
(2000) 08 PAT CK 0113
In the Patna High Court
Case No : C.W.J.C. No"s. 11266 of 1999

M/s. Lucky Confectionary Pvt. Ltd.

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 25-08-2000

Acts Referred:

Citation : (2000) 08 PAT CK 0113

Hon'ble Judges : R.N. Prasad, J

Bench : Single Bench

Advocate : N.K. Agrawal, for the Appellant; C.K.P. Bhagat, for the Respondent

Final Decision : Allowed

Judgement

1. In all the three writ petitions similar questions of law and facts are involved. They have been heard together and are being disposed of this order. In C.W.J.C. No. 11266/99 the petitioner is engaged in business of manufacture of confectionary known as its brand name "Lucky" and for manufacturing the same the petitioner purchases and stores sugar. In C.W.J.C. No. 11329/99 the petitioner is engaged in the business of manufacture of biscuit known by its brand name "Parle" and for manufacturing biscuit the petitioner purchases and stores sugar, vanaspati and maida. In C.W.J.C. No. 11404/99 the petitioner is engaged in manufacture of biscuit known by its brand name "Lucky" and for manufacturing the petitioner stores sugar, vanaspati and maida. They have filed the writ petition for declaration that provisions of Bihar Trade Articles (Licences Unification) Order, 1984, hereinafter referred to as Unification Order are not applicable to the petitioners as they purchases articles for manufacturing and not for sale. The articles purchased are consumed for manufacturing and its products are not specified commodities in Schedule I of the Unification Order. Under wrong advice they have obtained licence under the Unification Order although not required under law. Articles are purchased by the petitioners and stored for the purpose of consumption for manufacturing and not for the purpose of sale. Therefore, petitioners are not dealer within the meaning of provisions of

Unification Order. Petitioners tried to impress the authorities that they are not engaged in purchase and sale of the articles and as such they will not be called dealer within the meaning of Unification Order and are not required to obtain licence or renewal of the licence but they are not ready to accept the legal position and as such writ petition has been filed for declaration as indicated above.

2. In the counter affidavit filed by the respondents it has been stated that petitioners had obtained licence under the Unification Order and are getting licence renewed regularly as provided under the Unification Order. Their licences were valid up to December, 1999. Petitioners are storing essential articles beyond the storage limit and as such the provisions of Unification Order are applicable and enforceable against them. If any manufacture is allowed to store the articles without any licence under the Unification Order, there would be possibility of hoarding and black marketing of the essential articles mentioned in Schedule I of the Unification Order. Unification Order is applicable as the petitioners are storing the articles specified in Schedule I of the Unification Order not for the personal consumption.

3. The submission of learned counsel for the petitioners is that they are not engaged in purchase and sale of the essential articles. They purchase essential articles for manufacturing. They never engaged in sale of essential articles, therefore, they are not dealer within the meaning of Unification order. The products are also not specified in Schedule I of the Unification Order and as such Unification Order has no application, whereas counsel for the respondents submitted that petitioners are storing the essential articles not for personal consumption and as such Unification order is applicable in the case of the petitioners.

4. Thus the question which arises for determination is whether petitioners are dealers within the meaning of Unification Order and are liable to obtain licence under the Unification Order. To resolve the dispute it is necessary to deal with the relevant provisions of the Unification Order. Clause 2(e) of the Unification Order defines dealer which reads as follows :

2(e) "dealer" means a person, a firm, an association of persons or a Co-operative Society other than a National and State level Co-operative Society, engaged in the business of purchase, sale of storage for sale of any trade articles whether or not in conjunction with any other business and includes his representative or agent but does not include-

(i) a person who holds or is in possession of agriculture land under any tenure or any capacity and on which he raises or has raised crop of food grains, oilseeds or whole pulses;

(ii) a manufacturer of sugar;

(iii) Hawkers engaged in the purchase and sale of non-controlled cloth.

5. Retail dealer and whole-sale dealer have also been defined in clauses 2(p) & (u) which reads as follows :

(p) "retail dealer" means a person engaged in the business of purchase, sale or storage of any article (specified in Schedule I) for purpose other than personal consumption within the storage limit fixed by the Government from time to time.

(u) "Wholesale dealer" means a person engaged in the business of purchase, sale or storage of any article (specified in Schedule I) for purpose other than personal consumption within the storage limit fixed by the Government from time to time.

6. Clause 3 of the Unification Order deals with the requirement of licence which reads as follows :-

3. Licensing of Dealers.-(1) "No dealer shall after the commencement of this Order, carry on business of (purchase), sale or storage for sale of any of the trade articles mentioned in Schedule I except under and in accordance with, the terms and conditions of a licence issued in this behalf by the Licensing Authority under the provisions of this Order.....

(2) For the purpose of this clause, any person, firm, association of persons or a Co-operative society who stores any trade articles at any one time in quantities exceeding the limits prescribed in sub-clause (1), shall, unless the contrary is proved by him, be deemed to be carrying on business as a dealer and to store the same for the purpose of sale.

7. It is thus obvious from the aforesaid provisions that purchase and sale are dominant features to include a person/firm within the meaning of dealer. The person/firm who stores the articles mentioned in Schedule I of the Unification Order for sale would also come within the meaning of dealer and licence is required for such person/firm. Clause 3(2) of the Unification Order also makes it clear that the person/firm who stores trade articles more than the limit prescribed shall, unless contrary is proved, be deemed to be carrying on business as dealer and stores the same for sale. Therefore, it is obvious that the person/firm who stores the trade articles not for the purpose of sale would not come within the meaning of dealer and licence is not required for such person/firm. However, definition of retail and whole-sale dealer says that storage of any article specified in Schedule I of the Unification Order for the purpose other than personal consumption within the storage limit fixed by the Government would also come within the meaning of retail and whole-sale dealer.

8. Learned counsel for the respondents at this juncture gave emphasis on the definition of retail and whole-sale dealer and submitted that the person/firm who stores trade articles for the purpose other than personal consumption beyond the storage limit fixed by the Government would come within the meaning of dealer and licence is necessary. In this regard the word "personal consumption" mentioned in the definition of retail and wholesale dealer cannot be given

restricted meaning. The meaning of personal consumption would include the consumption of the stored article for the purpose of manufacturing. It is specific case of the petitioners that trade articles are being stored for the purpose of manufacturing and not for sale. The finished products are also not specified in Schedule I of the Unification Order. It is categorical averment of the petitioners that they never engaged in sale of the stored articles and the articles stored are consumed by the petitioners for manufacturing. The said fact has not been denied in the counter-affidavit. Therefore, it can safely be said that the trade articles stored by the petitioners are used for their personal consumption and there is nothing on the record to show that stored articles are being sold by the petitioners. Thus on consideration, the contention of learned counsel for the respondents, in my view, has no force at all.

9. The dispute has already been resolved by the Apex Court in the case of State of U.P. & ors. vs. Janta In. Udyog and ors. AIR 1991 S.C. 447. The case relates to manufacture of bricks for which coal was used for manufacturing. The Apex Court held that even though coal comes within the essential articles under U.P. Control Order, 1977, the same being used for the purpose of manufacture of brick, the manufacture of the brick cannot be subjected to take licence under the Control order as the order does not specify finished produce i.e. brick as one of the essential commodities. Similar question was involved in the case of Britannia Industries Ltd. and Another Vs. State of Bihar and Others In the said case the petitioner was engaged in manufacturing biscuit. In the said case edible oil, wheat and sugar were siezed on the ground of violation of Unification Order. Seizure was challenged on the ground that provisions of Unification Order were not applicable as the petitioner was not dealer within the meaning of Unification Order. The Court following the ratio decided by the Apex Court in the case of State of U.P. & ors. (supra), upheld the contention of the petitioner and held that petitioner was not liable to obtain licence and accordingly quashed the seizure. Similar view has been expressed in the case of M/s. Jamshedpur Beverages vs. State of Bihar, 1996 (2) E.F.R. 167 and also in the case of Pooja Engineering Pvt. Ltd. and Another Vs. State of Bihar and Others,

10. However, learned counsel for the respondents relied upon a decision in the case of State of U.P. Vs. O.P. Sharma, In the said case respondent was engaged in manufacturing Varnish and paints. His application for grant of licence was rejected. However, industrial unit was purchasing, storing linseed oil and edible oil and utilising the said oil manufacturing Varnish, paints and selling the same. The Apex Court considering the definition of dealer as provided in U.P. Oilseeds and Oilseeds Products Control Order, 1966 held that respondent was liable to have a licence under the aforesaid order. But the above mentioned decision is of no help to the respondents as the definition of dealer is not similar to the dealer given in the Unification Order. To understand the law laid down by the Apex Court it is necessary to quote the definition of dealer as provided in clause 2(g) of the U.P. Oilseeds and Oilseeds Products Control Orders, 1966 :

2(g) "Dealer" means a person engaged in the business of purchase or sale or storage for sale of oilseeds and oilseeds products, but does not include the (Food Corporation of India) the U.P. Food and Essential Commodities Corporation or a dealer who stocks less than 5 quintals of oils or less than 10 quintals of oilseeds or less than 25 quintals.

11. The Apex Court while considering the contention of the parties has noticed the definition of the dealer as quoted above and came to the conclusion that the dealer includes oilseeds products. The person/firm storing the essential articles for manufacturing and the finished products of the said articles will also come within the meaning of dealer. In the Unification Order definition of dealer is not similar to that of the definition which has been dealt by the Apex Court. The definition of dealer as has been provided in the Unification Order there is nothing to say that finished product would also come within the meaning of dealer. Moreover, the finished products of the petitioners are not specified in Schedule I of the Unification Order.

12. Learned counsel for the respondents also relied upon a decision in the case of State of Bihar vs. Tata Iron & Steel Company Ltd. 1995 (2) E.F.R. 287. The admitted case of the respondent was that company was not using non metro-logical coal rather company was regularly selling non metro-logical coal in open market and as such the Apex Court held that it cannot be said that it is not engaged in business of sale or storage for sale of non metro-logical coal and as such company is dealer under the Unification Order. The said case is not applicable in the present case in view of the fact that there is no admission of the petitioner the essential articles are stored for the purpose of sale rather categorical averment has been made in the writ petition that storage was for the purpose of manufacturing. The said averment has not been denied by the respondents in the counter-affidavit and as such in my view the case relied upon by the learned counsel for the respondents is not applicable to the case in hand.

13. Thus on consideration as indicated above, I am of the view that since petitioners store essential articles for manufacturing and are not engaged in sale of essential articles stored by them the petitioners do not come within the meaning of dealer as defined under the Unification Order nor their products are specified in Schedule I of the Unification Order, they are not required to obtain licence under the Unification Order. Accordingly, all the writ petitions are allowed but without cost.