SUPREME COURT OF INDIA

Tata Iron and Steel Company Limited

Vs.

State of Jharkhand

C.A.No. 2188 of 2002

(N. Santosh Hegde and A. K. Mathur JJ.)

25.08.2004

JUDGMENT

N SANTOSH HEGDE J

The appellant in this appeal has challenged a judgment of the High Court of Jharkhand, Ranchi, made in Civil Writ Jurisdiction Case No.1426 of 2001 dated 30.8.2001 whereby the High Court remanded the matter to the Commissioner of Commercial Taxes, Jharkhand, to re-examine the question whether in fact the appellant in its newly established industry manufactures a product which is commercially different from the product manufactured in its pre-existing unit of manufacturing Hot Rolled Product (HRP).

The facts giving rise to this appeal, briefly stated for the limited purpose of disposal of this appeal, are as follows :

The appellant company had established a manufacturing unit for production of HRP, Rounds, Structurals and other iron and steel products in Dhanbad which was then in the erstwhile State of Bihar. The State of Bihar in the year 1995 evolved a new industrial policy with a view to create an environment conducive to growth of industries in the State and to utilise to its optimum advantage all the resources available in the form of surface and ground water, fertile land, mineral wealth, disciplined and skilled manpower etc. By the said policy the Government tried to attract investors from various parts of the country to invest in identified thrust areas, as also for creation of essential infrastructure including private generation. One of the areas which the said industrial policy sought

to develop was in the field of metallurgical industries. As an incentive to attract investment in the State among others, the said policy provided for sales-tax incentives which included (exemption for new units in category 'B' districts) 8 years' sales-tax exemption on sale and purchase of materials from the date of commencement of production by such units located in category 'B' districts.

In pursuance of the said policy, necessary exemption notifications under section 7 of the Bihar Finance Act, were also issued.

The appellant having noticed the incentives offered by the State Government, by letter dated 30.4.1997 intimated the then Chief Minister of the State that it has a plan for installing a Cold Rolling Mill in Jamshedpur in which a sum of Rs.2, 000 crores was to be invested if the financial climate in the State was favourable. Therefore, before taking a final decision in this regard, it sought a confirmation from the State of Bihar as to its commitment to grant sales tax exemption as stated above. By that letter the appellant also requested the Chief Minister to authorise the Secretary of the Department of Industries and other officials of the State to have a discussion with the appellant about the plan in detail and to guide the appellant in the manner in which it could enjoy the benefits of sales-tax incentives.

Pursuant to the above request letter of the appellant, a meeting of the High Power Committee under the Chairmanship of the Chief Minister was summoned on 21.7.1997. Among the persons present at the meeting were the Minister for Commercial Taxes, Chief Secretary, Commissioner of Finance, Secretary of Industrial Department, Commissioner of Commercial Taxes and Director of Industries, Bihar, who were also the members of the said High Power Committee. In the said meeting the letter written by the appellant came to be discussed and a decision was taken that even existing industries which go in for diversification with an additional capital of Rs.500 crores shall be deemed to be treated as new units and all the benefits under the Industrial Policy of 1995 will be made available to them. It is pursuant to the said decision of the High Power Committee that a resolution was passed by the Government of Bihar amending the Industrial Policy Resolution, 1995 bringing it in conformity with the decision taken at the meeting of the High Power Committee on 21.7.1997.

Subsequent to the above referred amendment, the Commissioner and Secretary, Government of Bihar, Department of Industries, wrote a letter on 11.11.1997 stating that the Government has taken a decision that any investment over Rs.500 crore would be taken as an expansion/diversification or a new unit, as such the appellant company will be entitled to all the reliefs under the Bihar Industrial Policy. In the said letter the Secretary also expressed the hope that the appellant will take necessary steps to set up a unit in Bihar as soon as possible. As a follow-up action on 10.1.1998, the Director of Technical Development, Department of Industries, State of Bihar wrote to the appellant expressing the happiness on the decision of the appellant to put up a Cold Rolling Mill of 1.2 million tons per annum capacity and requested the appellant to go ahead with the project implementation and to keep the Government informed of the progress in this regard. By a letter dated 16.4.1999 the Commissioner and Secretary, Government of Bihar, re-assured the appellant that the Central sales-tax and Bihar sales-tax both will be exempted as provided in the policy in regard to the purchase and sale of Cold Rolling Mill. The said letter also assured that if production in the new unit of the appellant started in the year 1997 such benefit of exemption would be available up to the year 2005. It also assured that even if the industrial policy expired the facilities granted to the appellant will continue till a period of 8 years from the date of production.

On 2.3.2000 exercising the power conferred under sub- section 3(b) of section 7 of the Bihar Finance Act, 1981, an amendment was brought about in the notification which came into existence

pursuant to the industrial policy of 1995. This amendment also provided the benefit to the new industries which came into existence by way of expansion/modernisation/ diversification provided the investment in such expansion/ modernisation/diversification was done on an additional investment of Rs.500 crore. On 20.5.2000 pursuant to a decision taken on 26.4.2000 by the Commissioner, Finance, Director of Industries, Bihar, conveyed to the appellant that the Government has granted approval for setting up of Cold Rolling Mill with production capacity of 1.20 million tons on an investment of Rs.1874.04 crores put by the appellant on this project. On 9.8.2002, the Director Technical Development, Department of Industries (Director of Technical Development) wrote to the appellant that the team of Technical Officers constituted by his Department to determine the date of commercial production of appellant's Cold Rolling Mill made the site verification and examined the related papers, thereafter, they had submitted a report of inspection observing that the date of commercial production has been recommended as 1.8.2000, hence, the commercial production at CRMs is declared as from 1.8.2000.

From the above, it is noticed that relying on the industrial policy of the Government of Bihar of 1995 and the assurance given by the Government pursuant to the said policy and the notification made thereunder, the appellant invested nearly Rs.2000 crores on its new unit for the manufacture of CRMs, the commercial production of which commenced from 1.8.2000 which was verified by the Technical Officers of the Department of Industries, Bihar and certified as such by them.

On 15.11.2000 under the Bihar Re-organisation Act, 2000, a part of Bihar which included Jamshedpur, became a new State named as Jharkhand State. On 15.12.2000 by a notification, the Governor of Jharkhand ordered that the Bihar Finance Act, 1981, Central Sales Tax (Bihar) Rules, 1956 and the notification made thereunder, among other Acts, Rules and Regulations, shall be deemed to be in force in the entire State of Jharkhand w.e.f. 15.11.2000.

On 21.12.2000, the successor State, namely, the State of Jharkhand issued the exemption certificate as contemplated under Notification Nos.478 and 479 dated 22.12.1995 by the Bihar State Finance (and Commercial Tax) Department exempting the new unit of the appellant from purchase tax as well as sales-tax on purchases and sales made in regard to the Cold Rolling Mill. This was pursuant to an order made by the Joint Commissioner of Commercial Taxes dated 16.12.2000 wherein after an elaborate inquiry and after hearing the departmental representatives, the Joint Commissioner came to the conclusion among other findings that the product manufactured by the appellant in its new unit is entirely a new product called Cold Rolled Products while the product manufactured in its old unit was a separate product called HRPs; both of which required distinctly different manufacturing processes and equipments. He also held that though the raw-material for the manufacture of CR product is HR product, the CR product is totally different both in its metallurgical components, the end-use, and the two products were commercially recognised as different products, hence, the Cold Rolled Products manufactured by the new unit being different from the Hot Rolled Product manufactured by the old unit, the appellants were entitled to exemption of sales-tax as provided under the industrial policy and the notifications, therefore, he approved the issuance of certificate.

However, the Commissioner of Commercial Taxes, Jharkhand, initiated suo motu revision purporting to act under section 46(4) of the Bihar Finance Act against the said approval granted by the Joint Commissioner and after an inquiry and hearing the parties concerned, came to the conclusion that the hot rolled steel i.e. the HR product and cold rolled steel i.e. the CR product have to be treated as one and the same commodity for the purpose of levy of tax, therefore, the appellants are not entitled to the sales-tax exemption. In this process, he did not disagree with the finding of

fact arrived at by the Joint Commissioner as to the nature of product and how they are different but relied on an entry found in the Schedule to section 14 of the Central Sales Tax Act, which enumerated both hot and cold rolled products in the same entry. Then relying on a judgment in Telengana Steel Industries 6(SC)] held merely because the two products are found in the same Entry in the Schedule to the Central Sales Tax Act, both the products will have to be treated as the same. Though it was pointed out to the Commissioner that the judgment of this Court in Telengana's case (supra) was subsequently held to be contrary to an earlier Constitution Bench judgment of this Court and declared to be not good law in K.A.K. Anwar & Co. v. State of Tamil Nadu 1 (SC)], the Commissioner seems to have lost sight of the same and chose to rely upon Telengana Steel (supra) to come to the conclusion that the two products must be treated as the same commodity merely because they are found in the same Entry in the Act for the purpose of levy of sales-tax and if that be so under the policy and the notification unless the products are two different commodities the benefit of exemption was not available.

Being aggrieved by the said order of the Commissioner, the appellant preferred a civil writ petition before the High Court of Jharkhand. The High Court by the impugned judgment, accepted the appellants' case in all other respects including the effect of the judgment of this Court in K.A.K. Anwar & Co.'s case (supra) and came to the conclusion that merely because two commodities are shown in the same Entry in the Central Sales Tax Act, it would not ipso facto make the two commodities the same commodities. It also recorded the concession made by the learned Additional Advocate General appearing for the respondent-State who had submitted that all other issues raised in the writ petition have to be answered in favour of the appellant. The Court also held that the only issue to be decided was whether on facts the HR product and CR product manufactured by the two units of the appellant are one and the same product or are two different products, and not on the basis of law as held by the Commissioner.

On the above basis, the High Court without there being a challenge to the finding of the Joint Commissioner as to the comparability of the two products on facts, and which finding being based on material produced before the said authority, still remanded the matter to the Commissioner holding that the appellant had not produced enough material whereby it could be satisfactorily held that the CRM is a product commercially different from HRM. It is because of this limited finding that the appellant is now before us.

Mr. Dushyant A. Dave, learned senior counsel appearing for the appellants, raised various grounds, attacking the judgment of the High Court including the ground that after the amendment which permitted diversification with an investment of Rs.500 crore, nature of product manufactured by the new product has no relevance for the purpose of promised exemption. He also contended that the correspondence between the State of Bihar and the appellant which culminated in the certificate of exemption granted by the successor State, clearly shows that there was an unambiguous offer, if not a fervent request by the State of Bihar to the appellant to invest large sums of money in an industrial project for which all assistance and exemptions as available under the 1995 policy were promised by the State of Bihar and it was because of this representation, request and promise that the appellant which otherwise was thinking of putting up its project in other States like Orissa, Gujarat etc. which also had promised certain benefits, chose to come to Bihar and invest nearly Rs.2, 000 crores. In such circumstances, the respondent-State is precluded by the principle of promissory estoppel from retracting its promise.

We, however, do not think it is necessary for us to go into these questions since in our opinion as recorded by the High Court in the impugned judgment, the only question that arises for our

consideration is whether the product manufactured by the appellant in its new unit is a Cold Rolled Mill product or as it is termed in some parts of the judgment and orders as CRM or it is the same product as is being manufactured by the appellant in its old unit which is known as Hot Rolled Mill product or HRM.

In this regard, learned counsel for the appellant submits the correspondence between the State of Bihar and the appellant clearly shows that the new unit was being established for the manufacture of CRM and the appellant had no intention to increase the production of its HRM in the existing factory. It accepted the proposal of the State Government to invest such a huge amount of money because CRM is a new product used in the manufacture of certain sophisticated equipments for which HRM cannot be the raw-material. He submitted that from the various reports furnished by the appellant making known the process of manufacture, the inputs and the equipments required for such manufacture, it is clear that the product they manufacture in the new unit is only CRM. He further submitted that even the report submitted after inspection by the representatives of the Industries Department also establishes the same fact. Learned counsel pointed out that the Joint Commissioner while holding the two products to be different commodities had considered various materials to come to the said conclusion, and has given reasons for the same. He also pointed out that the Commissioner in his suo motu revisional order did not disagree with the Joint Commissioner on this question of fact but on an erroneous interpretation of the placement of the product in the same entry in the Central Sales, and following an overruled judgment of this Court, the said Commissioner came to an erroneous conclusion on a technicality, therefore, the High Court having found that technical reasoning of the Commissioner is unsustainable and having noticed the concession of the Additional Advocate General, it could not have allowed the writ petition on a ground which was neither raised nor argued before it and remanded the matter to the tribunal for a de novo inquiry by the Commissioner which would only amount to the harassment to the appellant.

Mr. Altaf Ahmad, learned senior counsel appearing for the State of Jharkhand, however, contended that while it is true that the only question which arose for consideration before the High Court was in regard to the nature of product manufactured by the new unit of the appellant. He contended that none of the parties had led sufficient evidence for establishing this fact, therefore, the High Court was justified in remanding the matter to the Commissioner with liberty to lead fresh evidence. He submitted that the appellant would not be put to any prejudice if really the product manufactured by it in the new unit is a new product because it can establish its case before the Commissioner. He also pointed out that this Court normally does not interfere in an order of remand.

Having heard learned counsel for the parties, we think in the facts and circumstances of this case, the High Court was in error in remanding the matter to the Commissioner to decide the question of fact which in our opinion was already conclusively decided by the Joint Commissioner and not disagreed on facts by the Commissioner. In this process, if we see from the narration of facts recorded hereinabove that right from the beginning, it is the case of the appellant that they wanted to establish a new unit for the manufacture of CRM.

The correspondence also shows at every stage even the State and the concerned Department accepted the proposal for the said purpose. No case has been made out, leave alone an attempt on behalf of the State has been made that the appellant misled the Department or by any sort of camouflage tried to put up a plant which only manufactures HRM. As a matter of fact, it was not the case of the respondent-State that in fact the product manufactured by the appellant in the new unit is not CRM. It could not have been the case either because in our opinion a careful reading of the letter of the Director of Technical Development, Bihar, dated 9.8.2000 wherein he has referred to a

team of Technical Officers who visited the unit of the appellant, had reported that the commercial production was CRM and on verification, production of the same was found to have started hence they recommended that a declaration be given in regard to the same w.e.f. 1.8.2000. These Technical Officers who we must presume have seen the product, have nowhere stated that the products manufactured were not CRM nor has the respondent-State repudiated this letter or challenged the correctness of the same. #

As noticed above, even the Commissioner who initiated suo motu revision, did not disagree with the finding of the Joint Commissioner given on facts that the product is CRM. He only proceeded on a technicality relying on an erroneous judgment.

In the writ petition filed by the appellant the State has filed a counter affidavit. Even in the counter affidavit the factual aspect of the product being CRM is not questioned nor do we find any argument addressed on behalf of the respondent-State before the High Court that the product manufactured by the appellant in its new unit is not CRM. It is for the first time the High Court having come to the conclusion that the finding of the Commissioner based on the judgment of this Court in Telengana Steel (supra) is erroneous, on its own proceeded to examine the material available on facts to establish whether the product manufactured by the appellant in its new unit is CRM or HRM. Even the High Court on such material that was available before it did not come to a definite conclusion that the finding of the Joint Commissioner was erroneous but it proceeded to weigh the quantity of evidence and thought it more prudent to remand the matter to take more evidence in this regard. We think in a writ petition filed under Article 226 or 227, the High Court ought not to have done such an exercise. #

Mr. Altaf Ahmad, learned senior counsel contended that the finding of the Joint Commissioner in regard to the nature of product only refers to certain literature produced by the appellant and certain feasibility report, project data and the correspondence between the Government of Bihar and the appellant. This by itself according to learned counsel, would not in fact indicate that the actual product that is manufactured by the appellant is CRM. He submitted that the appellant ought to have either by summoning the officers to the site or by other materials established that the new unit produced only CRM and not HRM. We are unable to accept this argument either. First of all, as noticed above, it is not the case of the State that the product manufactured by the appellant in its new unit is not CRM. It is not the case of the State that the existing unit either by its machinery or by its process is capable of making HRM and not CRM or is capable of manufacturing both. Of course, if such an issue were to be raised the burden would have been on the appellant to establish the same. When such an issue is not raised it is not necessary for the appellant to establish that fact by any such intrinsic evidence. The material produced before the Joint Commissioner was in our opinion sufficient to decide whether the product manufactured by the appellant is CRM or not and the said Joint Commissioner having given a positive finding and that finding having not been interfered with by the Commissioner, we think the High Court erred in remanding the matter for fresh inquiry.

It is true that normally as against an order of remand this Court hesitates to interfere since there is always another opportunity for an aggrieved party to establish its case. But in this case we should notice the decision to establish an industrial unit was initiated by the appellant as far back as in the year 1997. Based on a promise made in the industrial policy of the State of Bihar, at every stage the appellants tried to verify and confirm whether they are entitled to the benefit of exemption or not and they were assured of that exemption. It is based on these assurances that the appellant invested a huge sum of money which according to the appellant is to the tune of Rs.2, 000 crore but the State

says it may be to the tune of Rs.1, 400 crore. Whatever may be the figure, the fact still remains that the appellants have invested huge sums of money in installing its new industrial unit. At every stage of the construction, progress and installation of the machineries, the concerned Government/authorities were informed and at no point of time it was suspected that the new unit was going to manufacture HRM. The process of manufacturing HRM and CRM as could be seen from the experts' opinion are totally different and the material on record also shows that the plant design for a new unit is for the purpose of manufacturing CRM.

These factors coupled with the fact that at no stage of the proceedings which culminated in the judgment of the High Court, the respondent-State had questioned this fact except for the technical ground taken by the Joint Commissioner which is found to be erroneous, we find ends of justice would not be served by remanding the matter for further inquiry.

We are convinced that the issue before the High Court was not whether in fact the new unit of the appellant manufactures HRM or CRM. That being the case, the High Court ought not to have raised the issue suo motu and remanded the matter to the Commissioner. #

For the reasons stated above, this appeal succeeds; the impugned order of the High Court is set aside. We restore the proposal made by the Joint Commissioner for grant of exemption certificate to the appellant as also the exemption certificates granted consequently. #