(2004) 09 PAT CK 0005

In the Patna High Court

Case No : CWJC No. 11392 of 2004

Snowtemp Commercial (P) Ltd. APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 18-09-2004

Acts Referred:
Bihar Finance Act, 1981 — Section 7

Citation : (2004) 3 BLJR 2326 : (2004) 4 PLJR 855 : (2005) 141 STC 247

Hon'ble Judges : S.N. Hussain, J;R.N. Prasad, J

Bench : Division Bench

Advocate : S.D. Sanjay and Suraj Samdarshi, V.M.K. Sinha, for the Appellant; R.K. Dutta, for the Respondent

Final Decision : Allowed

Judgement

R.N. Prasad and S.N. Hussain, JJ.—The petitioner is a company. It is manufacturing soft coke from coal by adopting the technology of Central Fuel Research Institute and has been granted permanent registration as a small scale Industry. In terms of the government notification No. S.O. 478 dated 22.12.95 it has been granted exemption from payment of sales tax on purchase of raw materials vide exemption certificate dated 27.1.99, Annexure-1. It used to purchase coal from the Central Coalfields Ltd. without payment of sales tax. This procedure continued prior to 15.11.2000, the date on which the State of Bihar was bifurcated and a new State of Jharkhand was created. Since the petitioner was in regular need of coal it continued to purchase the same but it was coerced to pay sales tax with effect from 15.11.2000 though it had been granted exemption certificate.

2. The petitioner challenged the said action of the respondents in CWJC No. 15830/2001 which was heard along with CWJC No. 13697/2001, M/s. Sri Ram Enterprises and Ors. v. The State of Bihar and Ors. and analogous cases, by a learned Single Judge of this Court who after hearing the parties and in view of the judgment dated 2.4.2002 of the Division Bench passed in LPA No. 240/2002,

Commissioner of Commercial Taxes, Ranchi and Ors. v. M/s. Swam Rekha Cokes and Coals Pvt. Ltd. and Ors., [Reported in 2002(2) PUR 334] allowed the writ petitions holding that the petitioner is not liable to pay sales tax on purchase of coal, Annexure-4. Meanwhile, the Commissioner, Commercial Taxes, Ranchi filed SLP before the Apex Court giving rise to Civil Appeal No. 7798/2002 against the judgment of LPA No. 240/2002. The respondent-the State of Jharkhand challenged the order dated 18.7.2002, Annexure-4 in LPA No. 102/2003. The said LPA was dismissed on 10.2.2003, Annexure-5. The respondent-State of Jharkhand thereafter challenged the order before the Apex Court in SLP No. 13401/2003 (Civil Appeal No. 3035/2004). The said appeal was heard along with Civil Appeal No. 7798/2002 and other appeals filed by the Associated Cement Company Ltd. and Bhagwati Coke Industries Pvt. Ltd. Howevers, the Apex Court after hearing the parties dismissed the Civil Appeal No. 7798/2002 and Civil Appeal arising out of SLP No. 13401/2003 and allowed other appeals, Annexure-8. The petitioner, during the pendency of the Civil Appeal No. 7798/2002 before the Apex Court, filed a writ petition bearing CWJC. No. 12651/2002 for refund of the sales tax illegally realised from the petitioner. The said writ petition was heard along with other writ petitions. However, in those cases the counsel for the respondents took stand that Civil Appeal is pending before the Supreme Court and in that view of the matter, the writ petitions were permitted to be withdrawn holding that the judgment and order of the Supreme Court shall be binding on the parties including the question of refund Annexure-7.

3. The petitioner thereafter filed an application for refund before the authority, respondent No. 3, the Central Coalfields Limited. However, no action was taken in spite of the reminders. Thus, the petitioner was forced to file this writ petition for issue of direction to respondent No. 3 to refund the sales tax collected from it on purchase of coal. The copy of the writ petition was served on the counsel for the respondents. Counsel for the State of Bihar pointed out that in this matter he has nothing to do. No one appeared on behalf of the respondent No. 2 in spite of service of notice on it. Counsel for respondent No. 3 Mr. V.M.K. Sinha submitted that the petitioner should have filed an application before the Joint Commissioner, Commercial Taxes, Dhanbad because respondent No. 3 after collecting the sales tax deposited the same in the Commercial Taxes Department, whereas the learned counsel for the petitioner submitted that since the sales tax was collected by respondent No. 3 it is responsible for the refund of the same.

4. However, on consideration of the submissions made by the counsel for the parties and the materials available on record this much is obvious that collection of sales tax during the period the petitioner was granted exemption from payment of sales tax has been held right from the High Court upto the Apex Court illegal and the petitioner was not liable to pay the sales tax. In this regard it would be appropriate to quote one paragraph from the order of the Supreme Court to make the position clear.

"We, therefore, find ourselves in agreement with the view of the Patna High

Court in Civil Appeal No. 7798/2002. We hold that the benefit of exemption from payment of sales tax on purchase of raw materials in respect of new units or the benefit envisaged for units which have undertaken diversification or. expansion are available to those units, if eligible under S.O. 478 dated 22.12.1995 notwithstanding the fact that the erstwhile State of Bihar has been divided into two States by creation of the new State of Jharkhand. We are also satisfied that the said S.O. 478 has not been either modified, amended or altered by the State of Jharkhand and, therefore, it must continue to operate in the State of Jharkhand till such time as it is modified, repealed or altered in the manner prescribed by Section 85 of the Act."

5. It is evident from the aforesaid paragraph that collection of the sales tax from the petitioner was held illegal and it has been made clear that S O 478 dated 22.12.95, notwithstanding the fact that the erstwhile State of Bihar has been divided into two States by creation of the new State of Jharkhand, is binding on the successor State until it is modified, amended or altered. This Court also has already said in Annexure-7 that the order of the Supreme Court would be binding on the parties. However, on consideration this much is obvious that though the petitioner was granted certificate for exemption from payment of the sales tax on purchase of raw materials, soon after bifurcation it was forced by respondent No. 3 to pay the sales tax on purchase of the raw materials. Thus, the action of respondent No. 3 is illegal and as such, the petitioner is entitled for the recovery/ adjustment of the sales tax collected from it by respondent No. 3.

6. Thus, the writ petition is allowed directing respondent No. 3 to refund the sales tax collected from the petitioner. Annexure-6/A is statement of tax amount refundable from respondent No. 3. Respondent No. 3 shall be at liberty to verify the same and thereafter he shall refund it within a period of three months from the date of receipt/production of a copy of this order. It is, however, made clear that respondent No. 3 shall also be at liberty to adjust the sales tax collected from the petitioner against future purchase of the raw materials by the petitioner.

