

(2002) 11 PAT CK 0036
In the Patna High Court
Case No : C.W.J.C. No. 15620 of 2001

The Associated Cement Companies Ltd.	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 27-11-2002

Acts Referred:

Citation : (2002) 11 PAT CK 0036

Judgement

Nagendra Rai, J.—The petitioner has filed the present writ application for quashing the order dated 20th November, 2001 passed by the Assistant Commissioner, Commercial Taxes Incharge, Patna Special Circle, Patna, respondent No. 4 holding that the petitioner is liable to pay sales-tax after 15-11-2000 on sale of goods earlier exempted by exemption certificate dated 20-12-1995 granted in favour of it u/s 7 (3)(b) of the Bihar Finance Act in terms of the Industrial Policy of the State for a period from 1-4-1998 to 31-3-2007 and directed it to make the payment of sales-tax on a date specified in the order. A copy of the said order has been annexed as Annexure-1 to the writ application.

2. The petitioner, registered under the Companies Act as a public limited company and having its registered office at Mumbai is engaged in manufacturing cement in different cement factories/units located at different parts in the country. One of the regional offices of the marketing division of the Company is located in the town of Patna. The said unit has been registered as a dealer under the provision of the Bihar Finance Act. Two cement units of the petitioner are located at Sindri in the District of Dhanbad and Jhinkpani in the District of Singhbhum and which were registered under the Bihar Finance Act in Sindri Circle and Chaibasa circle respectively of the Commercial Taxes department.

3. The State Government with a view to accelerate industrial growth issued industrial policy from time to time giving different types of incentives to the industrial units. The exemption from payment of sales-tax on finished product is also one of the incentives provided under the said policy. In pursuance of the aforesaid industrial policy, on 22nd December, 1995 by Statutory order No. 479

which was published in the official gazettee on the same date, the State Government issued an exemption notification in exercise of power u/s 7 (3)(b) of the Bihar Finance Act. A copy of the aforesaid exemption notification has been annexed as Annexure-3 to the writ application. According to the said policy decision sales-tax exemption has to be granted to the new units or to the existing unit having additional production. The incentives were given for exemption of tax on purchase of raw materials and sale of finished goods in case of new units and sale of additional finished goods due to increased production of the existing units.

4. According to the petitioner in view of the aforesaid policy decision it took expansion of cement work located at Sindri and therefore, applied for exemption certificate on sale of incremental goods in terms of the aforesaid industrial policy and was issued an exemption certificate granting exemption from payment of sales-tax on the incremental production for a period from 1-4-1998 to 31-3-2007. Thereafter, he was availing of the benefits under the aforesaid policy.

5. On 15-11-2000, two States, namely, the State of Bihar and State of Jharkhand, were created out of the erstwhile State of Bihar. The production unit of the petitioner including Sindri unit with regard to which exemption was granted fell into the territory of Jharkhand State after bifurcation. On 13-10-2001, a notice was issued to the petitioner informing it that after the unit to which exemption was granted has fallen into the State of Jharkhand, exemption granted with regard to payment of sales tax will automatically come to an end with effect from the creation of the State of Jharkhand, i.e. 15-11-2000 and the petitioner Company is liable to pay tax under the Bihar Finance Act on the sale of cement in the State of Bihar and accordingly, the petitioner was asked to give details of sale made after 15-11-2000 along with a proof of payment of sales tax. A copy of the said notice has been annexed as Annexure-4 to the application.

6. The petitioner filed a writ application being CWJC No. 14312 of 2001 before this Court. This Court directed the petitioner to appear before the concerned authority and bring to their notice the exemption granted by the State Government. In pursuance of that order, the petitioner appeared before the authority concerned and filed an application stating that the exemption certificate is valid upto 31-3-2007 and the said exemption can only be withdrawn by the State Government which has not been done and as such the exemption notification is still valid for the remainder period. It was further stated therein that the petitioner has not collected any sales tax from any person on the sale of incremental production and as such it is not liable to pay tax thereon provided u/s 26 (2) of the Bihar Finance Act during the period under reference. The respondent No: 4, by the impugned order dated 20th November, 2001 rejected the stand of the petitioner as stated above.

7. The learned Counsel appearing for the petitioner contended that the notification issued u/s 7 (3)(b) of the Bihar Finance Act in terms of the Industrial

Policy was applicable to the erstwhile State of Bihar and even after its bifurcation into two States, the benefit granted by the notification will be extended to the entire erstwhile State of Bihar including the area which has now fallen into the State of Jharkhand u/s 84 of the Bihar Re-organisation Act, 2000 (hereinafter referred to as the Act) and the authorities have wrongly held that after the unit has fallen into the State of Jharkhand, the benefit of exemption cannot be granted by the State of Bihar in the matter of exemption of sales tax. He further submitted that the industrial policy was formulated by the State Government and it alone is competent to withdraw and modify the same and the respondent No. 4 has no jurisdiction in law to sit over the aforesaid industrial policy and withdraw the benefit of exemption as granted earlier to the petitioner.

8. The stand of the State on the other hand is that the Sindri Production Unit of the petitioner is outside the territorial jurisdiction of the State of Bihar. The exemption was granted to the unit u/s 7 (3)(b) of the Bihar Finance Act while it was in the erstwhile State of Bihar. Once the Unit has fallen into the State of Jharkhand, the said notification ceased to have any effect on the sale in the State of Bihar as the unit does not exist within the territorial boundary of the State. The petitioner is eligible for exemption in the State of Jharkhand in view of the notification dated 15-12-2000 where the Bihar Finance Act and other Acts and notification issued therein have been adopted. A copy of the said notification of the State of Jharkhand dated 15-12-2000 has been annexed as Annexure-A to the counter-affidavit filed on behalf of respondents No. 3 and 4.

9. The State of Bihar issued a press note on 30-11-2000 informing all the dealers in the State about the legal position regarding liability to pay sales tax after bifurcation of the State into two States. A copy of the said press note has been annexed as Annexure-B to the counter-affidavit.

10. Thus, the stand of the State is that the benefit was granted to Sindri unit on the incremental production and once the unit has fallen into the territory of State of Jharkhand, which has adopted the laws of the State of Bihar, the benefit of exemption can be claimed in and from the State of Jharkhand where the unit falls and not from the State of Bihar. In Bihar the petitioner is liable to pay sales tax in accordance with law.

11. The only question for consideration is as to whether the petitioner is entitled to the benefit of exemption certificate up to the period mentioned in the certificate with regard to incremental production of the Sindri Unit which admittedly from 15-11-2000 fell into the territorial jurisdiction of the Jharkhand State.

12. The petitioner has relied upon the Act in support of his submission and also relied upon the judgment of the Supreme Court in the case of State of Punjab and Others Vs. Balbir Singh and Others, and a Division Bench Judgment of this Court in the case of the Commissioner, Commercial Taxes and Another Vs. Swarn Rekha Cokes and Coal Pvt. Ltd. and Others .

13. Before advertng to the aforesaid two decisions, it is necessary to refer to Sections 84 and 85 of the Act on which strong reliance has been placed by the petitioner in support of his submission. The said Sections fall under Part X of the Act which deals with Legal and Miscellaneous Provisions. Sections 84 and 85 read as follows :

84. Territorial extent of laws.--The provisions of Part II of this Act 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.

85. Power to adopt 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, by order, make such adoptions 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 the adaptations and modifications so made until altered, repealed nor amended by a competent Legislature or other competent authority.

14. Part II of the Act deals with Re-organisation of the State of Bihar and it provides that on and from the appointed day, new State of Jharkhand will be formed with regard to the territories mentioned therein and thereafter the said territories shall cease to Form part of the existing State of Bihar and on and from the appointed day, the State of Bihar shall comprise the territories of the existing State of Bihar other than those forming part of the State of Jharkhand.

15. Section 84 of the Act provides inter alia that inspite of creation of the two States, the applicability of the iaw, which were in force before the appointed day, shall continue within the entire existing State of Bihar before the appointed day until otherwise provided by a competent Legislature or other competent authority. In other words, the laws which were in force prior to the appointed day, will have applicability into the entire territorial jurisdiction of the erstwhile State of Bihar inspite of creation of the States of Bihar and Jharkhand unless the said provisions are repudiated, amended, modified or changed by a competent Legislature or other competent authority.

16. Section 85 of the Act empowers both the State to adapt and modify laws which were in force prior to its existence by way of repeal or amendment within the period of two years from that day as found to be expedient and necessary and thereafter every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority.

17. The law has been defined in Clause (f) of Section 2 of the Act. According to which, it includes any enactment, ordinance, regulation, order, bye-law, rule,

scheme, notification or other instrument having, immediately before the appointed day, the force of law in the whole or in any part of the existing State of Bihar.

18. Thus, the notification granting exemption u/s 7 (3)(b) of the Bihar Finance Act comes within the purview of Law. The law which was in force prior to bifurcation of the State of Bihar will not stand abrogated after coming into the existence of the two States. On the other hand, it will remain in force as it was before the appointed day in the erstwhile State of Bihar until a competent Legislature or the authority of the successor States amends, in other words, makes any change in those laws.

19. The definition of law u/s 2 (g) and Section 88 of the Punjab Reorganisation Act, 1966 are *pari materia* with Section 2 (f) and Section 84 of the Bihar Reorganisation Act. The Apex Court in the case of State of Punjab (*supra*) held that the laws made by the erstwhile State of Punjab will continue to be in force and will be effective and binding on the successor States until and unless they are modified, changed, or repudiated by the Governments of the successor States. Though in that case, the matter under consideration was an administrative order and not law defined under the Act, but it held that the same principle will apply even in the case of administrative order and will remain in force and binding on the successor States until it is changed, modified etc.

20. Thus, the exemption notification issued u/s 7 (3)(b) of the Bihar Finance Act being a law will be binding upon both the successor States in terms of the provisions u/s 84 of the Act unless otherwise is provided or the law is adapted u/s 85 of the Act.

21. The State of Jharkhand in exercise of power u/s 283 (2) of the Constitution of India and u/s 85 of the Act has adapted laws with effect from 15th November, 2000, which were in force in the erstwhile State of Bihar as detailed in the notification which has been annexed as Annexure-A to the counter-affidavit. The same includes the Bihar Finance Act, Bihar Sales Tax Rules and the notifications issued thereunder. Thus, in view of the aforesaid notification from the appointed day, by virtue of adaptation, the State of Jharkhand has its own Finance Act, Rules and the notifications issued thereunder. The exemption notification has also been adopted by the State of Jharkhand.

22. It is admitted position that the exemption notification was granted to the petitioner with regard to its industrial unit situate at Sindri, now in the State of Jharkhand with regard to its incremental production. Admittedly, that territory is not a part of the State of Bihar. In that situation, the petitioner cannot claim benefit of exemption for the said unit as the industrial policy of the State of Bihar after industrial policy adapted by the State of Jharkhand will be in force only within the territorial jurisdiction of the State of Bihar. The unit outside the State of Bihar cannot claim exemption, In other words, by operation of law, the benefit of exemption will cease to be available to the unit of the petitioner in the State of

Bihar as the Unit is falling within the State of Jharkhand and the petitioner can claim benefit of the said exemption in the said State only.

23. So far the decision of the Division Bench in the case of the Commissioner, Commercial Taxes, Ranchi & Anr. (supra) is concerned, it does not help the case of the petitioner. There the writ petitioner M/s Swarn Rekha Cokes & Coal Private Ltd. & Ors. was granted exemption certificate with regard to purchase of raw material (coal) from BCCL in terms of the industrial policy issued u/s 7 (3)(b) of the Bihar Finance Act. The question arose for consideration in that case was that whether after bifurcation of the State of Bihar under the Act it is entitled to the benefit of the exemption of tax on purchase of raw materials (coal) up to the period prescribed in the exemption certificate. The Unit of the writ petitioner was in the State of Bihar. The learned Single Judge held that in view of the provisions contained under Sections 84 and 85 of the Act read with Section 2 (f) of the Act unless the Jharkhand State adapts laws or modify the law by repeal or amendment, the law applicable in the State of Bihar will continue to be applied in the entire territory including the territories falling under the State of Jharkhand for a period of two years from the appointed day and till that time, law made by the erstwhile State of Bihar will hold the field. The Division Bench of this Court upheld the aforesaid view of the learned Single Judge. It appears that before the Division Bench State of Jharkhand brought to the notice of the Court the industrial policy decision of 2001 made by the State of Jharkhand which envisages granting of tax benefit etc. to the industrial unit set up after 15-11-2000 and urged that in view of the said policy the earlier exemption notification issued by the erstwhile State of Bihar will not be applicable in the State of Jharkhand. Dealing with the said matter in paragraph 11 the Division Bench held as follows :

"So far as the Industrial Policy 2001 of the Government of Jharkhand is concerned reference to it by the appellants is wholly misplaced. The said Policy Resolution envisages giving certain tax benefits, among other things, to the new industrial units set up after 15-11-2000. It obviously refers to the industrial units situate in the State of Jharkhand and had nothing to do with the units situate outside the State. It has been referred to, perhaps, to point out that the Government of Jharkhand having declared an industrial Policy of its own, the industrial policy of the erstwhile State of Bihar of 1995 came to an end and, therefore, any tax benefit available to units thereunder also came to an end. If this is what the appellants intend to convey, it must be rejected out of hand, for, the industrial policy of the Jharkhand State relates to industrial unit situate in that State. Whether the industrial units situate outside the State are entitled to any such benefit has to be considered with reference to the statutory orders made under the Bihar Finance Act because notwithstanding the terms of the policy, unless corresponding provisions are made by issuing notifications/orders under the Bihar Finance Act to carry out the objects of the industrial policy, a trader does not get benefits of any sales tax exemption."

24. The aforesaid observation negatives the claim of the petitioner. Admittedly, the industrial unit of the petitioner is situated in the State of Jharkhand which has adopted the notification granting exemption, as such the said notification will apply with regard to unit situate in the State of Jharkhand and the notification issued by the erstwhile State of Bihar will cease to operate with regard to territories in the State of Jharkhand.

25. In our considered view, the authorities have rightly held that after creation of the State of Jharkhand and adaptation of laws by the State of Jharkhand as mentioned above, the petitioner cannot take benefit of the exemption certificate as the unit fell under the State of Jharkhand and his product will be assessed in the State of Bihar to the sales tax as product of the other State in accordance with law.

26. In the result, there is no merit in this writ application and the same is dismissed.