
(2002) 50 BLJR 2415 : (2002) 4 PLJR 694 : (2003) 131 STC 276

Patna High Court

Case No: C.W.J.C. No"s. 10205 and 10589 of 2002

Ambe Agro Industries
Ltd and Bhawani Flour
Mills Pvt. Ltd.

APPELLANT

Vs

State of Bihar and
Others

RESPONDENT

Date of Decision: Oct. 9, 2002

Citation: (2002) 50 BLJR 2415 : (2002) 4 PLJR 694 : (2003) 131 STC 276

Hon'ble Judges: R.S. Garg, J; Nagendra Rai, J

Bench: Division Bench

Advocate: S.D. Sanjay and Suraj Samdarshi, for the Appellant; R.K. Dutta, for the Respondent

Final Decision: Allowed

Judgement

1. The matters involved in both the writ applications are one and the same and as such they have been heard together and are being disposed of by this common order.
2. The petitioners in both the writ applications are companies registered under the Companies Act, 1956 and they have set up food processing units for manufacture of wheat products, namely, atta (wheat flour), maida, suji and bran in Patliputra industrial area in the town of Patna.
3. The State Government with a view to accelerate the industrial growth in the State of Bihar introduces the Industrial Policies from time to time. By notification dated December 22, 1995 it came out with an Industrial Policy giving several incentives to the new industrial units as well as to the old industrial units having undergone expansion/diversification. One of the incentives was to grant exemption from payment of sales tax on purchase of raw materials and sale of finished products. A copy of the said industrial policy has been annexed as annexure-1 to both the writ applications. The exemption with regard to sales tax on sale of finished goods for new units has been contained under Clause 16.2 of the said policy which runs as follows :

"16.2. Sales tax on sale of finished goods for new units.--New units, in addition to the benefit of "exemption/set off" of sales tax on purchases, will also have the option to choose deferment or exemption of sales tax [both Bihar sales tax (BST) and Central sales tax (CST)] on sale of finished goods for a period of 10 years for category "A" and 8 years for category "B" districts from the date of production of the unit with a ceiling of 100 per cent of the fixed investment made by the unit. However, those industries which are considered "Thrust Industries" as listed earlier in para 15 (excluding telecommunication, computers, software/hardware and electronics industries) as also industries located in "A" category backward districts the ceiling for deferment would be 150 per cent of the fixed investment. The ceiling for deferment linked to the fixed investment in regard to telecommunication, computers, software/hardware and electronics industries would be 300 per cent of the fixed investment made by the unit.

The amount of sales tax collected under sales tax deferment option would require to be returned in equal six monthly instalments in such a manner so that the entire amount is returned by the 13th year from the commencement of deferment option."

According to the said industrial policy, exemption is to be given on sale of finished goods for a period of 10 years for category "A" districts and 8 years for category "B" districts from the date of production of the unit with a ceiling of 100 per cent of the fixed investment made by the unit.

4. The petitioners units were registered for manufacturing aforesaid four items from wheat. Registration certificates granted by the authorities have been annexed with both the writ applications.

5. In terms of the industrial policy, notification granting exemption from payment of sales tax on purchases of raw materials and sale of finished goods were issued by the Finance Department, copies of which have been annexed as annexure-2 to both the writ applications.

6. The petitioners applied for grant of exemption from payment of sales tax in terms of the aforesaid notification clearly stating that the items for exemption were wheat products, namely, atta, maida, suji and bran, that is also evident from the documents annexed with the writ applications. Thereafter, it appears that the respondents-sales tax authorities issued notice to the petitioners that as bran is not the finished product in terms of the industrial policy, the earlier exemption granted to them was not according to law. In pursuance of the aforesaid notice, the petitioners filed show cause stating that bran is also a finished product.

7. The respondents-authorities having considered the matter rejected the claim of the petitioners by order dated June 25, 2002, as contained in annexure-8 to C.W.J.C. No. 10205 of 2002 and annexure-7 to C.W.J.C. No. 10589 of 2002, holding that the petitioners are not entitled to exemption from payment of sales tax with regard to bran as

the same is by-product and not the main product of wheat and as such it will not be treated as finished goods.

8. Learned counsel appearing for the petitioners in both the writ applications submitted that the petitioners had applied for registration for manufacturing wheat products, namely, atta, maida, suji and bran and the registration was granted for manufacturing the said products. It is submitted that the decision taken by the authorities not to treat bran as finished goods is contrary to law and the industrial policy. In the past, they had themselves treated it as finished goods and subsequent decision without any basis is not sustainable in law.

9. Learned counsel appearing for the State, on the other hand, submitted that bran is a by-product and not the finished goods and in that view of the matter, the authorities rightly withdrew the exemption granted earlier to the petitioners in terms of the industrial policy.

10. In view of the aforesaid submission, the only question for consideration is whether bran is a finished goods or not. The industrial policy, as stated above shows that the exemption is given to the finished goods. Both the petitioners-companies have been registered for manufacturing atta, maida, suji and bran. It is not in dispute that bran is also a product like other three products of wheat. It is a commercial product and is known as such in the market. If it is accepted that it is not the main finished product, then it is secondary finished product of wheat and as such it is included within the definition of the finished goods,

11. Similar matters were involved in the cases of Commissioner of Sales Tax, Bombay v. Bharat Petroleum Corporation Ltd. as well as [Commissioner of Sales Tax, Bombay Vs. Bharat Petroleum Corporation Ltd.](#). The units in those cases were engaged in manufacturing cotton as well as kerosene. The question was whether the by-product, i.e., acid sludge and cotton waste were also manufactured goods. It was held that where a subsidiary product is turned out regularly and continuously in the course of a manufacturing business and is also sold regularly from time to time, an intention can be attributed to the manufacturer to manufacture and sell not merely the main item manufactured but also the subsidiary products.

12. In the case of [ITC Bhadrachalam Paper Boards Ltd. Vs. State of A.P.](#), question was whether coal-ash which was left over residue after burning coal as fuel in the manufacture of paper and paper boards was entitled for exemption as product of the industry in terms of the policy of the State Government. The apex Court held that though the unit was engaged in manufacturing paper and paper boards and coal was being used as fuel in the manufacture of the same, the coal ash was the left over residue after burning coal was a product of the unit for the purpose of exemption. It was held as follows :

"The coal-ash that is produced as a result of the burning of coal as fuel is a product of the appellant-industry though it might not be the principal product for which the industry was

established. Even so, being a product of the industry, it is entitled to the exemption given by the said order."

13. These two cases fully support the case of the petitioners. Accordingly, we hold that bran is also a finished goods and is entitled to exemption like other wheat products, namely, atta, maida, and suji. The contrary view taken by the authority is against law. Accordingly, the impugned orders withdrawing exemptions granted to the petitioners earlier, as contained in annexure-8 to C.W.J.C. No. 10205 of 2002 and annexure-7 to C.W.J.C. No. 10589 of 2002 are quashed.

14. In the result, both the writ applications are allowed.