(2001) 04 PAT CK 0046

In the Patna High Court

Case No : CWJC No. 117t69 of 2000

Swarn Rekha Cokes and Coal Pvt. Ltd. APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 10-04-2001

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 2, 84, 85

Citation : (2002) 2 PLJR 299

Hon'ble Judges : S.K. Chattopadhyaya, J

Bench : Single Bench

Advocate : Y.V. Giri and Kamleshwar Prasad Gupta, for the Appellant; Amar Nath Singh, V.M.K. Sinha, for the Respondent

Final Decision : Allowed

Judgement

S.K. Chattopadhyaya, J.—In this application petitioner has prayed for a direction to the concerned respondents to give continuing effect to the exemption certificate dated 12.9.1997, which was granted to the factory of the petitioner by Assistant Commissioner, Commercial Taxes, Madhubani by notification dated 22.12.1995. Prayer has been made to allow incentive and benefits granted thereunder to be continued to the petitioner till 20.12.2006 for purchasing tax free raw material from the BCCL. Dhanbad as per the linkage order issue by the General Manager (CT), Central Mine Planning and Design Institute Limited contained in his letter dated 27.12.1998.

2. There is no denial of the fact that the petitioner''s factory having permanent Industry Registration Certificate No. 30302875 dated 17.2.1997 was granted a Sales Tax Registration Certificate and the same is dated 8.7.1997. In view of the Industrial Policy of 1995 the petitioner was granted an Exemption certificate dated 12.9.1997 as contained in Annexure-1. By virtue of this certificate the petitioner was given exemption on tax on purchasing of raw material for ten years with effect from 21.12.1996 to 20.12.2006. Even after reorganisation of the State, petitioner claims that he is entitled to get the same benefit of

purchasing tax free raw material (Coal) from the concerned coal company till 20.12.2003.

3. The petitioner was getting tax free raw material from BCCL Dhanbad but due to reorganisation of State of Bihar the linkage coal company, this BCCL Dhanbad has become part of new State, namely, Jharkhand State, It appears that due to such reorganisation the petitioner is apprehending that the BCCL Dhanbad being in the State of Jharkhand may not continue to give the same exemption to the petitioner as was provided by the undivided State of Bihar earlier. According to it, as the petitioner has taken loan from Bihar State Credit and Investment Corporation Ltd. for establishing his factory and such loan liability has become Rs. 82.00.316/- till 30.9.2000.

4. In the counter affidavit the Respondent BCCL has taken a plea that though earlier the petitioner was getting such exemption on raw material but after reorganisation of the State the petitioner will not be entitled as now the BCCL at Dhanbad is within the Jharkhand State and till a fresh exemption order is issued by the State of Jharkhand, earlier exemption certificate in favour of the petitioner will not be applicable.

5. Mr. Y.V. Gin, learned Senior counsel for the petitioner has contended that the objection raised by the BCCL for continuation of exemption certificate granted to the petitioner is misconceived in as much as in view of Section 85 of Bihar Reorganisation Act, 2000 until and unless any such adaptations and/or modification of law is made by the State of Jharkhand by way of repeal or amendment, the existing law shall have effect subject to those adaptations and modifications, made, Mr. V.M.K. Sinha, learned counsel appearing on behalf of Respondents 7 and 8, however, contends that even in view of Section 85 of the Act unless the State of Jharkhand either makes any new law or adopts any law of erstwhile State of Bihar, the BCCL cannot be directed to supply tax free raw material, that is, coal to the petitioner.

6. Section 85 of the Act read thus :

"Power to adapt laws.--For the purpose of facilitating the application in relation to the State of Bihar or Jharkhand of any law made before the appointed day the appropriate Government may, before the expiration of two years from that day, or order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to he adaptations and modifications so made until altered, repealed or amended by a competent legislature or other competent authority."

Explanation.--In this section, the expression "appropriate Government" means as respects any law relating to matter enumerated in the Union List, the Central Government and as respects any other law in its application to a State, the State Government."

7. In this context provisions of Section 84 of the Act are also relevant. According to this provision even formation of Jharkhand State shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to the State of Bihar shall, until otherwise provided by a competent Legislature or other competent authority be construed as meaning the territories within the existing State of Bihar before the appointed day.

8. A conjoint reading of the provisions of these two sections, in my view, will mean that until and unless the Jharkhand State either adopts or modifies any law by repeal or amendment, the law which is applicable to the State of Bihar will continue to apply in all the territories which are at present under the Jharkhand State. Before expiration of a period of two years from the appointed day, the Jharkhand State may take recourse to either adopt or modify the existing law of the State of Bihar, but until that is done, the notification, order etc. issued by the State of Bihar will hold the field.

9. In the instant case the exemption certificate was granted in favour of the petitioner''s factory in view of the notification of the State of Bihar dated 22.12.1995 and in view of Section 2(f) of the Act, such notification has a force of law which will have effect in relation to BCCL even though BCCL now falls under the Jharkhand State.

10. It is not the case of Respondent BCCL that the Jharkhand State had by now either repealed or amended the notification dated 22.12.1995 under which the petitioner''s factory was granted exemption by the State of Bihar before the appointed day.

11. Thus, in my considered opinion the effect of the exemption notification dated 22.12.1995 will continue in the case of the petitioner.

12. In the result, while allowing this writ application, I direct the Respondent BCCL to supply tax free raw materials, that is coal, which was given to it earlier till the Legislature or any competent authority of the Jharkhand State makes an amendment in this regard.

