(2002) 02 JH CK 0028

In the Jharkhand High Court

Case No : CWJC No. 473 of 2001

Shivam Coke (P) Ltd. APPELLANT

Vs

State of Jharkhand RESPONDENT

Date of Decision : 19-02-2002

Acts Referred:
Bihar Finance Act, 1981 — Section 7

Citation : (2002) 126 STC 436

Hon'ble Judges : Vinod Kumar Gupta, C.J;A.K. Prasad, J

Bench : Division Bench

Judgement

1. Heard.

The point of controversy involved in this case is indeed very short and simple. Almost all the factual aspects of the controversy forming subject matter of the writ petition are also admitted.

2. The petitioner M/s. Shivam Coke (P) Ltd. is, admittedly, a dealer within the scope and ambit of the Bihar Finance Act, 1981. Admittedly also, u/s 7 of this Act, the State Government is empowered to grant exemption from payment of sales tax on purchase of raw materials. Undoubtedly, a notification under the aforesaid Section 7 of the Act was issued on 22.9.1995 vide S.O. No. 478 whereby, subject to the terms and conditions contained therein, it was provided that the dealers whose production started between 1995-2000 were entitled to grant of exemption from payment of sales tax on purchase of raw materials. It is also an undisputed case of the parties that the petitioner comes within the scope and ambit of this notification and was entitled to grant of exemption having applied in due course of time. But for the reasons beyond its control, exemption certificate in favour of the petitioner was issued only on 31.7.1999 granting exemption in favour of the petitioner with effect from 5.9.95 to 4.9.2003. The grant of exemption certificate in favour of the petitioner on 31.7.99 but making the exemption effective/applicable from 5.9.95 till 4.9.2003 clearly suggests that the exemption -shall operate retrospectively i.e. with effect from 5.9.1995. If

such exemption was to operate retrospectively, the petitioner was entitled to refund of the tax paid by it on the purchase of raw materials from the selling dealers. The petitioner''s grievance is that despite such entitlement, the petitioner has not been given the refund for which the petitioner has approached this Court by filing application under Article 226 of the Constitution of India.

3. The respondents have relied upon a communication bearing No. 2419 dt. 29.6.1999 issued by the Commissioner of Commercial Taxes, Bihar, Patna and addressed to all the Joint Commissioners, Commercial Taxes, whereby a procedure has been prescribed for processing of the refund applications. Paragraph 5 of the said communication lays down a cumbersome procedure, the implementation whereof is, perhaps, almost impossible.

4. After hearing the learned counsel for the parties and on consideration of the relevant aspects of the matter, we find that the aforesaid communication dated 29.6.1999 has not been issued under any provision of the Bihar Finance Act. 1981 or the rules made thereunder. Apart from that, a dealer who otherwise is entitled to grant of exemption and who, based on such exemption is entitled to get refund of the tax amount already paid cannot be driven to take recourse to cumbersome procedure as prescribed in paragraph 5 of the aforesaid communication. Secondly, a selling dealer collecting tax on sale of raw materials cannot also be compelled to file an application for review under the aforesaid communication dated 26.9.1999 so as to obtain an order of refund of the tax amount deposited by it with the Government. Undoubtedly, the selling dealer only statutorily collects tax from the purchasing dealers and statutorily deposits the same with the competent sales tax authority. The selling dealer thus has no interest in the matter after that stage and, therefore, making any provision whereby the purchasing dealer has to depend upon the selling dealer for making any application seeking review of the order and then hoping to get refund from the selling dealer is absolutely de hors the Act and the rules.

5. We therefore, while allowing this writ application pass the following order :--

(i) the petitioner shall make a fresh application to the Deputy Commissioner, Commercial Taxes, Dhanbad Circle, Dhanbad, within a fortnight from today. In the application the petitioner shall claim adjustment/refund of the amount of the tax already paid by it on the purchase of raw materials and to which it is entitled in terms of the exemption certificate dated 31.7.1999 (supra) ;

(ii) on receipt of such representation/ application, the Deputy Commissioner, Commercial Taxes, shall process the same, consider it in the light of the observations made above and upon verification of all the facts and figures contained in the said representation, particularly those relating to the payment of the tax for which refund is claimed, shall pass an appropriate order within a period of three weeks from the date of receipt of the representation/application. While Passing the appropriate order, it shall be open to the Deputy Commissioner of Commercial Taxes to either refund the amount or to make its adjustment towards future payment.

This writ application is thus disposed of. No order as to costs.

