(2002) 04 JH CK 0049

In the Jharkhand High Court

Case No : Writ Petition (T) No. 5536 of 2001

Ram Krishna Industries, Dumka APPELLANT

Vs

State of Jharkhand and Others RESPONDENT

Date of Decision : 23-04-2002

Acts Referred:
Bihar Finance Act, 1981 — Section 7(3)

Citation : (2002) 04 JH CK 0049

Hon'ble Judges : Vinod Kumar Gupta, C.J;Vishnudeo Narayan, J

Bench : Division Bench

Advocate : M.S. Mittal, for the Appellant; B. Poddar, AAG, for the Respondent

Final Decision : Allowed

Judgement

Vishnudeo Narayan, J.—The petitioner had applied for exemption from payment of sales tax on the finished products in terms of the industrial policy resolution of 1995. The petitioner claims that it is entitled for exemption on payment of sales tax on the finished products on two counts; firstly, that it is a new industry and secondly that by manufacture of biscuits, it falls in the category of "thrust" industry. Clause 15.1 of the notification defines "thrust" industry as the one which is engaged with priority development in the State and contains some specified items/Entries relating to some articles/objects which might be manufactured. Entry XVIII in this clause relates to "food" and "food processing" industry. Despite the aforesaid, the petitioner''s application for exemption has been rejected. Apparently, the respondents have taken the stand in the counter affidavit that the rejection was on the ground that the petitioner was neither a new industry, nor was it involved in the activities of a "thrust" industry and hence not entitled to exemption.

2. Section 7(3) of the Bihar Finance Act. 1981 permits the State Government to exempt some specified categories of sales or purchases as mentioned in Clauses A to D of Sub-section (3) therefrom from payment of sales tax or purchase tax. It is in exercise of power vested under Sub-section (3) of Section 7 of the Act,

therefore, that the notification was issued on 22.12.1995 vide S.O. No. 479 granting exemption from payment of sales tax as has been noticed above. It is on the basis of this notification that the petitioner had requested/applied for issue of an exemption certificate. The petitioner''s exemption prayer was disallowed by passing of the impugned order dated 6.10.2001, copy whereof has been filed as Annexure 6 to the writ petition.

3. We very strongly disapprove and deprecate the manner in which the petitioner''s request for exemption was dealt with. If a citizen of this country is an assessee, or a dealer, or for that matter, he is an entrepreneur and he thinks or considers that he is entitled to grant of exemption and if, accordingly, because of an existing notification statutorily issued by the Government, such exemption request is made by him, it becomes the duty of the Authority vested with the power of processing such request and considering such application, to observe the bare and basic principle of natural Justice and to pass a reasoned and speaking order, if the authority thinks that the applicant is not entitled to grant of exemption. Not only that, such a well reasoned and speaking order is required to be directly conveyed to the applicant. In the present case, what we see is that by passing a cryptic and totally non-speaking and unreasoned order, some officer appears to have informed the other Officer that the petitioner is not entitled to grant of exemption. This is totally unacceptable. The applicant was entitled to be himself directly communicated the refusal order and that too, well supported by reasons and grounds of such refusal.

4. From consideration of all the relevant aspects and the material on the record, we prima facie, feel that in the present case the petitioner does appear to have made out the grounds entitling him for exemption. The petitioner says that it is a new industry. It also says that it is working in a thrust area and yet, its request for exemption was disallowed. If the petitioner is indeed a new industry and is indeed working in a thrust area, it is entitled to grant of exemption. Actually, the notification in question does not require both the aforesaid conditions to be met. Even if one of these two conditions, viz., either it is a new industry or it is working in a thrust area is met, even then the exemption entitlement becomes operational.

5. For the reasons aforesaid, we allow this petition and quash and set aside the impugned order/communication disallowing the exemption to the petitioner and direct, the Commissioner, Commercial Taxes, Jharkhand to reconsider the petitioner''s request in the light of the observations made herein above and to dispose it of within a period of six weeks from today. If despite the aforesaid observations and on absolutely valid reasons, the Commissioner also thinks that the petitioner is not entitled for grant of exemption, it may pass a reasoned and speaking order. The petitioner shall be at liberty to challenge any adverse order, if passed in the case, again. Till the aforesaid matter is disposed of by the Commissioner, the respondents shall not take any coercive steps for recovery of the impugned demand.

This petition is allowed. No order as to costs.