
(2021) 11 PAT CK 0042

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 10280, 10281, 10282, 10818, 10848, 10882, 10960, 11098, 11126 Of 2012

M/S Jayshree Sugar Mills

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 25-11-2021

Acts Referred:

Bihar Electricity Duty Act, 1948 — Section 2(ee)

Citation : (2021) 11 PAT CK 0042

Hon'ble Judges : Sanjay Karol, CJ;S. Kumar, J

Bench : Division Bench

Advocate : Y.V. Giri, Ashish Giri, Lalit Kishore, Vikash Kumar

Final Decision : Disposed Of

Judgement

Heard learned counsel for the parties.

In C.W.J.C. No. 10281 of 2012 titled as M/s Jayshree Sugar Mill & Ors., petitioner has prayed for the following relief(s):-

(i) To issue an appropriate Writ/Order/Direction declaring the provisions of newly inserted Clause (ee) in Section 2 of Bihar Electricity Duty Act, 1948 (hereinafter referred to as the "Act"), Clause 2 and Clause 3 of the Amendment and Validation of Bihar Electricity Duty Act 1948 (Bihar Act 36 of 1948) introduced by Bihar Finance Act, 2012 with effect from 17.10.2002 (as contained in Annexure 10) as ultra vires the Constitution of India and also otherwise as void.

(ii) To hold and declare that The Amendment and Validation of Bihar Electricity Duty Act 1948 (Bihar Act 36 of 1948) is in teeth of judgment dated 16.09.2009 passed by this Hon'ble Court in CWJC No 4613 of 2003 (Bihar Sugar Mills Association Vs. The State of Bihar & ors.) and other analogous cases and therefore liable to be struck down.

(iii) To issue an appropriate Writ/Order/Direction in the nature of Mandamus

commanding and restraining the Respondents and/or their servants and/or their agents from giving effect to the provisions of the Amendment and Validation of Bihar Electricity Duty Act 1948 (Bihar Act 36 of 1948).

(iv) For issuance of an appropriate writ, order or directions to the Respondent for refund of the amount deposited by the Petitioner sugar mill under the Bihar Electricity Duty Act, 1948.

(v) For issuance of an appropriate writ, order or directions directing the Respondent to maintain status quo with regard to the recovery of electricity duty till the disposal of the Writ Petition.

(vi) To grant such other consequential relief to the Petitioner which this Hon'ble Court may find the Petitioner to be entitled to in equity and/or in law in the facts and circumstances of the case.

We find that in the analogous matters, the prayer is similar.

The matter was heard for some time.

We notice that the grounds raised during the course of the submissions as also the subsequent factual matrix are missing in the original petition. Conscious of the facts that Hon'ble the Supreme Court had transmitted the record of these petitions to this Court for adjudication on merit, granting interim protection, we are of the considered view that petitioners adopt any one of the two courses, enabling the State to effectively respond - (a) Petitioners file application seeking amendment of the petition, including the prayer as also the grounds challenging the vires of the statute (b) File a fresh petition on the same and subsequent cause of action, incorporating all pleas, within the stipulated period of time, during which period, the interim protection shall continue to remain in operation.

Having given thoughtful consideration to the submissions made at the Bar, we are of the considered view that it would be prudent that the petitioners choose the later and file a fresh petition.

Ordered accordingly.

Petitioners shall file a fresh petition on the same and subsequent cause of action, incorporating all the pleas, more so, factual in nature, in view of the intervening developments which took place during the pendency of the present lis. This the petitioners shall positively do within a period of eight weeks from today. Till such time the petition is filed within the aforesaid period, the interim protection granted in favour of the petitioners shall continue to operate. As and when any such petition is filed, the Registry shall immediately process the same and positively list it before the appropriate Court within three days.

Joint Registrar (List) to ensure compliance.

The writ petitions stand disposed of in the aforesaid terms.

Interlocutory Application(s), if any, shall stand disposed of.