

(2020) 12 PAT CK 0334

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 17407 Of 2011

Reliance Infratel Ltd

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision: Dec. 9, 2020

Acts Referred:

- Indian Telegraph Act, 1885 - Section 3(3), 3(1AA)

Hon'ble Judges: Sanjay Karol, CJ; S. Kumar, J

Bench: Division Bench

Advocate: Ashish Giri, Vikash Kumar

Final Decision: Disposed Of

Judgement

The petitioner has prayed for the following relief(s):-

â€œ(i) To hold and declare that the energy generated and consumed for the purpose of transmission of a message does not fall under the definition of energy as provide under Section 2(C) of the Bihar Electricity Duty Act, 2003 read with Section 3(3) and 3(1AA) of the Indian Telegraph Act and therefore the act not applicable to the transaction of the petitioner.

ii) To issue an appropriate writ/order/direction in the nature of Certiorari for quashing the letter bearing no.898 dated 20.09.2011 (Annexure-9) issued by the respondent Deputy Commissioner, Commercial Tax Department address to the Branch Manager, H.D.F.C. Bank, Patna whereby and where under the Branch Manager has been directed to handover a draft of Rs. 56,05,557/- from the account of the petitioner bearing no. 01860310000444 on alleged failure for payment of electricity duty by the petitioner for the period September 2007 to 31.12.2010.

iii) To issue an appropriate writ/order/direction in the nature of Certiorari for quashing the demand notice dated 21.03.2011 (Annexure-5) and assessment order dated 21.03.2011 (Annexure-5) whereby and whereunder the respondent Deputy Commissioner, Commercial Tax Department has made an ex parte assessment of the liability of the petitioner to pay electricity duty for the energy consumed by the diesel generation set for the period September 2007 to 31.12.2010 and has raised a demand of Rs.5605557.00/-.

iv) To issue an appropriate writ/order/direction in of Mandamus directing the respondent authorities to refund the amount of Rs. 56,05,557.00/- unlawfully collected from the account of the petitioner in purported excise of power under the Act in the light of the impugned orders dated 20.09.2011 and 21.03.2011.

v) To any other relief or reliefs for which the the petitioner is found entitled in the facts and circumstances of the case.â€

Mr. Ashish Giri, learned counsel for the petitioner, points out that unlike other cases, writ petitioner had deposited the entire component of the electricity duty, in fact, necessary averments made out in the writ petition reads as under:-

â€œ19. That despite repeated request from the petitioner company seeking time to take necessary orders from this Honâ€™ble Court yet the authorities have on 22.09.2011 forcefully recovered the unlawful demand of electricity duty to the tune of Rs. 5605557/- from the account of the petitioner which is wholly illegal and arbitrary exercise of the power.â€ to which there is no denial by the State.

Shri Giri prays that this Court can direct the refund of the amount.

Shri Vikash Kumar, learned Standing Counsel-11, states that, perhaps, proceedings under the newly enacted legislation may have been initiated and if not already done, shall positively be done within the current financial year (2020-21).

Needless to add, it is always open for the authorities to initiate action in accordance with law under the amended Statute but, however, if the needful is not done within this financial year, the amount deposited by the petitioner shall be refunded on or before 30th April, 2021.

We clarify that this order shall become operative only and only if no action is taken against the petitioner under the provisions of the amended Statute.

It is not in dispute that the impugned action is based on the notification bearing SO No. 14 dated 4th March, 2005. It is also not in dispute that the

validity of the said Notification, subject matter of adjudication of the present lis, was struck down by a co-ordinate Bench of this Court vide decision

rendered in Bihar Sugar Mills Association, a branch of India Sugar Mills Association, New Delhi & Ors. Vs. The State of Bihar & Ors; 2009(4)

PLJR416.

It is also not in dispute that assailing the same, the State preferred an Appeal before Honâ€™ble the Apex Court, bearing Civil Appeal No. 2570 of

2010, titled as State of Bihar & Ors. vs. Bihar Sugar Mills & Ors., which, on account of certain intervening developments, was disposed of along with

several other analogous cases in the following terms:

â€œAll the civil appeals stand dismissed as having become infructuous and all the transferred cases are disposed of in the terms of the signed order.

Till further order is passed by the High Court, the interim order will continue.â€

Undisputedly, the substratum of the present impugned action stands taken away, in view of subsequent notification issued by the State.

As such, we dispose of the present petition making the decision rendered in Bihar Sugar Mills Association (supra) binding the parties, reserving liberty

to the State to initiate action in terms of the subsequent legislation.

Interlocutory application, if any, shall also stand disposed of.