

Bihar Foundry and Casting Limited Vs. State of Bihar and ors.

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Court : Patna

Decided On : Jul-04-2000

Judge : Choudhary S.N. Mishra and A.K. Prasad, JJ.

Appeal No. : C.W.J.C. No. 556 of 2000 (R)

Appellant : Bihar Foundry and Casting Limited

Respondent : State of Bihar and ors.

Disposition : Application Allowed

Prior history : Choudhary S.N. Mishra and A.K. Prasad, JJ. 1. After having heard the earned Counsel for the parties and going through the pleadings filed on their behalf, this Writ application is being disposed of at the time of admission itself. 2. In this Writ application, the prayer of the petitioner is for quashing the order dated 6.8.1999 passed by the Deputy Commissioner of Commercial Taxes, Hazaribagh Circle, Hazaribagh (Respondent No. 4), whereby he has refused to grant exemption certificate to the ne

Judgement :

Choudhary S.N. Mishra and A.K. Prasad, JJ.

1. After having heard the earned Counsel for the parties and going through the pleadings filed on their behalf, this Writ application is being disposed of at the time

of admission itself.

2. In this Writ application, the prayer of the petitioner is for quashing the order dated 6.8.1999 passed by the Deputy Commissioner of Commercial Taxes, Hazaribagh Circle, Hazaribagh (Respondent No. 4), whereby he has refused to grant exemption certificate to the new industrial unit of the petitioner-Company known as 'Gautam Ferro Alloys' from payment of Sales Tax on purchase of raw materials under Notification No. S.O. 478 dated 22.12.1995 (Annexure 2), From perusal of the order under challenge, it appears that prayer of the petitioner has been rejected on two grounds; Firstly, that Gautam Ferro Alloys is part and parcel of the Bihar Foundry and Casting Ltd. Rolling Mill Division, at Murar which is already enjoying the benefits of the Scheme; Secondly, the petition praying for grant of exemption was filed beyond the period prescribed. Mr. Poddar, earned Counsel appearing on behalf of the petitioner has challenged the order on the ground that even if it is assumed that M/s Gautam Ferro Alloys is a part and parcel of the Bihar Foundry and Casting Limited, still M/s Gautam Ferro Alloys is entitled for the exemption under the Industrial Policy of 1995. In support of his contention, earned Counsel has relied upon the decisions in the case of Malviya Chemicals & Pharmaceuticals (P) Ltd. and Anr. v. State of Uttar Pradesh and Ors. in 83 STC 436 wherein it has been held that in such matter the authority has to examine as to whether the goods manufactured by the Units was the same as the sister unit and if not than even if the unit is owned by the same person and part and parcel of the sister unit which is already enjoying exemption, such unit is to be treated as a separate and new unit for the grant of exemption. In the instant case, the earned Counsel submits that Gautam Ferro Alloys is manufacturing entirely different goods and as such, the unit is entitled for exemption for payment of Sales Tax on purchase of raw materials. As regards the second ground, earned Counsel submits that since the unit of the petitioner situate in Marar within the Ranchi Circle, the petition for grant of exemption was filed at Ranchi well within the time but subsequently, the petitioner was directed to file at Hazaribagh where the unit situate and a fresh petition was filed albeit beyond the prescribed period. It is further submitted that certain documents are required to be filed along with the petition and unless those documents are supplied by the department, the petitioner could not have been filed such petition. Submission of the earned

Counsel seems to be well founded. In similar situation, a Division Bench of this Court in the case of Apex Auto Ltd. v. The State of Bihar in CWJC No. 2158 of 1998 (R) wherein it has been held that the authority should have considered, the prayer of the Writ petitioner for grant of exemption and should not have rejected the prayer on the ground of technicalities like limitation.

3. Accordingly, in the facts and circumstances the case is remitted back to the authority concerned, namely, the Respondent No. 4-Deputy Commissioner, Commercial Taxes who will pass a freshy order, after hearing the representatives of the parties in the light, of the observation made herein above and also in the light of the decision referred to above as early as possible preferably within six weeks from the date of receipt/production of a copy of this order. In the result, the order dated 6.8.1999 as contained in Annexure 15 is hereby quashed and consequently, this Writ application is allowed to the extent indicated above.

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