(2005) 12 JH CK 0017

In the Jharkhand High Court

Case No : WP (T) No. 3851 of 2004

Soma Puf Metal Private Ltd. APPELLANT

Vs

State of Jharkhand and Others RESPONDENT

Date of Decision : 23-12-2005

Acts Referred:

Bihar Finance Act, 1981 — Section 7(3)(6)

Citation : (2006) 1 JCR 356

Hon'ble Judges : N. Dhinakar, C.J;M.Y. Eqbal, J

Bench : Division Bench

Advocate : Biren Poddar and Ajay Poddar, for the Appellant; K.K. Jhunjhunwala, GP III, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Mr. Biren Poddar, learned Counsel for the petitioner and Mr. K.K. Jhunjhunwala, learned standing counsel No. III.

2. In this writ petition the petitioner seeks direction upon the Joint Commissioner of Commercial Taxes (Admn.), Jamshedpur Division, Jamdhsedpur (respondent No. 3) to issue the Eligibility Certificate for deferment of the sales-tax on sale of finished goods under Notification No. 480 dated 22.12.1995 for a period of eight years from the date of commercial production of the petitioner''s unit and further for a direction restraining the respondents from collecting the sales-tax from the petitioner. By filing amendment petition, petitioner further sought relief for quashing the order dated 2.11.2004 passed by the respondent authority rejecting the application of the petitioner for deferment of sales tax.

3. The facts of the case lie in a narrow compass :

Petitioner is a private limited company and it came into existence during the year 1999 and alleged to have been started production by manufacturing F.R.P. auto component, FRP Shielding etc. and other automobile accessories. It is contended that the Unit was registered as Small Scale Unit on 11.5.1999 and was granted registration number Managing Director, Adityapur Industrial Area Development Authority, Jamshedpur (in short AIIDA). Petitioner''s unit said to have came into commercial production on, 16.1.1999 and on 12.3.1999. Petitioner filed application claiming benefit of deferment of sales tax under the 1995 Industrial Policy of the State Government. It is further contended that inspite of the requirements fulfilled by the petitioner, the application for deferment of sales tax was illegally rejected by the respondent authority.

4. A counter affidavit has been filed by the respondents, wherein It is stated that earlier there was partnership firm namely, Soma Agencies, which was, converted into private limited company with effect from 1.4.2001. Pursuant to the Industrial Policy 1995, the Commercial Tax Department, Government of Bihar issued Notification No, 480 dated 22.12.1995 in exercise of power conferred u/s 7(3)(6) of the Bihar Finance Act 1981 whereby deferement of sales tax payable on sales of finished goods has been granted to the new Industrial Units as well as to the Industrial Units coming with expansion/diversification in all sectors fulfilling the conditions as contained in different clauses of the said Notification. Petitioner said to have started commercial production on 16.1.1999 but the total fixed capital investment was made for Rs. 26,47,763/-. Petitioner filed incomplete application on 12.3.1999 without any proof of production from the Industry Department or Adityapur Industrial Area Development Authority which is competent authority. The said application was not as per the provisions of the Standing Order No. 480, hence it was not considered. Petitioner filed fresh application on 11.9.1999 as per provisions of Standing Order and along with permanent registration certificate. The application was not filed within 60 days from the date of production. It is stated that the application was filed more than 237 days after the date of production. Since the said application was against the Rule 6(1)(2) of Standing Order 480, the District Level Committee rejected the same.

5. Mr. Biren Poddar, learned Counsel for the petitioner assailed the Notification of the respondent authority as being illegal and wholly without jurisdiction. Learned Counsel submitted that action of Die respondents in rejecting the application is arbitrary and against the principles of Industrial Policy, as a result of which the legitimate right of the petitioner has been violated. Learned Counsel submitted that application for deferment of sales tax could not have been rejected on technical ground. In this connection learned Counsel relied upon the decisions of the Patna High Court in the case of "Bihar Foundary & Casting Limited v. State of Bihar and Ors." (2001) BRLJ 52 and in the case of "S.C. I. India Ltd. v. The State of Bihar and Ors.," (2002) 2 PLJR 288.

6. There is no dispute that with a view to encourage industrialization of the State, the Government of Bihar came with an industrial policy in 1995, inter alia provided for certain concessions in the matter of sales tax to those establishing new industries in the State and also those who expanded their existing capacities. But such benefit under the Industrial Policy is subject to fulfillment of

certain conditions as contemplated under the sales tax rules. In the case of Commissioner of Sales Tax, Orissa and Another Vs. Jagannath Cotton Company and Another, , the Supreme Court observed :

Apart from the above consideration, we must also see what are the provisions, if any, in the Orissa Sales Tax Act providing exemption from sales tax in the case of new industries and whether they are consistent with the provisions of IPR or are they different. The High Court seems to have proceeded on the assumption that the IPR by itself is enough to provide the exemption from the sales tax. But where the provisions of the Sales Tax Act are also amended providing for exemption, then the Court has to see whether they are the same as the IPR or are they different and if different, what is the effect of which difference. It is, therefore, necessary to ascertain the relevant provisions in the Sales Tax Act, rules and notifications, if any, issued thereunder before expressing a final opinion in the matter.

7. It has not been disputed by the petitioner that in terms of Notification No. 480 dated 22.12.1995 issued by the Commercial Tax Department in excise of power conferred u/s 7(3)(6) of the Bihar Finance Act, 1981, only those units shall be granted exemption in payment of sales-tax which came with expansion/ diversification subject to fulfilling the condition as contained in different clauses of the said notification. In terms of the said notification the unit is required to submit application with all certificates relating to production and expansion within 60 days from the date of production.

8. From perusal of Annexures-3 and 4 to the writ petition, it appears that registration of the petitioner''s Unit as Small Scale Industry was done on 11.5.1999 and on 12.3.1999 application was made for the said benefit. Annexure-11 to the writ petition is the receipt dated 12.10.2000 regarding submission of application. From Annexure-13 to the writ petition, it appears that application for deferment of sales tax was submitted by the petitioner''s unit to the Deputy Commissioner, Commercial Tax on 20.10.2000. The respondent authority have taken notice of the fact that application was filed only on 17.1.2000. The authority has, therefore, refused to consider the claim of the petitioner for the benefit under the Industrial Policy in the matter of deferment of sales tax.

9. We do not find the action of the respondents either illegal or mala fide. As noticed above, a unit seeking benefit under the Industrial Policy must fulfill all the conditions and such benefits shall be granted strictly in accordance with procedure provided in the rules. In that view of the matter, we do not find any reason to interfere with the impugned order passed by the respondent authority. There is no merit in this writ application, which is, accordingly, rejected.