned for rejection in the impugned orders. It has been pointed out that it is not disputed that the unit in question had gone in production within five years of 31.8.2000 but the reason for rejecting the claim of exemption is that even though the petitioner had applied for registration on 29.8.2000, the registration was done only on 31.8.2000. Therefore, in terms of S.O. 58 read with S.O. 479, the registration should have been done prior to 31.8.2000. That is the primary reason for rejection of the claim of the petitioner. Some doubt has also been expressed about validity of the partnership deed which was submitted alongwith the registration application.

2. Learned senior counsel for the petitioner further submits that if such a hyper-technical view is taken for rejecting the claim of exemption then the very object and purpose of having such industrial policy would be defeated. In fact, the Courts in such matter have always held a view that a liberal interpretation ought to have been given so that the object and purpose of the policy accrues to the targeted section. In this regard reliance has been placed on a decision of the Supreme Court in the case of Commissioner of Central Excise, Shillong Vs. North-Eastern Tobacco Company Ltd., . Emphasis has been given on paragraphs 9 and 10, which are as under:-

"9. The exemption notification nowhere defines the words "new industrial units". The object of exemption notification is obvious. It intends to encourage capital investment and establishment of industrial units in specified North-Eastern States for the purpose of increasing production of goods, promoting development of industry and employment in the said regions. In the case of Hindustan Aluminium Corpn. Ltd. vs. State of U.P. this Court emphasized that the notification issued under the Act, should not only be confined to its grammatical meaning or ordinary parlance but it should also be construed in the light of the context.

It was reiterated that the expression should be construed in a manner in which similar expressions have been employed by those who framed relevant notifications,

Therefore, there is a need to derive the intent from a contextual scheme,

(emphasis supplied)

10. The other important principle of interpreting an exemption notification is that as far as possible liberal interpretation should be imparted to the language thereof, provided no violence is done to the language employed."

3. It is further urged on behalf of the petitioner that there is clear evidence contained in Annexure-6, which shows that an application for registration was received by the Industries Department on 29.8.2000 itself. If there was any

delay in issuing the certificate of registration on the part of the State Government it is not open now to the minions of the State Government to take advantage of their inaction. In this regard, reliance has been placed on a decision in the case of All India Groundnut Syndicate Ltd. Vs. Commissioner of Income Tax, Bombay City, .

4. A counter affidavit has been filed on behalf of the respondents and they have basically taken a stand that no wrong has been committed in passing of the impugned order because the concerned authority has taken a strict view of the provisions of the Industrial Policy. If the petitioner failed to obtain registration from the department before 31.8.2000 then the benefit of exemption of sales tax cannot accrue to him. Some other averments have also been made, which may not be very relevant because the Court has to examine the correctness of the order in question, limited to the reasoning which has been assigned for rejection.

5. Keeping in mind not only the proposition of law settled in this regard by the Apex Court but also the object for which such industrial policies are formulated, this Court finds the posture adopted by the State Government, specially its officials to be unpalatable. Such hyper-technicality and nit picking in the applications while interpreting the policy will surely kill all the initiatives, enthusiasm and the goodwill, which may be generated by the political leadership of this State. The confidence building at the highest level will not percolate down in actual implementation of such policies, if the mind-set of the Government officials do not change. The negative mind set must change lest it deter even future entrepreneurs from embarking from investment in the State.

6. The Court comes to a considered opinion that the reasoning assigned by the concerned authority in passing of the order dated 8.5.2004 contained in Annexure-16 series are arbitrary on the face of it and deserves interference. The writ application is allowed. Annexure-16 series are quashed. Matter is remanded back to the competent authority to consider the case of the petitioner afresh. The Court expects an early decision in the matter to settle the dispute one way or the other.

