

(1977) 09 PAT CK 0012

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1877 of 1976

National Industries

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 23-09-1977

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1979) 44 STC 202

Hon'ble Judges : S. Ali Ahmad, J;Lalit Mohan Sharma, J

Bench : Division Bench

Advocate : K.N. Jain, Krishna Nandan Prasad and N.K. Agrawal, for the Appellant; Md. Khaleel, Government Pleader III and A.K. Singh Chauhan, for the Respondent

Final Decision : Dismissed

Judgement

S. Ali Ahmad, J.—The petitioner is a partnership firm. It has filed this application under Article 226 of the Constitution of India with a prayer to quash annexures 2, 3 and 4 to the writ application. Annexure 2 is an order dated 8th July, 1974, passed by the Assistant Commissioner of Sales Tax, Patna City, holding that the petitioner is not entitled to the exemption from the levy of "general sales tax and special sales tax" in relation to the raw materials purchased for the manufacture of M.S. rods for the period from 6th January, 1974, to 11th September, 1975. Annexure 3 is an order dated 31st October, 1974, passed by the Deputy Commissioner of Commercial Taxes dismissing the revisional application filed by the petitioner against the order dated 8th July, 1974. The petitioner thereafter filed another revision application u/s 31(3)(c) of the Bihar Sales Tax Act, 1959, before the Commissioner of Commercial Taxes, Bihar. The Commissioner dismissed the revisional application by his order dated 7th April, 1976, and that order has been marked as annexure 4 to this writ application.

2. The facts, shortly stated, are that a partnership firm under the name and style of M/s. National Industries came into existence on and from 10th June, 1968,

under a deed of partnership dated 9th August, 1968. The firm had two partners, namely, Ishwar Prasad Goenka and Nagarmal Goenka, sons of Bholaram Goenka. The partnership was constituted, according to the petitioner, for manufacture of buckets and agricultural implements and was registered under the small-scale industries being registration No. I/DI/Bihar/1968-2322 (proposal). The State Government with a view to give encouragement to the establishment and for the growth of small-scale industries, issued a notification dated 19th September, 1969. The notification was issued in exercise of powers under Clause (b) of Sub-section (3) of Section 4 of the Bihar Sales Tax Act, 1959. By this notification, newly set up small-scale industries approved and registered by the industries department of the Government of Bihar were exempted from payment of general sales tax and special sales tax for a period of five years from the day the industry started its production. The petitioner-firm, which had already been set up before the notification was issued, filed an application for exemption from payment of general sales tax and special sales tax in form A, as required in the aforesaid notification. The sales tax department granted an exemption certificate in form B exempting the petitioner-firm from payment of sales tax in respect of its purchase of raw materials for the purpose of manufacturing buckets and agricultural implements. Under the exemption granted in form B, the period of exemption was five years beginning from 6th January, 1969, the day the firm had gone into production. According to the petitioner, a new firm of four partners, namely, Bholaram Goenka with his three sons Ram Nivas Goenka, Ishwar Prasad Goenka and Nagarmal Goenka, was constituted under a registered deed of partnership dated 2nd March, 1970, for the purpose of starting a new industrial unit for the manufacture of M.S. rods, production of which was started on and from 11th September, 1970.

3. It is said that the new firm also made an application to the industries department to recognise this unit as a new industry which was also accepted by the industries department. But as the name and style of the old firm and that of the new firm were the same, the industries department amended the earlier registration by inserting therein the item M.S. rods. On the basis of the amendment made by the industries department, similar amendment was made by the sales tax department by amending the exemption certificate in form B and including therein the item of M.S. rods also with effect from 11th September, 1970, the date when the new firm went into production. On the basis of the amendment in the exemption certificate in form B, the petitioner-firm was allowed the benefit of the notification in purchasing the raw materials relating to manufacture of M.S. rods for a period of five years beginning from 6th January, 1969, i.e., up to 5th January, 1974, vide annexure 2. As has been noticed earlier, the Deputy Commissioner and the Commissioner of Commercial Taxes by annexures 3 and 4 respectively also upheld the order of the Assistant Commissioner and rejected the plea advanced on behalf of the petitioner that the period of five years in respect of the raw materials purchased for the manufacture of M.S. rods should be counted from 11th September, 1970, the

date when the new firm went into production. The grievance of the petitioner is that the firm which came into existence in the year 1970 and went into production on 11th September, 1970, was a distinct industrial unit and, as such, was entitled to the benefit under the notification in its own right for a period of five years from the date it went into production. It is further said that the machineries for the production of M.S. rods were different from the one which was used by the old firm for producing buckets and agricultural implements. Reliance was also placed on the insertion of M.S. rods which was made by way of an amendment in the exemption certificate granted by the sales tax department which shows that the production of M.S. rods started with effect from 11th September, 1970.

4. A counter-affidavit has been filed on behalf of the respondents in which, inter alia, it has been stated that the industries department did not recognise the new firm as a newly started small-scale industrial unit and that is why the old registration certificate granted by the industries department for manufacture of buckets and agricultural implements was only amended by inclusion of M.S. rods with effect from 11th September, 1970, when the production of M.S. rods was started. It is further said that in fact no new firm was established but only two other partners who happened to be the father and brother of the old partners were inducted as partners to the firm. It is further said that the petitioner-firm went into production on 6th January, 1969, and was granted exemption from payment of sales tax with respect to purchase made for the production of the items mentioned in the certificate including M.S. rods for a period of five years.

5. Mr. Jain, the Learned Counsel for the petitioner, strenuously urged that the fact that the new firm was not registered as a separate industrial unit by the industries department was not material. He also submitted that likewise the fact that the sales tax department also did not grant a separate exemption certificate in form B was not of any consequence. According to him, separate registration by the industries department and separate exemption certificate by the sales tax department were only matters of procedure and form and could not take away the rights which had accrued to the petitioner under the notification. He also submitted that, keeping in view the object and purpose of the notification, it should be construed in a liberal way so that small-scale industries in the State may flourish. The argument of Mr. Jain, although quite attractive, has no substance. The notification which has been marked as annexure 1 to the writ application clearly says that newly set up industrial unit approved and registered by the industries department of the Government will be exempted from the levy of general sales tax and special sales tax for a period of five years from the day the industry starts its production. That means that before exemption certificate in form B can be granted to the industry by the sales tax department, the industry must be approved and registered by the industries department of the Government of Bihar. In some cases, an establishment may start a new industrial unit but if the establishment wants to avail of the benefit provided in the notification it must get the new unit approved and registered in the industries

department and only then it can claim exemption. The fact that the parent establishment was already registered and approved by the industries department, in my opinion, will not by itself be of any advantage in so far as the newly set up industrial unit is concerned. Mr. Jain, however, contended that M.S. rods was inserted by way of amendment both by the industries department and by the sales tax department. He, therefore, contended that it amounted to approval and registration by the industries department and, consequently, exemption by the sales tax department with regard to M.S. rods with effect from 11th September, 1970. It is difficult to accept this argument also. All that has been said is that item No. 5 of the particulars in form B was amended by inserting M.S. rods with effect from 11th September, 1970. This insertion meant that purchase of raw materials for the production of M.S. rods was also exempted from the levy of sales tax with effect from 11th September, 1970. But that does not mean that the life of the exemption certificate will be extended to a period of five years beginning from 11th September, 1970, with respect to the raw materials purchased for the production of M.S. rods. This I say because it is not said that paragraph 2 of form B was also amended. Paragraph 2 of the form as prescribed says that this certificate is valid up to.... Admittedly, the exemption certificate was granted in the year 1969 and it was to remain valid up to 5th January, 1974. Even if the authorities had jurisdiction to extend the life of the certificate beyond what was mentioned in paragraph 2, it was not so done. The result is that the certificate in spite of amendment of item No. 5 of the particulars remained valid only up to 5th January, 1974. The petitioner, therefore, under this exemption certificate was not entitled to any benefit under the notification beyond 5th January, 1974. I do not, therefore, see any illegality in the orders as contained in annexures 2, 3 and 4 to the writ application.

6. The result, therefore, is that the application has no merit and is dismissed with costs. Hearing fee Rs. 100.

Lalit Mohan Sharma, J.

I agree.