

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10038 of 2020

M/s Essell Lubricants and Chemicals Private Limited having its Office at Eyari Road Farm, Aurangabad-824101. through its Managing Director-Laxmi Prasad aged about 53 Years S/o Late Gupteshwar Ram, resident of Village-Nawadih Road, Near Kali Club P.S.-Aurangabad, District-Aurangabad.

... ... Petitioner/s
Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department of Industry, Government of Bihar, Patna.
3. Commissioner-Cum-Secretary, Department of State Taxes, Government of Bihar, Patna.
4. Director, Industries, Department of Industry, Government of Bihar, Patna.
5. The Director (Technical Development) Department of Industry, Government of Bihar,
6. The General Manager, District Industries, Centre, Aurangabad.

... ... Respondent/s

Appearance :

For the Petitioner/s : Mr.Brisketu Sharan Pandey
For the Respondent/s : Mr.Lalit Kishore (Ag)

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT

Date : -03-2024

1. Heard the parties.
2. The petitioner/M/s Essel Lubricants and Chemicals Pvt. Ltd. has filed the present writ application for a direction to the respondent/authorities to pay a sum of Rs. 17.79 lacs towards reimbursement of value added tax for the year 2012-13 till 2014-15 under the Bihar Industrial Incentive Policy of 2006 (hereinafter referred to as the 2006 Policy). By way of I.A. No. 1 of 2022, the petitioner has sought quashing of the letter no. 649 dated 27.08.2001 whereby respondent no. 6 has



communicated that the petitioner does not have the approval of district level Single Window Clearance Committee/State Investment Promotion Board.

3. Brief facts involved in the case are that the Bihar government published 2006 Policy for increasing the industrial growth of the State and to revive the sick and closed unit by creating favourable environment to attract domestic and foreign investment. As per Clause 2 (vi) read with Clause 10 of the Policy, new units which commence the commercial production within five years from 01.04.2006 were given the incentive of 80% of reimbursement against the admitted VAT amount deposited by the unit in the account of the State Government. This facility was made available for a period of ten years. The petitioner, on the basis of promise made under the Policy, setup a manufacturing unit of refined petroleum products for which production commenced on 01.07.2008. *Vide* letter no. 546, dated 31.07.2010 (Annexure 1), the petitioner was issued eligibility certificate under the 2006 Policy by the General Manager, District Industrial Centre, Aurangabad, certifying that the petitioner/company is eligible to receive reimbursement of 80% of VAT paid under the 2006 Policy.

4. For the financial year 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15, the petitioner applied for reimbursement of a



sum of Rs. 17,493/-, Rs. 9,50,600/-, Rs. 9,07,022/-, Rs. 9,28,077/-, Rs. 7,11,502/-, total amounting to Rs. 35,14,694/- under the 2006 Policy, out of which, reimbursement of Rs. 9,67,590/- for the financial year 2010-11, 2011-12 was paid to the petitioner against reimbursement of the VAT amount which is 80% of the total admitted tax paid by the petitioner.

5. For the financial year 2012-13, 2013-14 and 2014-15, against the total amount of Rs. 26,94,442/-, the petitioner has been paid only Rs. 9,14,606/-. The balance amount of Rs. 17,79,836/- has not been paid for which the petitioner has filed a representation before the Commercial Tax Department but did not receive any response.
6. Learned counsel for the petitioner argued that after coming into force the 2006 Policy, the petitioner/company set up a manufacturing unit of refined petroleum and in terms of the policy, commenced production on 01.07.2008 i.e., within five years from the cut off date i.e., 01.04.2006. The petitioner/unit was fully covered by the 2006 Policy, as such, it was eligible for 80% VAT reimbursement. *Vide Annexure 1*, the respondent/authorities duly declared the petitioner/unit eligible for 80% VAT reimbursement. The authorities also accepted the claim of the petitioner for reimbursement of 80% VAT amount and paid the same for financial year 2010-11, 2011-12.



7. In the supplementary counter affidavit, dated 01.09.2021, the respondent/authorities, for the first time, took a specious plea that petitioner does not have the approval of District Level Single Window Clearance Committee/S.I.P.B. The petitioner/company, on the basis of promise made in the Industrial Policy, established the manufacturing unit, changed its position. Now, the 80% of VAT reimbursement is being denied firstly on the plea of not having the approval of District Level Single Window Committee and secondly, that in 2011, a new Industrial Policy has come into force under which the petitioner/company is entitled for 25% of VAT reimbursement only.
8. On the other hand, learned counsel for the respondent/state argued that in 2011, new Industrial Policy came into existence and in terms of Clause 3 (iii) of Industrial Policy, 2011, the petitioner was only entitled for 25% of VAT reimbursement which has been paid to the company for the financial year 2012-13, 2013-14 and 2014-15. He further argued that approval from the State Investment Promotion Board/S.I.P.B. and/or approval of the District Committee was not taken by the petitioner. The fate of such units which do not have the approval of the committee are yet to be resolved internally by the department. The claim of the petitioner relates to the 2006 Policy which has already completed its tenure and is closed



now and a new Industrial Policy, 2011 has come into existence and now another Industrial Policy of 2016 is in vogue.

9. I have heard learned counsel for the parties and have gone through the 2006 Policy and 2011 Policy. The question which requires consideration is as to whether the petitioner/company can be denied reimbursement of VAT paid under the 2006 Policy on the ground that a new Industrial Policy came into existence in 2011 under which the petitioner is entitled to get VAT reimbursement to the extent of 25% only. Industrial policy 2006 was published on 15.07.2006. Clause 2 (vi) of the Policy deals in subsidy/incentive on VAT and says that this facility will be available to small/large and medium industries. The industrial unit will get a passbook from the State Government in which the details to the tax paid under Bihar VAT could be entered and verified by the Commercial Tax Department in the form prescribed in Appendix III. The Director, Industries, will be authorized to pay the incentive amount on the basis of verification.

10. The new units will avail 80% reimbursement against the admitted VAT amount deposited in the account of Government, for a period of ten years. The maximum subsidy amount payable is 300% of the capital invested. The Industrial Policy, 2011 in Clause 3 (b), also says that new units will be entitled to avail 80% reimbursement against the admitted VAT



amount deposited in the account of the government, for a period of ten years. The ceiling for this reimbursement will be 300% of the capital invested but in Clause 3 (iii) under heading reimbursement of VAT/entry-tax for the unit in operation, the 2011 Policy says that presently working industrial units will get reimbursement of 25% of the VAT/entry-tax deposited in the account of government against admitted VAT. The State/respondent is relying upon the aforesaid Clause of the 2011 Policy to submit that since petitioner/unit is presently working, therefore, it is entitled for VAT reimbursement to the extent of 25% only.

11. In Pournami Oil Mills and Others vs. State of Kerala and Another reported in 1986 SUPP SCC 728, the Hon'ble Supreme Court has held that concession to new industries, setup pursuant to concession granted by the State Government, is entitled to invoke rule of promissory estoppel to obligate the State not to take a different stand and to grant concession to them. Under the notification dated 11th April, 1979, of the Kerala Government, new small scale units were invited to set up their industries in the State of Kerala and with a view to boosting of industrialization, exemption from sales tax and purchase tax for a period of five years, which was to run from the date of commencement of production, was extended as a concession. By a subsequent notification dated



29th September, 1980, published on 21.10.1980, the government withdrew the exemption relating to the purchase tax and confined the exemption from sales tax to the limit specified in the proviso of the said notification. The Hon'ble Supreme Court held that if in response to such an order and in consideration of the concession made available, promoters of any small scale concerned have set up their industries within the State of Kerala, they would certainly be entitled to plead the rule of estoppel in their favour when the State of Kerala purports to act differently.

12. In Motilal Padampat Sugar Mills Co. Ltd. vs. The State of UP and Others reported in (1979) 2 SCC 409, the Supreme Court has said that the law may, therefore, now be taken to be settled as a result that where the Government makes a promise, knowing or intending that it would be acted on by the promisee and, in fact, the promisee acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by the Article 299 of the Constitution.

13. A Co-ordinate Bench of this Court, in the case of M/s Gangotri Iron & Steel Co. Ltd. vs. The State of Bihar &



Others reported in 2021(3) PLJR 73, while considering 2006 Policy, has held that once the State Government has made a clear and unequivocal promise regarding grant of subsidy/incentive, knowing and intending that it would be acted upon by the promisee and the promisee acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee.

14. Doctrine of promissory estoppel is applicable against the government in exercise of its governmental/public or executive functions. This court relied upon judgement of Hon'ble Supreme Court in **Kasinka Trading's Case (Supra) and Rom Industries vs. The State of Jammu & Kashmir, reported in (2005) 7 SCC 348**, and quoted paragraph 34 of the judgment which is being reproduced hereinbelow:-

34. In Kasinka Trading's case (supra) and Rom Industries vs. State of Jammu & Kashmir, (2005)7 SCC 348, on which reliance has been placed by the learned counsel for the respondent do not disturb the settled position in law that where a right has already accrued, for instance, the right to exemption of tax for a fixed period and the conditions for that exemption have been fulfilled, then the withdrawal of the exemption during that fixed period cannot effect the already accrued right. Of course, overriding public interest would



prevail over a plea based on promissory estoppel, but in the present case there is not even a whisper of any overriding public interest or equity. Notification SRO 38/98 was an amendment and not a clarification of SRO 1729/93 and was expressly made prospective w.e.f. 15.1.1998.

15. In the present case, under 2006 Policy, the unequivocal promise made by the State was that the new industrial unit which commences production within five years from the cut off date fixed under the Policy i.e., 01.04.2006, shall be entitled for VAT reimbursement to the extent of 80%. In response to the Policy, the petitioner/unit established an industrial unit for manufacture of refined petroleum products (lubricants) and admittedly, commenced production within two years from the date of coming into force the Industrial Policy i.e., of 01.07.2008. The State Government granted eligibility certificate under the 2006 Policy to the petitioner/company certifying that the petitioner/unit is eligible to receive reimbursement of 80% of VAT paid under the Industrial Policy, 2006. The Policy was acted upon and the petitioner/unit based on the promise, made under the policy, altered/changed its position by establishing the manufacturing unit. It invested a lot of amount also on the basis of promise made in the Policy. The respondent/State reimbursed 80% of the VAT paid by the unit for the year 2010-11 and 2011-12, thereafter, for the financial year 2012-13, 2013-14 and 2014-



15, it has been denied on the basis of subsequent Policy of 2011 that the unit is only entitled for 25% of reimbursement and not 80%. The decision taken by the Authority in letter no. 649 dated 27.08.2021, which has been challenged by way of I.A., is arbitrary and whimsical decision, lacking application of mind inasmuch as the respondent/state itself granted eligibility certificate to the petitioner/unit for grant of incentive/reimbursement of VAT amount and in fact reimbursed the amount also to the extent of 80% for two financial years i.e., 2010-11 and 2011-12 and 25% for another financial years upto 2014-15. Therefore, the plea that the petitioner/unit was not having the single window clearance by S.I.P.B./District Committee, is preposterous and is not acceptable, accordingly, letter No. 649, dated 27.08.2001, is quashed.

16. Considering the aforesaid submissions of the parties and the law laid down by the Apex Court, in my opinion, the State, having made a promise under the Industrial Policy, 2006, to extend the incentive benefits to the industrial unit for a period of ten years and the petitioner/company having acted on the promise made investment, fulfilled the criteria for grant of incentive, the respondent/State cannot deny the benefits arising out of 2006 Policy on the principles of promissory estoppel/legitimate expectation, accordingly, I direct the



respondent/authorities to reimburse the 80% of the VAT amount paid by the petitioner/company for the period 2012-13, 2013-14 and 2014-15 after adjusting the amount which has already been paid by the respondents to the petitioner. The amount towards incentive arrived at for the aforesaid period must be paid by the respondents within a period of two months from the date of receipt/ production of a copy of this order.

(Anil Kumar Sinha, J)

HarshPandey/-

AFR/NAFR	AFR
CAV DATE	26.02.2024
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