(2002) 08 PAT CK 0075

In the Patna High Court

Case No : C.W.J.C. No. 7360 of 2002

Salson Liquors Pvt. Ltd. — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 05-08-2002

Acts Referred:
Bihar Finance Act, 1981 — Section 23A
Bihar State Financial Corporations Act, 1951 — Section 29

Citation : (2002) 08 PAT CK 0075

Hon'ble Judges : R.S. Garg, J;Nagendra Rai, J

Bench : Division Bench

Advocate : S.D. Sanjay, for the Appellant; R.K. Dutta, for State, for the Respondent

Final Decision : Allowed

Judgement

1. The Petitioner has filed the present writ application for quashing the order dated 3.5.2002, as contained in Annexure 9, passed by the State Level Committee, constituted by the State Government vide S.O. letter No. 480 dated 22.12.1995, rejecting the application filed by the Petitioner deperment of tax and for a direction to the aforesaid Committee to issue eligibility certificate.

2. The facts, which are not in dispute, are that the Petitioner is a company incorporated under the provisions of the Companies Act and its shareholders and Directors are citizens of India. The company is registered under the provisions of the Bihar Finance Act as well as under the Central Sales Tax Act. The State Government came out with an industrial policy in the year 1995 giving different types of incentives to the new industrial units or old industrial units increasing their production. One of the incentives was for grant of deferment from payment of sales tax to new industrial units. A copy of the said industrial policy of the State Government has been annexed as Annexure ''1''. In terms of the aforesaid policy, the Commercial Taxes Department of the State Government issued a notification u/s 23A of the Bihar Finance Act, giving benefit of deferment of sales

tax on sale of finished goods to the new industrial units going for production between 1.9.1995 to 31.8.2000, provided they have been granted eligibility certificate by the authority mentioned in the said notification. A copy of the said notification has been annexed as Annexure 2.

3. Two sets of Committees were constituted, namely, the District Level Committee and the State Level Committee to grant eligibility certificate for the benefit of deferment in payment of sales tax on sale of finished products. With regard to medium industries and big industries, the State Level Committee has been empowered to grant eligibility certificate, whereas, in case of small industries, the District Level Committee has been authorised.

4. The Petitioner claims that it established a new unit and went into production on 15.03.2002 and invested immovable properties to the extent of Rs. 1,66,48,972=00. It applied on 3.4.2000 for grant of benefit of deferment of Sales tax before the State level Committee on the ground that it is eligible for the same as it has started the production in between the period 1.9.1995 to 31.8.2000. It further stated that its unit was registered with the Department of Industries, Government of Bihar on 27.3.2000, a copy of which is Annexure 4. In pursuance of the aforesaid application, the Petitioner''s premises were inspected by the concerned authorities to find out as to whether it is eligible for the grant of deferment in payment of sales tax but no decision was taken and the Petitioner came to this Court in C.W.J.C. No. 13940 of 2001 and this Court, by order dated 17.10.2001 (Annexure 7) directed the State Level Committee to dispose of the matter within three months from the date of receipt/production of a copy of the order. It appears that the matter was not disposed of within time and a contempt application being M.J.C. No. 420 of 2002 was filed and during the pendency of the matter, the State Level Committee has rejected the claim of the Petitioner by the impugned order dated 3.5.2001, a copy of which has been appended as Annexure 9 to the writ petition.

5. From a perusal of the order (Annexure 9), it appears that the only ground for rejection of the claim of the Petitioner is that it has not fulfilled the condition as mentioned in Clause 2(8) of the Government resolution dated 22.12.1995 conferring deferment of sales tax, according to which for conferment of the benefit under the Scheme, the entrepreneur has to prove that either it is owner of the land or in case the factory is on a leased hold land, in that case there should be a lease of minimum period of fifteen years with regard to the land and building either in the name of the proprietor, or the partner of the firm, or in the name of the holding company, as the case may be.

6. It is not in dispute that the land, over which the Petitioner has established its factory, belongs to another person, to whom the Bihar State Financial Corporation has advanced loan and it took steps u/s 29 of the Bihar State Financial Corporation Act and sold the land and building to the Petitioner for Rs. 55.80 lacs and an agreement for sale was executed on 16.4.1999. According to the agreement, 25% of the sale amount was to be deposited in cash down, which

was deposited by the Petitioner and the remaining amount was to be paid in 20 equal installments. On 9.4.2002, the Petitioner has paid the entire amount. According to the terms of the agreement, on payment of the entire consideration money, the sale-deed was to be executed by the Bihar State Financial Corporation. The fact of payment of the entire consideration money has been admitted by the Bihar State Financial Corporation, but the Corporation has not executed the sale-deed. Thus, the rejection of the claim of the Petitioner, as stated above, is on the foundation that as no sale-deed has been executed by the Bihar State Financial Corporation in favour of the Petitioner-Unit as the owner of the land and building, Clause 2(8) of the industrial policy has not been fulfilled, as a result of which the Petitioner is not entitled to the grant of eligibility certificate.

7. Learned Counsel for the Petitioner submitted that the main purpose to insist a unit to be either owner of the land or a lessee for a period of fifteen years is that the Government may not face any difficulty in recovering the deferred sales-tax in case of default by the unit. In the present case, admittedly, the unit has been sold by the Bihar State Financial Corporation and the Petitioner has performed its part by depositing the entire consideration money and the possession of the land and building has already been handed over by the Corporation to the Petitioner. The delay is only because of non-examination of the sale deed by the Corporation, for which the Petitioner should not be allowed to suffer. In support of his submission, learned Counsel for the Petitioner relied upon a Division Bench judgment of this Court in C.W.J.C. No. 1599 of 1999 (R), disposed of on 4.1.2000 by the Ranchi Bench of the Patna High Court.

8. Learned Counsel for the State, on the other hand, submitted that the unit is not owner of the land and building as no sale-deed has been executed by the Bihar State Financial Corporation and as such the condition as contained in Clause 2(8) of the said policy has not been fulfilled and the State Level Committee has rightly rejected the claim of the Petitioner for deferment of sales tax.

9. After hearing learned Counsel for the parties and going through the records, we are of the view that the State Level Committee has taken too technical a view of the matter. The very object of Clause 2(8) of the said policy is to see that the land either belongs to the entrepreneur or it has been leased in its favour for a particular period This requirement has been incorporated with the sole purpose that the State Government may not suffer in future if ultimately there is a default in payment of the deferred sales tax by the unit after expiry of the period specified in the scheme. This Court in the case of M/s Eastern Synpacks Limited (supra) had occasion to consider the similar matter. There the sub-lease was granted by the TISCO and the entrepreneur was put in possession but the formal document was not created because of non-fixation of rate of salami by the State Government. Taking into consideration the said matter, a Division Bench of this Court observed; "If there is material to satisfy the State Government that the

Petitioner has set up its industrial unit upon land upon which it is authorized to set up such a unit pursuant to an under-standing with the land-holder, namely, TISCO, then in that event the State Government will have no objection to the grant of benefit of deferment of payment of sales tax in accordance with the Incentive Policy, without production of a registered lease deed for 15 years."

10. In this case, as stated above, the seller is the Bihar State Financial Corporation. An agreement for sale has been executed. The entire consideration amount has been paid by the Petitioner and in terms of the sale-deed, it is now for the Bihar State Financial Corporation to execute the sale-deed. In part performance of the aforesaid agreement, the Petitioner has been put in possession. These matters should have been taken note of and considered by the State Level Committee and it should not have rejected the claim of the Petitioner only on the ground that the formal sale-deed was not produced by the Petitioner-unit. Though the learned Counsel for the Petitioner submitted that on the basis of these materials, this Court should issue a direction for grant of eligibility certificate and the consequential benefit under the aforesaid policy, but we are of the view that this is a matter, which requires reconsideration by the State Level Committee, which has been authorised under the said policy to consider the matter.

11. Accordingly, the impugned order dated 3.5.2002, as contained in Annexure 9, is quashed and the matter is remitted to the State Level Committee to reconsider the matter in the light of the observations made above and take a final decision in the matter within a period of six weeks from the date of receipt/ production of a copy of this order.

12. In the result, this writ application is allowed with the aforementioned observation/direction.