

(1998) 08 PAT CK 0051

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.1887 of 1998 (R)

Steel India

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 19-08-1998

Acts Referred:

Bihar Finance Act, 1981 — Section 2, 7(3)

Citation : (1999) 47 BLJR 94

Hon'ble Judges : R.A. Sharma, J;A.K. Prasad, J

Bench : Division Bench

Advocate : Pawan Kumar and A.K. Sahni, for the Appellant; Indrani Sen Chaudhary, S.C.I., for the Respondent

Final Decision : Dismissed

Judgement

R.A. Sharma, J.—The petitioner has filed this writ petition challenging the order dated May 15, 1998, passed by the Joint Commissioner of Commercial Taxes (Administration), Dhanbad (respondent No. 3), contained in annexure 14 to the writ petition, setting aside the certificate exempting it from payment of tax on purchase of raw materials and directing the Bokaro Steel Plant not to issue any tax-free raw material to it, except on receipt of the new/revised exemption certificate. By the said order, which has been passed by him in exercise of revisional power conferred on him u/s 46(4) of the Bihar Finance Act, 1981 (hereinafter referred to as "the Act"), the Joint Commissioner has held that the petitioner is not entitled to exemption from payment of tax on purchase of raw materials under the Government Notification S.O. 95 dated April 4, 1994 (hereinafter referred to as "the notification") because it is not manufacturing any finished goods.

2. The Government of Bihar adopted Industrial Policy, 1993, providing incentives to the entrepreneurs to establish new industries. One of the incentives was in the form of exemption from payment of sales tax on purchase of raw materials. Pursuant to the said policy decision the Government issued the notification giving

benefit of exemption from payment of tax on purchase of raw materials to 46 industries mentioned in Clause 1. Clause 2 of the notification, the English version of which is reproduced below, has specified the raw material with respect to which the exemption from payment of tax can be claimed and has also laid down the conditions subject to which such exemption can be availed of by the industries :

"This exemption is available on such raw material which is directly used for manufacture. Direct raw material means only such raw materials which are directly consumed for conversion into finished goods, but those raw materials which are indirectly used such as coal, fuel, oil, etc., shall not be included in such raw materials."

According to the said Clause 2 the exemption from payment of tax on purchase of raw materials is available to an industrial unit only when it uses the raw materials in manufacturing the finished goods.

3. The Joint Commissioner in the impugned order has held that the petitioner is not manufacturing finished goods and it is only doing the work of cutting the iron coil into small pieces. The learned counsel for the petitioner has disputed the said findings and in this connection he has placed reliance on paragraph 24 of the writ petition, which is reproduced below :

"That in the case of the petitioner the petitioner is manufacturing goods by making various process and after bringing the coil stretching it and then cutting according to the size as per the demand and thereafter put in the furnace and make it mild so that the steel so made can be used for manufacturing of various items like almirah, doors, etc., and in fact the different commodity de hors of the sheet roll is made out."

Reply of paragraph 24 is contained in paragraph 33 of the counter-affidavit filed by the respondents, which is also reproduced below :

"That with regard to the statements made in para 24 of the writ petition, it is stated that the petitioner do not have any furnace and, therefore, the statements made in this paragraph is incorrect and as such denied."

In paragraph 24 of the writ petition, the petitioner has stated that, (i) it is manufacturing goods by making various process, (ii) it cuts the iron coil into various size as per demand, and (iii) thereafter puts them in the furnace to make them mild so that the steel may be used for manufacturing of various items, like almirah, doors, etc.

4. The petitioner has not stated the goods, it is manufacturing. In fact it is not manufacturing any finished goods and it is only doing the work of cutting iron coil into smaller pieces. its allegations that it puts the small size iron sheet in furnace to make the mild so that they may be used for manufacturing various items are factually incorrect, because it does not have any such furnace. In paragraph 33 of the counter-affidavit it has been specifically stated by the

respondents that the petitioner has no furnace and the same has not been denied or disputed in the rejoinder affidavit. Cutting of the iron sheet into the small pieces does not amount to manufacture of finished goods. Therefore, the petitioner is not entitled to exemption from payment of tax on purchase of raw materials. In this connection reference may be made to Commissioner of Sales Tax, Orissa v. Jagannath Cotton Company [1995] 99 STC 83 ORI, wherein the Supreme Court while dealing with the similar question has laid down as under :

"Manufacture, in its ordinary connotation, signifies emergence of new and different goods as understood in relevant commercial circles. Furthermore, the use of the expression "purchase of raw material" itself shows that what is ultimately produced is different goods than the raw material used. Similarly, the repeated use of the expression "finished products" and the grant of exemption in the case of small-scale industries both in respect of raw materials as well as finished products indicates that these concessions at substantial cost to public exchequer were being provided with a view to encourage units engaged in the manufacture or production of goods and not to help those units which merely engaged themselves in some sort of processing whereunder the goods remain essentially the same goods even after the said process. Even if a process is adopted, the test is the same, viz., whether different goods emerge as a result of application of such process."

5. The learned counsel for the petitioner in this connection has submitted that the question as to whether the petitioner is engaged in manufacture of goods has to be decided with reference to the definition of the word "manufacture" contained in Section 2(n) of the Act, which is reproduced below :

"2(n) "manufacture" with all its grammatical variations and cognate expressions, means producing, making, extracting, altering, ornamenting, finishing or otherwise processing, treating or adopting any goods but does not include such manufacture or manufacturing process as may be prescribed."

The definitions contained in Section 2 of the Act, including that of the word "manufacture" in Section 2(n) can be applicable "unless there is anything repugnant in the subject or context". The notification granting exemption from payment of tax on raw material has been issued by the State Government in exercise of power conferred on it Under Sub-section (3) of Section 7 of the Act, which is quoted below :

"7(3) The State Government may, by notification and subject to such conditions or restrictions as it may impose, exempt from the sales tax or purchase tax--

- (a) sales of any goods or class or description of goods ;
- (b) sales of any goods or class or description of goods to or by any class of dealers ;
- (c) any sale or category or description of sales ; and

(d) purchase of any goods by any class of dealers or any purchase or category or description of purchases of such goods."

Sub-section (3) of Section 7 of the Act specifically empowers the Government to grant exemption "subject to such conditions or restrictions as it may impose". When the Government grants exemption, it can, therefore, impose conditions subject to which exemption can be availed of by the industries. The notification, a copy of which has been filed as annexure 1 to the writ petition, has restricted the benefit of exemption to industries mentioned in Clause 1 and even those specified industries can avail of the benefit only if they, as laid down by Clause 2, produce/manufacture finished goods out of such raw materials. Therefore, it is not the definition of the word "manufacture" as given in Section 2(n) of the Act, which has any relevance for the purpose of granting exemption. What is relevant is the conditions laid down in the notification subject to which benefit of exemption can be availed of.

6. In this connection the learned counsel for the petitioner further submitted that even cutting of the iron sheet/coil into small pieces amount to manufacture of finished goods and in support of his submission he has placed reliance on (i) *Kross Manufactures v. State of Bihar* 1996 (2) PLJR 725, (ii) *Sri Jagannath Industries v. State of Orissa* [1995] 97 STC 375 (Ori) [FB], (iii) *C.T.O. v. Bhonri Lal Jain* [1994] 94 STC 118 (Raj) and (iv) *State of Gujarat Vs. Lina Traders*, . It is not possible to accede to the said contention of the learned counsel. In none of the cases cited by the learned counsel for the petitioner, the question as to whether the work of mere cutting of raw material, like iron sheet/ coil, into pieces without anything more amount to manufacture of finished goods, was involved. In *Kross Manufactures* 1996 (2) PLJR 725, the petitioner therein was manufacturing auto parts made of iron and steel. This fact is stated in paragraph"1" of the judgment itself. In *Sri Jagannath Industries* [1995] 97 STC 375 (Ori) [FB] making of exercise and bound books out of papers by process of cutting, ruling, stitching, sizing and binding with cloth and leather was held a manufacturing process. It is not a case of simple cutting the paper into small pieces. Here by applying the appropriate process new finished goods, namely, exercise and bound books were produced. The same is the position in *C.T.O. v. Bhonri Lal Jain* [1994] 94 STC 118, wherein the learned single Judge of Rajasthan High Court held that cutting of stones after excavation in the form of blocks of specific sizes having definite length, breadth and thickness and having different commercial name in common and commercial parlance amount to the process of manufacture. In *State of Gujarat Vs. Lina Traders*, the question therein was as to whether the sale of stone chips made out of the grit amount to resale of the grit within the meaning assigned to it in the Gujarat Sales Tax Act. It was held that the stone chips are produced by subjecting the grit to the process of sieving and they have a distinct and separate commercial identity and are put to different use ; while stone chips are used in the manufacture of flooring tiles, the grit is generally used as building material. This judgment of the High Court has to be read with reference to the definition of the word "resale",

contained in the said Act.

7. For the reasons given above, this writ petition is dismissed. No cost.

A.K. Prasad, J.

8. I agree.