

STATE OF BIHAR AND ORS.

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v.

M/S SUPRABHAT STEEL LTD. AND ORS.

NOVEMBER 17, 1998

[S.P. BHARUCHA, G.B. PATTANAİK AND
S. RAJENDRA BABU, JJ.]

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Sales Tax :

*Bihar Finance Act, 1981 : Section 7—Industrial Policy of 1993—
Clause 10.4(1)—Sales Tax exemption on purchase of raw materials—
Notification dated 4.4.1994—Denial of sales tax exemption to old units
started prior to 1.4.1993—High Court quashed the said notification to the
extent it denied the exemption to old industrial units—On appeal, held,
under sub-clause (b) of clause 10.4(i) of the Industrial Policy, even old units
started production prior to 1.4.1993 whose investment does not exceed Rs.
15 crores are entitled to sales tax exemption—Thus High Court fully justified
in striking down that part of notification which is repugnant to clause
10.4(i)(b) of the Industrial Policy.*

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The appellant-State with the object to promote industrial growth in the State, introduced Industrial Policy of 1993. Clause 10.4(i)(b) of the policy deals with the sales tax exemption on purchase of raw materials. The State Government after introducing the industrial policy issued the notification dated 4th April 1994 in exercise of the powers under section 7 of the Bihar Finance Act, 1981. The said notification denied the facility of sales tax exemption to such old industries which had started production prior to 1.4.93 but whose investment on plant and machinery did not exceed fifteen crores on 1.4.1993. The respondent-industrial units which had come into production prior to 1.4.93, approached the High Court for quashing the said notification to the extent it makes the old industrial units like respondents ineligible for the facility of sales tax exemption and for a direction to the State to extend the facility to them in terms of clause 10.4(i)(b). The said petition having been allowed the appellant-State has preferred the present appeal.

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On behalf of the appellant-State it was contended that clause 10.4(i)(b) must be read subject to clause 1(a) and industrial policy of 1993 which in no uncertain terms declares that the industrial policy will be applicable to

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A those industrial units which had come into production from 1.4.93 to 31.3.98 and thus High Court committed an error in holding that the respondents' old industrial units are entitled to the facility of sales tax exemption.

Dismissing the appeals, the Court

B HELD : 1. The High Court was fully justified in striking down that part of the Notification dated 4th April 1994 which was repugnant to sub-clause (b) of clause 10.4(i) of the industrial policy and committed no error in granting the benefit of the clause 10.4(i) of the industrial policy to the respondents' industrial units. [705-B-C]

C 2. In exercise of its powers under section 7 of the Bihar Finance Act, 1981, the State Government is not permitted to deny any benefit which is otherwise available to an industrial unit under the Industrial Incentive Policy. The Industrial Incentive Policy is issued by State Government after it is approved by the Cabinet. The issuance of notification under section 7 of the Act is by the State Government in the Finance Department to carry out the objectives and policy decisions taken in the industrial policy. Thus any notification issued by the Government order in exercise of power under section 7 of the Act, if found to be repugnant to the industrial policy, then the said notification must be held to be bad to that extent. In the instant case, the notification dated 4th April 1994 has been examined by the High Court and has been rightly found to be contrary to clause 10.4(i)(b) of the Industrial Policy. [705-D to H; 706-A]

F 3. Under sub-clause (a) of clause 10.4 of the Industrial Policy, the Industrial units which had come into production between 1.4.93 to 31.3.98 whose investment on plants and machinery does not exceed Rs. 15 crores were entitled to the facility of exemption on the purchase of raw material for a period of seven years from the date of production. However under sub-clause (b), even the old industrial units whose investment on plant and machinery does not exceed Rs. 15 crores on 1.4.93 would be entitled to the said facility of sales tax exemption for a period of seven years from 1.4.93. Thus it is clear that generally the incentive under the 1993 policy would be available to the industrial units coming into production between 1.4.93 to 31.3.98, but so far as sales tax exemption on purchase of raw material is concerned, even the old units which have started production prior to 1.4.93 but whose investment on plant and machinery does not exceed Rs. 15 crores on 1.4.93 would also be entitled to the facility of sales tax exemption.

H [704-E-F; 705-A-B-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 28-30 of 1996. A

From the Judgment and Order dated 19.2.96 of the Patna High Court in C.W.J.C. No. 671 of 1996.

Rakesh Dwivedi and Mr. B.B. Singh for the Appellants. B

Pawan Kumar, A.K. Sinha, Gopal Prasad, M.S. Mittal, K. Pandeya, B.V. Desai, D.K. Garg, D.P. Mukherjee, Rudreshwar Singh, R.P. Wadhvani and S.B. Upadhyay for the Respondents.

The Judgment of the Court was delivered by C

G.B. PATTANAIK, J. Leave granted in the Special Leave Petitions which have been tagged on to the Civil Appeals.

In these appeals, the Judgment of the Division Bench of Patna High Court in Civil Writ Jurisdiction Case Nos. 7063, 7068 and 7467 of 1994 and the other Judgments following the same are under challenge. The short question for consideration is whether the Industrial Units which have started production prior to 1.4.93 and whose investment on plant and machinery do not exceed Rs. 15 Crores on 1.4.93 would be entitled to the facilities of sales tax exemption on the purchase of raw material for a period of seven years from 1.4.93 in accordance with Clause 10.4(i)(b) of the Industrial Incentive Policy, 1993 (hereinafter referred to as 'the Industrial Policy') and whether the notification issued by the Government of Bihar dated 2nd of April, 1994 in exercise of power under Section 7 of the Bihar Finance Act to the extent it indicates "who has not availed of any facility or benefit under any Industrial Promotion Policy" is invalid as being contrary to the Policy Resolution of 1993. The High Court by the impugned Judgment came to the conclusion that the old industrial units whose investment on plant and machinery did not exceed Rs. 15 Crores on 1.4.93 would be entitled to the sales tax exemption on the purchase of raw material for a period of seven years from 1.4.93 as provided under Clause 10.4 (i)(b) of the Industry Policy of 1993. Examining the notification dated 2nd of April, 1994, issued by the Government of Bihar in exercise of power conferred by Clause (b) of sub-section (3) of Section 7 of the Bihar Finance Act, 1981, the High Court further came to the conclusion that the notification so far as it imposes a condition that the facility of sales tax exemption on purchase of raw material will be available only to those industrial units who have not availed of any facility/benefit on the earlier incentive policy is bad and struck D
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A down that part of the notification.

B It is not necessary to state the facts in detail. Suffice it to say that the State of Bihar with the object of accelerating the industrial progress in the State have been declaring the industrial policies from time to time and prior to 1993 Policy, had announced the Policy on 1.9.86. Being of the opinion that the incentives given under 1986 Policy have not achieved the desired industrial progress in all the Districts of the State and to achieve balanced industrial growth in a planned manner, the industrial incentives require new dimensions, the State Government introduced the new Industrial Policy of 1993. Clause 10.4(i)(b) of the Policy deals with the facility of sales tax exemption on the purchase of raw material with which provision we are concerned in the present appeals. There is no dispute that the respondents in each of these appeals are old industrial units which have come into production prior to 1.4.93 but whose investment on plant and machinery did not exceed Rs. 15 crores on 1.4.93. The State Government after introducing the new Industrial Policy of 1993, issued the exemption notification on 4th of April, 1994 in exercise of the power under Section 7 of the Bihar Finance Act under which the old industrial units like the respondents who had started production prior to 1.4.93 but whose investment on plant and machinery did not exceed Rs. 15 crores on 1.4.93 were denied the facility of sales tax exemption on the purchase of raw materials as those units had availed of some facilities under the prior Policy of 1986. Being aggrieved by the said notification, the respondents approached the High Court of Patna for quashing the said notification dated 4th of April, 1994 to the extent it makes the old industrial units of the respondents ineligible for the facility of sales tax exemption on purchase of raw materials and for a direction to the State of Bihar to extend the facility to such old units of sales tax exemption on raw materials in terms of Clause 10.4(i)(b) of the Policy Resolution of 1993. Those writ petitions having been allowed, as stated earlier, the State has preferred these appeals.

G Mr. Rakesh Dwivedi, learned Senior Counsel appearing for the appellant-State contends that the Policy Resolution of 1993 having been made applicable to those industrial units which came into production from 1.4.93 to 31.3.98 as provided in Clause 1(a) and to those entrepreneurs who have invested capital for the establishment of industry on the basis of previously announced incentives before 1.4.93 but could not begin production till 31.3.93 subject to exercising their option within 30 days from the date of the issue of the 1993 Policy Resolution, indicating whether they would avail of the benefits under H the previous incentive policy or the benefit of the new industrial policy, the

respondents being the old industrial units who have started producing prior to 1.4.93 would not be entitled to the benefit of the exemption from sales tax on the purchase of raw material, even if their investment on plant and machinery did not exceed Rs. 15 crores on 1.4.93 as indicated in Clause 10.4(i)(b) of the Policy. According to Mr. Dwivedi, said Clause 10.4(i)(b) must be read subject to Clause 1(a) which in no uncertain terms declares that the Industrial Policy of 1993 will be applicable to those industrial units which would come into production from 1.4.93 to 31.3.98. In this view of the matter, Mr. Dwivedi contends that the High Court was in error to hold that the respondents' old industrial units are entitled to the facility of sales tax exemption on the purchase of raw material even if their production have started prior to 1.4.93 since undisputedly their investment on plant and machinery did not exceed Rs. 15 crores on 1.4.93 in terms of Clause 10.4(i)(b) of the Policy of 1993. Mr. Dwivedi, learned Senior Counsel further argued that even if it is construed that the old industrial units like the respondents are entitled to the facility of sales tax exemption on the purchase of raw materials in terms of Clause 10.4(i)(b) of the Policy of 1993 but no such exemption can be claimed until and unless the State Government issues notification of exemption in exercise of power under Section 7 of the Bihar Finance Act. The Government having issued such a notification on 4th of April, 1994 and the said notification having made it clear that the respondents will not be entitled to the benefit of Clause 10.4(i)(b) of the Policy, as such industrial units have already availed of the facilities and incentives under the old Policy of 1986, the High Court committed error in striking down the said notification of the State Government issued on 4th of April, 1994. According to Mr. Dwivedi the power of the State Government for issuing notification of exemption under Section 7 of the Bihar Finance Act having authorised the State Government to issue such notification subject to such conditions and restrictions as it may impose and the State Government under the impugned notification dated 4th of April, 1994 having imposed such conditions, the notification was within the powers conferred on the State Government under sub-section (3) of Section 7 of the Bihar Finance Act and the High Court, therefore, was not justified in striking down the same to the extent already indicated.

We have carefully considered both the contentions raised by the learned counsel for the appellant, but we do not find force in any one of them. It is no doubt true that Clause (a) of the Policy clearly indicates that the policy would be applicable to those industrial units which would come into production from 1.4.93 to 31.3.98. But in enumerating the benefits which would be available under the Policy, the policy makers have indicated different heads of the

A benefit dealing with subsidy, financial assistance, exemption in sales tax/deferment facility so on and so forth. Clause (10) deals with facility of sales tax deferment. Clause 10.4 deals with the heading 'Sales tax exemption on the purchase of raw material'. It would be appropriate to extract Clause 10.4 in extenso since the interpretation of this Clause is involved in these appeals.

B "10.4. Sales Tax exemption on the purchase of raw material:

(i) This facility will be admissible to the industrial units mentioned in Annexure-V in the following manner:

C (a) Industrial Units coming into production between 1.4.93 to 31.3.98 whose investment on plant & machinery does not exceed Rs. 15.00 Crores shall be entitled for this facility for a period of seven years from the date of production.

D (b) Such old industrial units whose investment on plant & machinery do not exceed Rs. 15.00 Crores on 1.4.93 shall be entitled for this facility for a period of seven years from 1.4.93.

(ii) All other industrial units shall continue to enjoy the existing facility of purchase of raw material on concessional rate of tax as announced and made applicable by the Sales Tax Department as before."

E A bare look at the aforesaid Clause makes it crystal clear that under sub-clause (a), while the industrial units coming into production between 1.4.93 to 31.3.98 whose investment on plant & machinery does not exceed Rs. 15 crores would be entitled to the facility of exemption on the purchase of raw material for a period of seven years from the date of production, under sub-clause (b) the old industrial units whose investment on plant & machinery does not exceed Rs. 15 crores on 1.4.93 would be entitled to the said facility of sales tax exemption on the purchase of raw material for a period of seven years from 1.4.93. In view of the clear and unambiguous language of sub-clause (b) of Clause 10.4, it is difficult to accept the contention of Mr. Dwivedi, learned Senior Counsel, appearing for the State that even said sub-clause (b) would be subject to the terms indicated in the beginning of the Resolution that the Policy would be applicable only to those industrial units which would come into production from 1.4.93 to 31.3.98. While considering the benefits and incentives given to the several industrial units under the Policy Resolution of 1993, it would not be appropriate to exclude those industrial units who would be otherwise entitled to the sales tax exemption

on the purchase of raw material under Clause 10.4(i)(b) of the Policy. Reading the Policy as a whole, the only conclusion which can be arrived at is while generally the incentives under the 1993 Policy would be available to the industrial units coming into production between 1.4.93 and 31.3.98, but so far as sales tax exemption on the purchase of raw material is concerned which is provided under Clause 10.4, even though the old industrial units have started production prior to 1.4.93, but whose investment on plant and machinery does not exceed Rs. 15 crores on 1.4.93 would be entitled to the facility for a period of seven years from 1.4.93. We are entirely in agreement with the conclusion arrived at by the High Court in this regard and we do not find any error committed by the High Court in granting the benefits of the said Clause 10.4(i)(b) of the Policy to the respondents' industrial units. We accordingly have no hesitation to affirm the conclusion of the High Court on this score and reject the submission of Mr. Dwivedi, the learned Senior Counsel, appearing for the appellatant.

Coming to the second question, namely the issuance of notification by the State Government in exercise of power under Section 7 of the Bihar Finance Act, it is true that issuance of such notifications entitles the industrial units to avail of the incentives and benefits declared by the State Government in its own industrial incentive policy. But in exercise of such power it would not be permissible for the State Government to deny any benefit which is otherwise available to an industrial unit under the Incentive Policy itself. The Industrial Incentive Policy is issued by the State Government after such Policy is approved by the Cabinet itself. The issuance of the notification under Section 7 of the Bihar Finance Act is by the State Government in the Finance Department which notification is issued to carry out the objectives and the policy decisions taken in the Industrial Policy itself. In this view of the matter, any notification issued by the Government Order in exercise of power under Section 7 of the Bihar Finance Act, if it is found to be repugnant to the Industrial Policy declared in a Government Resolution, then the said notification must be held to be bad to that extent. In the case in hand, the notification issued by the State Government on 4th of April, 1994 has been examined by the High Court and has been found, rightly, to be contrary to the Industrial Incentive Policy, more particularly the Policy engrafted in Clause 10.4(i)(b). Consequently, the High Court was fully justified in striking down that part of the notification which is repugnant to sub-clause (b) of Clause 10.4(i) and we do not find any error committed by the High Court in striking down the said notification. We are not persuaded to accept the contention of Mr. Dwivedi that it would be open for the Government to issue a notification

- A** in exercise of power under Section 7 of the Bihar Finance Act, which may over-ride the incentive policy itself. In our considered opinion the expression “such conditions and restrictions as it may impose” in sub-section (3) of Section 7 of the Bihar Finance Act will not authorise the State Government to negate the incentives and benefits which any industrial unit would be otherwise entitled to under the general Policy Resolution itself. In this view
- B** of the matter, we see no illegality with the impugned judgment of the High Court in striking down a part of the notification dated 4th of April, 1994.

We, accordingly do not find any force in these appeals, which are, therefore, dismissed but in the circumstances there will be no order as to costs.

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S.V.K.I.

Appeals dismissed.