IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11320 of 2001

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Sanjay Gas Distributor (P) Ltd., through its Director, Sanjay Nath Ravi son of Sri Baidya Nath Prasad, resident of Chainpur Maniyari, PS-Kurhni, District-Muzaffarpur.

.... Petitioner/s

Versus

1. Bihar State Electricity Board through its Chairman, Vidhyut Bhawan, Bailey Road, Patna.
2. Financial Controller (Revenue), Bihar State Electricity Board, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Suraj Samdarshi, Adv.

For the Respondent/s : Mr. Vinay Kirti Singh,
Mr. Vijay Kumar Verma, Adv.
Mr. Akhileshwar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 31-03-2015

In this case, the petitioner is challenging the order dated 28.06.2001 passed by the Financial Controller (Revenue), Bihar State Electricity Board, Patna which was communicated to the petitioner vide order dated 30th June 2001 by which the Financial Controller has held that Unit of the petitioner is engaged in bottling work having no connection in production and/ or expansion/ diversification as envisaged in Board's Memo No. 652 dated 11th October 1996.

The petitioner is a Bottling Plant Unit situated in the city of Muzaffarpur where the basic work is transferring the Liquid Petroleum Gas from big container to small container consuming electrical energy.

The Government of Bihar has come up, with Industrial Policy of 1993 and later on, it was substituted by Industrial Policy of 1995 providing certain exemption in certain areas to certain class of the industry with a view to attract the investment to augment industries in the State of Bihar.

On the basis of that Scheme, the petitioner filed an application before the Sales Tax Department as well as in the Bihar State Electricity Board (herein after mentioned as "Board") for granting exemption of payment of minimum guarantee charge, as the Unit is consuming the power upto 500 KVA.

A similar application was filed by the petitioner in the Sales Tax Department for granting exemption in payment of tax.

Basically, the present case is only confined to grant benefit of payment of minimum guarantee charge and, as such, this Court is not required to deal with the matter with respect to the other dispute.

The petitioner filed a writ application vide CWJC No. 5119 of 2001 for providing incentives in terms of granting exemption from payment of minimum guarantee charge under the Industrial Policy of 1995.

This Court disposed of the writ application with liberty to the petitioner, may file a representation raising his claim for exemption under the Industrial Policy of 1995 before the Financial Controller (Revenue), Bihar State Electricity Board, Patna who will examine the case of petitioner and pass an appropriate order within six months from the date of filing of the representation.

In pursuance of the direction of this Court, the Financial Controller examined the case of the petitioner in context of Industrial Policy of the State Government and after in depth examination of the Industrial Policy, refused to grant benefit of incentives by way of exemption to pay the Minimum Guarantee Charge holding that the unit of the petitioner is an industry engaged in the bottling work does not relate to production and/ or expansion or diversification as envisaged in the Board's Memo No. 652 dated 11th October 1996, not entitled to such benefit.

The counsel for the petitioner submits that on examination of different provisions of the Bihar Industrial Policy, the Policy maker has identified industries mentioned in clause (15) of the said Policy deals with thrust industries giving definition that industries which can build upon and utilise the resources and advantages of the State would be identified for development. Important criteria for determining the suitability of thrust industries to be identified for accelerated development in the State will be (a) Raw Material availability (b) Market (c) Manpower resources and (d) Linkage with larger units e.g. Steel/Automobile/Power/Mining Sectors etc. Sustainability concerns. Clause 15.1 has classified large number of industries catalogued, categorized as thrust industries, one of the industry has been mentioned as Engineering Industries.

Further annexure annexed to the Industrial Policy, clause (2) deals with the Industrial Unit/ Industrial concern means any unit/concern engaged or to be engaged in manufacturing/ processing/ servicing industry belonging to the industries mentioned there included Thrust Industries mentioned in clause (b) of Industrial Unit/Industrial Concern.

The explanation attached to this clause, provides that for the purposes of concessions/benefit relating to sales tax, only such unit shall be deemed to be industrial units which carry on the business of manufacturing goods for sale, clause (iii) provides that if any doubt arises as to whether a unit/concern is an industrial unit/industrial concern or not for the purposes of this policy the same shall be referred to the Department of Industries, Government of Bihar and the decision of the Commissioner and Secretary, Department of Industries in this regard shall be final.

The counsel for the petitioner submits that the Industrial Policy does not define the manufacturing/ processing, in absence of such definition, it will be required to take into account definition provided in similar other Statutes and he has relied on section 2K of the Factories Act which provides the meaning of manufacturing process which encompasses very large area, claims that activities performed by the petitioner falls under the definition of manufacturing provided under the Factories Act, so much so, he has also relied on the judgment reported in (2010) 51 GLR 2323 where the Gujarat High Court has taken view that the bottling plant is an Industry Undertaking as defined under section 2BB of the Bombay Electricity Duty Act and also placed reliance on Rule-2 Sub-clause-xxv the Gas Cylinder Rules, 1981 which defines the expression "manufacturing of gas" means filling of a cylinder with any compressed gas and also includes transfer of compressed gas from one cylinder to any other Cylinder and on that basis, the Gujarat High Court held the unit was manufacturing unit entitled to concession under the scheme of Government of Gujarat, taking help of aforesaid judgment, the petitioner is claiming that petitioner unit is a manufacturing unit, entitled to exemption under the Industrial Policy of State of Bihar under the Industrial Policy, 1993 includes 1995.

With regard to granting exemption of sales tax, the matter was referred to the Government of Bihar and there the Deputy Secretary, Industries Department vide letter no. 4058 dated 14.09.2004 and the letter of Director, Industries Department vide letter no. 2560 dated 15.09.2004 communicated to the petitioner vide letter no. 1084 dated 20.09.2004 by General Manager, District Industrial Centre, Muzaffarpur informing the petitioner that the industry has been treated to be manufacturing industry, in pursuance thereof, the petitioner has been granted benefit of sales tax exemption from the period 13.12.1999 to 12.12.1999 i.e. for ten years.

The counsel for the petitioner submits that the materials are so overwhelming which only indicates the petitioner is a manufacturing industry falls under the category of beneficiaries mentioned in the Industrial Policy.

In contra, the Board has submitted that as there is no manufacturing of any material rather it is transferring of gas from big cylinder to small cylinder, will not be a manufacture as no new material comes out in that process cannot be said to be engaged in manufacturing or its incidental, will be out side the purview of Industrial Policy. He has further submitted that the Financial Controller has taken care of the provision of the Industrial Policy and also letter of Board defining nature of beneficiary industries arrived to a conclusion that the petitioner is not entitled to the benefit of exemption of Minimum Guarantee Charge.

Any observation of this Court will not be an ultimate opinion on the subject should not be taken into consideration either advantage or disadvantage of any of the parties.

The present case now is confined to whether transferring the gas from big container to small container, for that, the electric power used will be covered under the Industrial Policy.

The basic question as to whether the petitioner while transferring the Liquid Petroleum Gas is engaged in manufacturing process or not is dependant upon nature of function embarked falls under industrial policy of State Government.

This Court is not examining the issue on merit.

The Respondent Board has drawn attention to sub-clause (3) of 15 which provides that in case of dispute, for clarification, the decision of the Secretary and the Director will be final.

In such view of the matter, the matter is referred to the Principal Secretary of Industry Department who will examine the case of the petitioner and decide as to whether the Industrial Policy of 1995 is applicable to the petitioner so far giving of exemption of payment of Minimum Guarantee Charge under the tariff rule of Electricity Act. The whole process should be completed within three months from the date of receipt/production of a copy of this order.

Accordingly, this petition is disposed of.

(Shivaji Pandey, J)

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