

(2002) 08 PAT CK 0120
In the Patna High Court
Case No : C.W.J.C. No. 7121

Shivam Enterprises

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 07-08-2002

Acts Referred:

Citation : (2002) 08 PAT CK 0120

Final Decision : Dismissed

Judgement

1. The Petitioners in all the thirteen writ applications are producing soft coke/ domestic fuel. Admittedly, they used to purchase raw materials for making the aforesaid product from the State of Jharkhand and other States. It is an admitted position that under the Industrial Incentive Policy, 1995, they have been granted exemption from payment of tax on sale of their finished products i.e. soft coke, for a period of ten years.

2. The Petitioners have filed the present writ applications challenging the provisions of Ordinance No. 1 of 2001 (Bihar Tax on Entry of Goods into Local Area for Consumption, Use or Sale Therein Amendment Ordinance, 2001 (hereinafter referred to as the Ordinance) as well as the notification dated 25th July, 2001, whereby the coal has also been included as one of the scheduled articles under the aforesaid Ordinance and is liable to Entry tax at the rate of 4%.

3. According to the Petitioners, they are not liable to pay Entry tax as the Entry tax levied upon them is not adjusted towards the sales tax by reason of the fact that they are exempted from payment of sales tax in terms of the Industrial Incentive Policy, 1995, on finished goods.

4. The Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale Therein Act, 1993 (hereinafter referred to as "the Act") has been enacted to levy Entry tax at one time on the scheduled articles, coming into the local area for use, consumption or sale therein at the rate not exceeding 5% as provided under the Act as specified by the State Government in the notification published in the

official gazette. Coal was not included in the earlier notification. Later on, the said provision was amended by the Ordinance and the coal has been included as one of the scheduled articles liable to pay entry tax under the Act. The charging provision is Section 3 of the Act, which prior to amendment by the Ordinance was as follows:

3. Charge of Tax.-(1) There shall be levied and collected a tax on entry of scheduled goods into a local area for consumption, use or sale therein at such rate not exceeding 5 percentum of the import value of such goods as may be specified by the State Government in a notification published in an official gazette subject to such conditions as may be prescribed:

Provided different rates for different scheduled goods and different local areas may be specified by the State Government.

(2) The tax leviable under this Act shall be paid by every dealer liable to pay tax under Bihar Finance Act, 1981 or any other person who brings or causes to be brought into the local areas such scheduled goods whether on his own account or on account of his principal or takes delivery or is entitled to take delivery of such goods on such entry:

Provided no tax shall be leviable in respect of entry of such scheduled goods effected by a person other than the dealer if, the value of such goods does not exceed 25 thousands in a year.

(3) Notwithstanding anything contained in Sub-sections (1) and (2) of this section and subject to the provision of this Act there shall be levied and collected a tax on the entry of any Motor Vehicle into any local area for. use or sale therein which is liable for registration in the State under the Motor Vehicles Act, 1988. The rate of tax shall be at such rate or rates as may be specified by the State Government by a notification published in the official gazette on the purchase/import value of motor vehicle but not exceeding the rate prescribed for sales tax for such motor vehicles under the Bihar Finance Act, 1981:

Provided that no tax shall be levied and collected in respect of any motor vehicle which was registered in any other State or Union Territory under the Motor Vehicles Act, 1988 for a period of fifteen months or more before the date on which it is registered in the State under that Act.

5. According to the provision, the Dealer is liable to pay tax under the Finance Act as well as non-dealer is liable to pay entry tax if he carries scheduled goods for the purpose mentioned in the section. Under the charging section, there was no provision that the Entry tax paid shall be adjusted towards the sales tax under the Bihar Finance Act but the said provision was incorporated by the notification dated 25th of February, 1993. Later on, by the said Ordinance, Section 3 of the Act was amended and a proviso was added incorporating the provision, which was earlier in the notification and the same runs as follows:

Provided further, that where an importer of scheduled goods liable to pay tax

under the Act, becomes liable to pay tax under the Bihar Finance Act, 1981 (Bihar Act 5, 1981) by virtue of sale of such scheduled goods, his liability to pay tax under the Bihar Finance Act, 1981 shall stand reduced to the extent of tax paid under the Act.

6. The Entry of goods has been defined u/s 2(c) of the Act, which, according to the definition, means entry of goods into a local area from any place outside that local area or any place outside the State for consumption, use, or sale therein. A proviso was also added to the aforesaid definition by the Ordinance, according to which in case of such goods which are liable to tax u/s 12(1) of the Bihar Finance Act, entry of goods shall mean entry of goods into local area from any place outside the State for consumption, use or sale therein. The coal is taxable u/s 12(1) of the Bihar Finance Act.

7. The stand of the Petitioners is that as they are exempted from payment of tax under the Bihar Finance Act, there is no question of there being adjustment of the Entry Tax paid by them towards sales tax, whereas, in case of manufacture of coke of the other State outside the State, the entry tax paid by them for bringing the goods into the local areas of the State of Bihar will be adjusted towards sales tax payable by them at the time of sale of their products (Coke) in the State. According to the Petitioners, there is a discrimination writ large in such a situation and in that view of the matter, the action of the State is discriminatory and violative of Articles 19(1)(g), 301 and 304(b) of the Constitution of India.

8. The stand of the State, on the other hand, is that the Act is compensatory in nature and its validity has been upheld by the Apex Court in the case of State of Bihar v. Bihar Chamber of Commerce, reported in AIR 1996 S.C. 2344 : 1996(1) PLJR (SC) 105 and in that view of the matter, Articles 301 and 304 (b) have no application to these cases. It is also not violative of Article 19(g) of the Constitution by reason of there being no discrimination in the matter.

9. The manufacturers of coke as well as the persons dealing in steel and iron in this State had challenged the aforesaid Ordinance earlier in C.W.J.C. No. 218 of 2002 and other batch cases and we have disposed of the same on 19.2.2002 by dismissing the writ applications giving liberty to them to move before the State Government for granting exemption as provided under the Act.

10. The vires of the Act was challenged by the Bihar Chamber of Commerce and this Court held the Act to be ultra vires and the State filed an appeal before the Apex Court against the judgment of this Court and the Apex Court in the case of State of Bihar v. The Bihar Chamber of Commerce (supra) upheld the validity of the Act and held in paragraph 12 as follows:

It must be held that the State has established that the Impugned tax is compensatory in nature.

The Apex Court also considered the question from other angle as to whether it is

violative of Article 301 of the Constitution of India or not and upheld the validity of the Act.

11. The law is well-settled that the taxes, which directly or immediately restrict or interfere with the freedom of trade and commerce are violative of Article 301, but once the taxation law is of regulatory measure or compensatory measure, the aforesaid Article is not offended. In this connection, reference may be made to the Constitution Bench decision of the Apex Court in the case of *The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others*,

12. As stated above, this Act has been held to be compensatory in nature. Thus its validity cannot be tested with reference to the provisions contained in Articles 301 and 304 of the Constitution. So far as the submission advanced on behalf of the Petitioners that they have been discriminated vis-a-vis the manufacturer of the finished goods of the other State is concerned, the same is devoid of any substance. Under the provisions of the Act, the Entry tax is levied on the entry of the goods specified in the schedule and according to the proviso added to Section 3(2) of the Act, the adjustment of entry tax towards the sales tax under the Finance Act is made only when the sale of the scheduled goods takes place. If the goods which are liable to Entry tax at the time of entering into the local areas are not sold in the original form and used as a raw-material and finished products are made then the benefit of the said proviso is not available to it.

13. According to the own case of the Petitioners, the coal is imported by them in the State of Bihar and it is not sold as such, on the other hand, the coke is manufactured out of the said coal and then the same is sold in the market. So far as the finished products are concerned, admittedly they are not paying Entry tax. They are not liable to pay entry tax on the manufactured products. Thus there is no question of its adjustment towards the sales tax paid on finished goods. This apart, as stated above, they are already exempted from paying sales tax on finished goods and as such no question for adjustment of Entry tax towards sales tax arises at all.

14. So far as the manufacturers of coke of other States are concerned, they are liable to pay sales tax and Entry tax and in their case the payment of Entry tax is adjusted towards the sales tax, so their case stands on a different footing and the Petitioners cannot claim any comparison with their case. This part, they pay entry tax on a higher value of manufactured goods, whereas, the Petitioners pay Entry tax on coal, which is of a lesser value. So, in this way also, their cases cannot be equated.

15. This apart, we will like to mention the other argument advanced by Mr. Giri which, we think, was made only for the sake of argument but he insisted that the said argument should also be considered and as such we are considering the same also. He submitted that in view of the provision contained in Section 8 of the Act, which has made provision of the Bihar Finance Act and the Rules framed there under applicable to the Act with regard to assessment proceedings, refund

etc., the Petitioners are entitled to the refund of the payment of entry tax, specially in view of the proviso added to Section 3(2) by the Ordinance. Section 8 of the Act only prescribes procedure, which is to be followed by the authorities while dealing with the matters under the Act regarding assessment and other formalities including the refund, meaning thereby if any refund is due under the Act for any reason then the same procedure is to be followed as is being followed under the Finance Act. It does not contain any specific provision in the sense that if the refund is permissible under the Finance Act by virtue of any notification then the same benefit should be given under the Act also. It does not show that the provisions under the Finance Act with regard to exemption or refund granted will ipso facto apply to the Entry Tax Act. If the refund was granted with regard to the Finance Act, the same cannot be a ground that the refund is to be granted under the Act.

16. For the aforementioned reasons, we find no merit in these writ applications and they are, accordingly, dismissed.