

(2002) 11 PAT CK 0023

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 11381 of 2002

Pooja Engineers Private Ltd.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 26-11-2002

Acts Referred:

Bihar Finance Act, 1981 — Section 42
Bihar Sales Tax Rules, 1983 — Rule 34

Citation : (2003) 51 BLJR 21 : (2003) 1 PLJR 297 : (2004) 138 STC 480

Hon'ble Judges : Nagendra Rai, J

Bench : Single Bench

Advocate : Navniti Pd. Singh and Vikash Jain, for the Appellant; R.K. Dutta, SC IV, for the Respondent

Final Decision : Allowed

Judgement

Nagendra Rai, J.—The petitioner, a Private Limited Company carrying on business of manufacturing and sale of bakery products, has filed the present writ application for a direction to quash Circular No. Bikri-kar/Vapsi/1/99-109 dated 7-1-2000 (Annexure 7-A), issued by the Commissioner of Commercial Taxes (Respondent No. 2), laying down a procedure for the refund of the sales tax amounts, which were found to be collected unauthorisedly from the purchasing-dealers as well as for a direction to the respondent-authorities to refund, to the petitioner the amount of sales tax collected unauthorisedly.

2. The admitted fact is that the petitioner-firm is engaged in manufacturing bakery products from Maida, which is the raw-material. The petitioner is a registered dealer under the provisions of the Bihar Finance Act. It was also registered as a small scale industrial unit in 1987. The State Government with a view to accelerate the industrial production in the State issued Industrial Policy giving benefits under different heads including sales tax incentive to the units since 1986. The petitioner-unit commenced production on 12-11-1987 and availed benefit of set off of sales tax under the Industrial Policy of 1990 up to the

period of 31-12-1994.

3. In the year 1993, the Government came out with another Industrial Policy providing for exemption from the payment of sales tax from the purchase of raw-materials for industrial units mentioned in the said policy. The said exemption was also given to the old industrial units whose investment on plant and machinery did not exceed rupees fifteen crores as on 1-4-1993. The said exemption was to remain in force for a period of seven years from the said date. The petitioner by virtue of fulfilling all the conditions was entitled to the benefit of the aforesaid Industrial policy. However, the Commercial Taxes Department issued a notification on dated 4-4-1994 imposing a condition to the extent that the unit, which had already availed the benefit under any previous Industrial Policy, is not entitled to the benefit under the said policy. In view of the aforesaid condition, after expiry of the period up to 31-12-1994, during which it was availing of the benefit of the set off of sales tax in terms of the. 1990 Policy, the petitioner paid the sales tax to the selling-dealers for the purchases made from 1995.

4. Suprabhat Steels is Limited and others challenged the notification dated 4-4-1994, when imposed the aforesaid condition, in this Court and this Court struck down the notification issued by the Sales Tax Department dated 4-4-1994 imposing the aforesaid condition. The State of Bihar challenged the aforesaid judgment before the Apex Court and the Apex Court upheld the judgment of this Court in the State of Bihar v. Suprabhat Steels, reported in 112 S.T.C. 258 (SC). The Apex Court held that even the old industrial units, which had commenced production prior to 1-4-1993, would be entitled to the facility of sales tax exemption as contemplated in terms of Clause 10.4 (i) (b) of the Industrial Policy, 1993. The petitioner also filed a writ application in this Court being C.W.J.C, No. 6816 of 1997, which was disposed of in terms of the order of the Apex Court, a copy of which is appended as Annexure 4 to the writ petition. The petitioner approached the sales tax authority for grant of exemption which it was entitled in view of the law settled by the Apex Court and this Court and, accordingly, the exemption certificate was granted to the petitioner in Form "kha-II" by the Deputy Commissioner, Commercial Taxes (Respondent No. 3) for the period 1-1-1995 to 31-3-2000 (Annexure-5). The petitioner approached Respondent No. 3 for refund of the sales tax wrongly paid by it on purchases during the period 1-1-1995 to 20-8-1999, who informed the petitioner that the Commissioner, by the impugned circular dated 7-1-2002, has laid down guidelines for refund of the amount of sales tax and the petitioner should take steps accordingly. Thereafter, the petitioner approached the Commissioner of Commercial Taxes again for refund of the amount of sales tax, who dismissed the same on the ground that he cannot sit over the decision taken by the predecessor-in-office (Annexure 7-A) by order dated 9-5-2001 (Annexure 9). Hence, the writ application.

5. Before proceeding to decide the controversy, it is apt to state briefly the

contents of the impugned circular dated 7-1 -2000 (Annexure 7-A). The said circular provides, inter-alia, that the refund can be granted only u/s 42 of the Bihar Finance Act, read with Rule 34 of the Bihar Sales Tax Rules, 1983, to those dealers, who have made the payment of tax. The payment of tax the been made by the selling-dealers and not by the purchasing-dealers. Accordingly, the purchasing-dealers should file their claim before the selling-dealers on the basis of the declaration form and the amount should be refunded by the selling-dealers to the purchasing-dealers. In case the assessment of the selling-dealers has already been completed then the selling-dealers can apply for review of the concluded assessment to the extent of the claim of refund before the respective Assessing Officer and in that case the selling-dealers should be either granted a demand notice showing excess payment of tax or its liability for tax would be reduced to the extent of the amount refunded to the purchasing-dealers.

6. The narration of the facts stated above shows that the petitioner-unit is entitled to the exemption from payment of sales tax on the purchase of raw-materials for the period 1-1-1995 to 20-8-1999 when the exemption certificate was granted. Of the petitioner has paid the amount of sales tax as claimed by it to the selling-dealer then it is entitled to refund of the same. The only controversy is as to how the refund is to be made. The assertion on behalf of the petitioner is that the procedure providing for claiming refund as contained in the impugned circular is arbitrary and cumbersome and the direction contained therein will only result in harassment to the purchasing-dealer. In case the selling-dealer refuses to refund the amount of sales-tax then the purchasing-dealers will have no remedy to get the amount of sales tax refunded.

7. The learned counsel appearing for the State, on the other hand, submitted that Section 42 of the Act, read with Rules 34 of the Rules, contained an elaborate procedure for refund of the sales tax and the refund is to be made only to the dealer or person, who has deposited the amount and as admittedly the purchasing-dealer has not deposited the amount of sales tax, the Commissioner of Commercial Taxes has simplified the procedure for refund of the amount of sales tax by the impugned circular.

8. After having heard learned counsel for the parties, we are of the view that once a dealer is entitled to refund of the amount then the State should refund the same and should to postpone or delay the refund by adopting delaying and dilatory tactics. The State and its officers are required to act fairly and its action should be above board and it should not give an impression that its decision or action has been taken with a view to harass the persons covered by the said action and decision. We are constrained to observe that the impugned circular in this case is arbitrary as the said procedure provided for refund of the money is cumbersome and dilatory one. There is no provision or circular to meet a situation where the selling-dealer refused to refund the amount of tax collected by its from the purchasing-dealer. The selling-dealer is also put to harassment as he is required to file an application for review of the assessment in case the

assessment has been completed. Such cumbersome and arbitrary procedure, in our view, should not be laid down in case of refund of sales tax. If the sales-tax has been paid to the respondent-State by the selling-dealer after its collection from the purchasing-dealer then the State is bound to refund the same to the person, who is entitled to get it. There is no dispute that the petitioner was entitled to exemption and as such it is entitled to the refund of sales tax for the period mentioned above provided it has paid the sales tax to the selling-dealer, who has deposited the amount with the State Government. The State cannot take shelter of technicalities of the provisions contained in Section 42 of the Act, read with Rule 34 of the Rules because the situation, which has arisen in this case or similar cases, is not covered by the aforesaid provisions of the Act and the Rules. Once the dealer is entitled to refund, the State should refund the amount and should not postpone the same on one pretext or the other, which does not stand to the legal scrutiny. Accordingly, we hold that the procedure laid down in the aforesaid circular (Annexure 7-A), which has been challenged by the petitioner, is arbitrary and cumbersome and the same, if allowed to continue, will result in harassment to both the selling-dealer and the purchasing-dealer and the latter, in case of refusal by the former, will be remediless.

9. Accordingly, we are of the view that in a situation like this, an application should be made before the concerned authority by the purchasing-dealer and if an application is made by the purchasing-dealer before the concerned authority, the authority should issue notice to the selling-dealer and on being satisfied that the selling-dealer has collected the amount of sales tax from the purchasing-dealer on raw-materials for the period when the exemption was in force and the said amount has been deposited with the respondent-State, an order of refund should be made in favour of the purchasing-dealer by the concerned authority. Accordingly, the petitioner is directed to file a fresh application before the Deputy Commissioner of Commercial Taxes (Respondent No. 3), who is directed to issue notice to the selling-dealer and after hearing the matter to pass an order of refund or adjustment in case the amount of sales tax has been collected from the purchasing-dealer for the relevant period by the selling-dealer and deposited with the State Government.

10. With the aforesaid direction, this writ application is allowed.