(1997) 09 PAT CK 0042

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2324 of 1996 (R)

Tata Nagar Agri. Tools (P) Ltd. APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 17-09-1997

Acts Referred:
Central Sales Tax Act, 1956 — Section 14

Citation : (1998) 2 BLJR 837

Hon'ble Judges : S.K. Chattopadhyaya, J;Nagendra Rai, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The petitioner, a limited company, has approached this Court with a prayer to quash the order dated 16.2.96, by reason of which its application for exemption of payment of tax has been rejected.

2. For disposal of this application, some facts are necessary to be stated.

The petitioner received raw material like iron and steel from Durgapur Steel Plant as well as local rolling mills for manufacturing the agricultural equipments namely, Powrah, Pick Axe, Crow bar and Shovel. The process of manufacturing has been detailed which is, according to the petitioner, being done through 13 processes. Annexing the chart showing the process flow from raw materials to finish product, the petitioner has asserted that it is manufacturing agricultural tools from raw materials namely, Iron and Steel. From the raw materials which are M.S. Flats and other pieces of iron and steel are required to be melted into the furnace and thereafter required-shapes are required to be given for the respective tools. It is registered under the Bihar and Central Sale-Tax and started its production from 1.6.95 by investing towards plant and machinery upto 1.4.93 to the tune of the amount which is less than 15 crores. According to it, it fulfils all the requisite conditions as contemplated under Notification No. S.O. 95 dated 4.4.94. As it started its production from 1.6.95 in view of the said notification, it applied for exemption of payment of sales tax on purchase of raw materials to the Deputy Commissioner, Commercial Taxes, Jamshedpur, respondent No. 2. The valuation report duly verified by the Chartered Accountant and descriptions of process of manufacturing of agricultural tolls were attached with the said application but it is stated that without any enquiry or verification of the process of manufacturing the said application was rejected by the impugned order. The reason for disallowing the claim of the petitioner was given that the unit does not come within the purview of manufacturing of certain categories of items and further that manufacturing ''Powrah'' does not come under the categories of items as mentioned in Notification No. S.O. 95.

3. Mr. Kalyan Roy, learned Counsel appearing on behalf of the petitioner, strongly contended that the respondent No. 2, not being an expert on the subject, should not have come to a hasty conclusion that the manufacturing process of agricultural tools or ''Powrah'' does not come within the meaning of iron and steel. According to him, the petitioner-Company comes under Clause 46 of the terms and conditions as provided under Notification No. S.O. 95 and the respondent No. 2 failed to appreciate that in order to give respective shapes of the tolls 13 stages are required to be covered before giving the finished product. Lastly it is contended that no reason whatsoever has been assigned by the respondent No. 2 for ignoring the report of the Chartered Accountant regarding valuation.

4. Mrs. I. Sen Choudhary, learned Standing Counsel No. 1 on the other hand, has taken a preliminary objection regarding maintainability of the writ application by submitting that without exhausting the internal remedy the petitioner cannot maintain this writ application. Elaborating argument, she contends that the High Court is not supposed to appreciate the process of manufacturing which is, according to the petitioner itself is about 13 in number. According to the respondents, raw materials which are being used for the purpose of Powrah, Pick Axe etc. are steel plate and as such, item No. 46 of the Notification is not applicable inasmuch as it postulates that only an unit engaged in manufacturing iron and steel is eligible for purchase of tax free raw materials. Referring to Section 14 of the Central Sales Tax Act, 1956 (hereinafter referred to as ''the Act''), it is contended that uncontrovertedly Powrah or other agricultural implements do not find mentioned in Section 14 of the Act and as such admittedly when the petitioner-company is engaged in manufacturing agricultural implements it cannot claim exemption. Further case is that after making full enquiry and giving an opportunity to the petitioner, the respondent No.2 has come to a conclusion that the petitioner is not entitled to any exemption and the respondent No. 2 being the competent authority has passed a reasoned order which cannot be interfered by this Court. Learned SC I has urged that the Company, which is using M.S. Flats cannot be allowed to claim exemption from sales tax on the raw materials inasmuch as Powrah is different from iron and steel as defined u/s 14 of the Act. In this connection, learned Counsel has drawn our attention to the fact that Powrah itself has been given exemption in view of

Notification No. Bikrikar/San/1026/77-14547 dated 26th December, 1977.

5. From the above analysis of fact, it is clear that the petitioner-Company is engaged in manufacturing of number of agricultural implements and Powrah is one of them. The question is as to whether the petitioner is entitled for exemption from manufacturing this item. The report of Valuer and Engineering Consultants dated 21.2.95 shows that the Company manufactures agricultural implements like Powrah Pick Axe, Shovel etc. by getting raw materials from Durgapur Steel Plant and local rolling mills and the years of commencement of production is 1990, as reported.

6. With a view to encourage the industrialisation of the State of Bihar, Industrial Incentive Policy was introduced first time in 1986 and modified from time to time and ultimately Industrial Incentive Policy, 1993 came into existence. The object of this policy clearly indicates that in order to achieve balance industrial growth in a planned manner, some incentive are required to be given to the manufacturer. Clause (a), in an unequivocal term, contemplates that this industrial policy shall be applicable to those industrial units which would come into production from 1.4.93 to 31.3.96 and in regard to the date of production of small industrial units, the certificate issued by the respective General Manager, District Industry Centre or Managing Director, Industrial Area Development Authority will be considered. It further says that in case of any dispute relating to date of production the decision of the Director of Industries shall be final. However, in the case of Large and Medium Industries the certificate issued by the Director, Technical Development/Director of Industries shall be considered. Similarly, Clause (b) postulates that units coming into production before 1.4.93 shall be entitled to the benefits for the period as announced by the previous Incentive Policy and the entrepreneurs who have invested capital for the establishment of industry on the basis of previous incentive benefits before 1.4.93 but for some reason or other could not begin production till 31.3.93 will have to give in writing to the Director of Industries within 30 days from the date of issue of 1993 Policy as to whether they want to avail of the benefits as announced by the earlier Incentive Policy or the benefits of the new Industrial Policy, which has come into effect from 1.4.1993.

7. In the instant case, on own showing of the petitioner, it came into production with effect from 1.6.95, although valuer report indicates the year of commencement as 1990. Thus, the very genisis of the date of production of the petitioner-company is in dispute. This aspect of the report regarding the year of commencement i.e. year of manufacturing as reported by the valuer, has not been controverted by the petitioner in its application but rather asserted that production started from 1.6.95. Much reliance has been given by Mr. Roy on the finding of the valuer report and as such the year of commencement/manufacture as reported by the valuer (as 1990) has to be accepted as correct. If this be the position, in our considered opinion, the petitioner is not entitled to get benefit from the Industrial Incentive Policy, 1993 because this will apply only to those

units which started production from 1.4.93 to 31.3.98. Our aforesaid view finds support from the decision in the case of Sone Vanaspati Vs. State of Bihar and Others , wherein a Division Bench of this Court has already held that the petitioner establishing his industry before enforcement of Bihar Industrial Policy, cannot claim benefit under the Policy. In this connection, we may refer to the Resolution No. S.O. 95 dated 4th April, 94 which, inter alia provides that those certified units are started production with effect from 1st April, 93 to 31st March, 98 and investment is not more than 15 crores, will get exemption from direct tax on raw materials for 7 years starting from 1st April, 93 but even for getting this benefit some conditions have been imposed which are incorporated in the resolution itself and item No. 46 mentions Iron and steel as defined in Section 14 of the Act. From bare perusal, it appears that even this resolution specifically provides exemption for those units which started its production from 1st April, 93 to 31st March, 98 and that too exemption on raw materials. At this juncture, it will be useful to refer the provisions as laid down in Sub-clause (iv) of Section 14 of the Central Sales Tax Act, which reads as follows:

(iv) iron and steel, that is to say,-

(i) Pig iron and cast iron including (ingot moulds, bottom plates) iron scrap, cast iron scrap, runner scrap and iron skull scrap;

(ii) steel semis (ingots slabs, blooms and billets of all qualities, shapes and sizes);

(iii) Skelp bars, tin bars, sheet bars, hoe-bars sleeper bars;

(iv) steel bars (rounds, rods, squares, flats, octagons and hexagons, plain and ribbed or twisted, in coil form as well as straight lengths);

(v) steel structurals (angles, goists, channels tees, sheet piling sections, Z section or any other rolled sections);

(vi) sheets, hoops, strips and skelp both black and galvanised, hot and cold rolled, plain and corrugated in all qualities, in straight lengths and in coil form, as rolled and in riveted condition;

(vii) plates both plain and chequered in all qualities;

(viii) discs, rings, forgings and steel castings;

(ix) tool, alloy and special steels of any of the above categories;

(x) steel melting scrap in all forms including steel skull, turnings and borings;

(xi) steel tubs, both welded and seamless, of all dismetres end lengths, including tube fittings;

(xii) tin-plates, both hot dipped and electrolytic and tinfree plates;

(xiii) fish plates bars, bearing plate bars, crossing sleeper bars, fish plates, bearing plates, crossing sleepers and pressed steel sleepers, rails heavy and light crane rails;

(xiv) wheels, tyres, axles and wheel sets;

(xv) wire rods and wires-rolled, drawn, galvanised, aluminised, tinned or, coated such as by copper;

(xvi) defectives, rejects, cuttings or end pieces of any of the above categories.

8. This section finds place in Chapter IV of the Act which relates to goods of special importance in inter-State trade or commerce. Therefore, if we read this provision alongwith item No. 46 of S.O. 95, it would be amply clear that only because certain articles have special importance in inter-State trade or commerce, the State Legislature considered it proper to give exemption to those articles/goods.

9. Reliance made by Mr. Roy in the case of State of Tamil Nadu Vs. Pyare Lal Malhotra and Others, , in our view, is misplaced. In that case notices issued by a Commercial Tax Officer showing institution of Sales Tax Assessment proceedings in respect of certain iron and steel goods for certain assessment years were challenged before the Madras High Court. The High Court dismissed the writ petition on the ground that they involve an investigation into the question of fact whether the iron and steel scrap, out of which the manufactured goods, sought to be subjected to Sale Tax, had been made, were already taxed or not. The State of Tamil Nadu being aggrieved by the finding of the High Court, holding that the manufactured goods, said to consist of a "steel rounds, flats, angles, plates, bars" or similar goods in other forms and shapes, could not be taxed again if the material out of which they were made had already been subjected to sales tax once as iron and steel scrap as both were "iron and steel". While setting aside the order of the High Court, the Apex Court, inter alia, observed as follows:

It appears to us that the position has been simplified by the amendment of the law, as indicated above, so that each of the categories falling under "Iron and Steel" constitutes a new species of commercial commodity more clearly now. It follows that when one commercial commodity is transformed into another, it becomes a separate commodity for purposes of sales tax.

10. Thus, from reading of the aforesaid decision, it is amply clear that the: point involved in the instant case as to whether the petitioner-company is eligible for exemption under S.O. No. 95 was not before the Supreme Court and it is well settled that the binding nature of the decision of the Supreme Court is only in respect of the point decided by their Lordships.

11. On the other hand, in the case of State Level Committee and another Vs. M/s. Morgardshammar India Ltd., , interpreting the word "new unit" and considering the exemption provisions as provided u/s 4-A (2) of U.P. Sales Tax Act (15 of 1948) and its explanation, their Lordships noted that new unit starting production on or after first day of October, 1982 is entitled to exemption from sales tax provided the unit satisfies the recruitments and conditions prescribed

by the section.

12. In the instant case the respondent No. 2, after due consideration, has found that the petitioner-company does not fulfil the requirements and conditions prescribed by S.O. No. 95 as well as Industrial Incentive Policy, 1993. It is now well settled that a provision providing for an exemption, as the case may be, has to be construed strictly. Reference may be made to the decision in the case of Mangalore Chemicals and Fertilisers Ltd. Vs. Deputy Commissioner of Commercial Taxes and others, . This principle has also found favour in the case of State Level Committee (supra). In our view when, while providing for exemption the State Government has put certain conditions, it is not open to the Court to ignore those conditions and extend the exemption.

13. Interpreting the exemption clause, in the case of Union of India and others Vs. M/s. Wood Papers Ltd. and another, , their Lordships held that exemption clause is to be construed strictly and against the subject but once ambiguity or doubt applicability is lifted and the subject falls in the Notification then full play should be given to it and it calls for a wider and liberal construction.

14. In the premises, in our view, the petitioner in the instant case, has failed to satisfy the factual aspect which can reasonably be held to be a good ground for grant of exemption.

15. Another aspect of the matter should not be lost sight of that agricultural implements have already been allowed exemption by Notification No. Bikrikar/San/1026/77-14547 dated 26th December, 1977. Serial No. 14 of this notification deals with agricultural implements which includes Powrah in item (vi) of Serial No. 14. It cannot be denied that a manufacturer is not entitled to get exemption on both accounts. Therefore, the claim of the petitioner, in our view, has been rightly rejected by the respondent No. 2 though the grounds for such refusal are different.

16. Last but not the least, as rightly pointed out by the learned Standing Counsel No. 1 that the petitioner before approaching this Court should have moved the District Level Committee canvassing its grievances and that having not been done, this Court cannot give any relief to the petitioner.

17. in the result, we find no merit in this application and the same is dismissed. However, no order as to costs.

