(2006) 03 PAT CK 0004

In the Patna High Court

Case No : CWJC No. 2658 of 2006

M/s Mithila Coal Industries Pvt. Ltd. APPELLANT

Vs

The Bharat Coking Coal Limited and Others RESPONDENT

Date of Decision : 09-03-2006

Acts Referred:

Citation : (2006) 2 PLJR 200

Hon'ble Judges : R.N. Prasad, J;R.K. Datta, J

Bench : Division Bench

Advocate : Dhruba Mukherjee and Aruna Tripathi, Raj Kishore Prasad and Tej Bahadur Roy, for the Appellant; V.M.K. Sinha for the B.C.C.L., for the Respondent

Final Decision : Allowed

Judgement

1. In this petition the only question which has surfaced for consideration is as to whether the petitioner is entitled to get the refund of the entire amount of sales tax realized from it by the Bharat Coking Coal Limited on the purchase of coal on the ground that the petitioner''s unit has been exempted from the payment of sales tax on the purchase of raw materials in the light of the policy of the Government. It is rightly jointly pointed out before us that there is a settled proposition of law that in view of the Government resolution there is exemption from the payment of sales tax on the purchase of raw materials. Therefore, the assessee is entitled to exemption even after the bifurcation of the erstwhile State. This view taken by the Division Bench of this Court came to be upheld by the Apex Court in petition for Special Leave to Appeal (Civil).. (CC.1679 of 2005).

2. We, therefore, find that the present petition is squarely covered by the proposition of law enunciated by this Court and affirmed by the Apex Court.

3. A supplementary affidavit on behalf of the petitioner has been filed in Court today wherein it has been specifically stated that the burden of tax as collected from the petitioner, has not been passed on to the ultimate consumer, as the petitioner was to compete in the market with those traders/ manufacturers who

were exempted from payment of tax on purchase of coal and, thus, there is no scope of unjust enrichment of the petitioner.

4. In the result, the petitioner is entitled to refund of the amount and the appropriate authority on being moved for the said claim will examine and pass an appropriate order in the light of the aforesaid settled proposition of law and the observation within a period of two months from the date of receipt/production of a copy of this order. With the aforesaid observation, this petition stands allowed.