(2002) 08 JH CK 0041

In the Jharkhand High Court

Case No : C.W.J.C. No. 3123 of 2002

Sumit Fuels — APPELLANT

Vs

State of Jharkhand and Others — RESPONDENT

Date of Decision : 27-08-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 08 JH CK 0041

Hon'ble Judges : Vinod Kumar Gupta, C.J;Hari Shankar Prasad, J

Bench : Division Bench

Advocate : M.S. Mittal, A.K. Yadav, V.Mittal and N.K. Pasari, for the Appellant; B.S. Lal, AAG, for the Respondent

Final Decision : Allowed

Judgement

1. Mr. Burnwal submitted that the petitioner had not been co-operative with the Commissioner, Commercial Taxes, and because of the non-co-operation of the petitioner the matter could not be disposed of in time and it is because of this reason that the Court''s order dated 14.8.2002 could not be complied with and implemented in time. This assertion and submission on the part of Mr. Burnwal is not at all borne out from the record. Actually this oral submission of Mr. Burnwal does not get any support from the averments made in the application for extension filed on behalf of the respondents. All that is borne out is that on 21.8.2002 a communication was sent on behalf of the Commissioner addressed to the petitioner calling the petitioner to appear on 23.8.2002 along with "necessary papers". On 23.8.2002 the petitioner did appear along with "necessary papers" as is clearly borne out from the copy of the communication of the petitioner dated 23.8.2002, which has been filed by none else than the respondents along with the Extension Application. It is altogether a different matter that on 23.8.2002 the Commissioner, Commercial Taxes himself was not available.

2. On 23.8.2002 for the very first time the respondents spelt out some specific/

named documents which they called upon the petitioner to produce on 26.8.2002. The Commissioner again was not available because he had gone on leave. In what manner therefore, on the basis of the aforesaid narrative of facts, can the petitioner be held responsible in not co-operating the Commissioner has not been understood by us.

3. Actually, on the contrary the aforesaid facts clearly and unmistakenly point out that the petitioner rendered every possible co-operation and the matter could not be disposed of only because of the fault and neglect on the part of the respondents. In the face of this factual background, Mr. Burnwal''s assertion and accusation of no co-operation by the petitioner is not at all correct. The respondents have not complied with the Court''s direction dated 14.8.2002, apparently and prima facie, purposely and deliberately.

4. Since the order dated 14.8.2002 has not been complied with, it appears that the respondents are not interested in deciding the issue on their own. We accordingly, have decided to hear the parties and dispose of this petition ourselves, today itself.

5. The petitioner has challenged the communication/order dated 3rd May, 2002 whereby the petitioner''s request for grant of Exemption Certificate on the basis of Notifications Nos. S.O. 478 and 479, both dated 22.12.1995, has been rejected. These two notifications provide for grant of exemption from payment of sale tax on the purchase of raw material as also on the sale of finished products. This case has a small chequered history, in the sense that the petitioner has been fighting this legal battle since the year 1999 when he first approached the Commercial Taxes Department for the issuance of the Exemption Certificate in terms of the aforesaid notifications, but this was denied to him on the ground that the petitioner''s unit was not registered appropriately with the Industries Department. One round after another of litigation was pursued thereafter by the petitioner, for which we are not concerned in this petition, except to observe that ultimately on the basis of the directions issued and order passed by this Court, the Industries Department did grant Registration in favour of the petitioner as is apparent from the Registration Certificate issued on 4.1.2002 by the General Manager, District Industries Centre, Dhanbad. Even though the date of grant of Registration Certificate is 4.1.2002, the certificate itself mentions that the unit went into production on 22.1.99. Even though we specifically referred to the various orders passed by this Court, one particular order does assume relevance in the sense that while issuing a mandamus with respect to the question of petitioner''s registration with the Industries Department, this Court had clearly made an observation that the moment the certificate of registration is granted by the Industries Department the earlier order rejecting the petitioner''s prayer for the grant of exemption certificate would stand recalled and a fresh order could have to be passed on the basis of the certificate of registration. The aforesaid relevant part of the order dated 3.2.2000 passed by the Division Bench of this Court in C.W.J.C. No. 2615/99(R) reads thus :

"7. It goes without saying the moment the Certificate of Registration is granted or produced by the petitioner, the order contained in Annexure-16 will have to be recalled by the competent authority and a fresh order will be passed thereafter on the basis of such certificate."

Such a fresh order was undoubtedly to be passed by the Commercial Taxes Department. It is in the aforesaid background that the impugned order rejecting the petitioner''s prayer for grant of exemption has been passed.

6. The only ground, the only basis on which the rejection order has been passed is that after coming into being of Jharkhand State, Notifications Nos. S.O. 478 and 479, both dated 22.12.1995, have ceased to be operative or applicable. Mr. Burnwal, learned Addl. Advocate General appearing for the respondents, has conceded that this reasoning, this ground of rejection, is clearly not tenable because, according to him also, these notifications did apply to the State of Jharkhand and these continue to apply even as on date and the petitioner is also covered by the ambit of those two notifications. If the notifications were applicable and the petitioner''s unit went into production in the year 1999 and if the petitioner''s unit has also been granted registration by the Industries Department (non-registration with the Industries Department earlier was the only ground of refusal to grant exemption), where was the reason to reject the prayer of the petitioner, has not at all been explained by the respondents in the counter-affidavit or otherwise during the course of hearing of the case. Harassing an entrepreneur time and again and harassing him by passing a perfunctory order is indeed illegal. A bare perusal and a bare look at the impugned order suggests that it has been passed so perfunctorily and without any application of mind and in a way that it does suggest that the respondents were bent upon harassing the petitioner every time whenever the petitioner approached them with the request to grant exemption. We have no doubt in our minds that the impugned order for the aforesaid reasons is patently illegal and totally erroneous. The same accordingly deserves to be quashed and set aside.

7. The writ petition is accordingly, allowed and the impugned order dated 3.5.2002 is quashed and set aside. The respondents are directed to reconsider the matter afresh in the light of the observations made hereinabove and on the merits of the case and in accordance with applicable law, rules and regulations, and consequentially pass a fresh order within a period of two weeks from today.

Because of the observations made hereinabove, the writ petition is allowed with costs assessed at Rs. 10,000/- (ten thou sand) to be deposited by the respondents in the Advocates'' Welfare Fund, Jharkhand High Court, Ranchi.