

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8907 of 2023

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Shree Saibaba Plasto Products Private Limited, Having its Office at Flat D-3 (P) EPIP Industrial Area, Hajipur, Vaishali, Bihar 844101, through its authorized representative-Ajit Kumar Sharma (male), aged about 54 Years S/o C.D. Sharma, R/o 164/C/48 Prince Anwar Shah Road, Lake-Gardens Kolkata, West Bengal P.S.-Lake Police Station, District-Kolkata.

... .. 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-Secretary, Commercial Tax Department 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, Patna.
6. Managing Director, Bihar Industrial Area Development Authority, Patna.
7. The General Manager, District Industries Centre, Hajipur.

... .. Respondent/s

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Appearance:

For the Petitioner/s : Mr. Abhishek Kumar
For the Respondent/s : Mr. Vikash Kumar (Sc11)

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL JUDGMENT

Date : 19-09-2024

Heard the learned counsel for the parties.

The present writ petition has been filed for the following reliefs:-

“vi. For issuing a writ of mandamus or any other appropriate writ directing the Respondent Authorities to bring on record order(s) or letter(s) by which the claim of the petitioner under the head of reimbursement of VAT/SGST paid has been denied for the period April 2021 to September 2021 and the ground that



the production of the petitioner unit was below 25% of Installed capacity.

vii. For issuing a writ of certiorari or any other appropriate writ setting aside the order(s) or letter(s) so brought on record by the Respondent Authorities by which the claim of the petitioner under the head of reimbursement of VAT/SGST paid has been denied for the period April 2021 to September 2021 and the ground that the production of the petitioner unit was below 25% of installed capacity.

viii. For issuing a writ of mandamus directing the respondents to pay the petitioner its entitlement under the head of reimbursement of SGST paid for the period April 2021 to September 2021 which has been denied on the ground that the petitioner has not done production of more than 25% during the said period.

ix. For issuing the writ of mandamus directing the respondents nor to withhold payment of reimbursement of SGST paid on the ground that the petitioner has not done production of more than 25%.

x. For any reliefs, direction/directions for which the petitioner is entitled may be given.”

3. Learned counsel for the petitioner has stated that the petitioner pursuant to the Incentive Policy, 2011 floated by the Government of Bihar has set up a plastic furniture unit. That due permission was accorded to the unit of the petitioner by the State Investment Promotion Board (SIPB) in its meeting held on 21.07.2010 and, thereafter, letter dated 13.08.2010 (Annexure-P/2) was issued to the petitioner. That the unit of the petitioner started



production on 08.11.2011, the petitioner was given the eligibility certificate for reimbursement of the VAT/SGST on 31.08.2012 (Annexure-P/3). That when the petitioner was denied the incentives i.e., reimbursement of VAT/SGST by the State Government, the petitioner has approached this Court by way of CWJC No. 10492 of 2021 (Annexure-P/4). This Court vide order dated 24.03.2022 has directed the authorities to consider the case of the petitioner for reimbursement of the VAT/SGST duly taking into consideration the orders passed by this Court in the case of ***M/s Sunny Stars Hotel Pvt. Ltd. Vs. The State of Bihar & Ors*** reported in ***2020(2) PLJR 321***. Thereafter, the petitioner was directed to file necessary documents and also certificate issued by the Chartered Accountant to show that the unit of the petitioner is in production. The petitioner accordingly submitted the required documents however, the authorities while granting the reimbursement for the period July 2017 to March 2021 have rejected the claim of the petitioner for the period April 2021 to September 2021. Learned counsel has stated that the rejection of the claim of the petitioner for the period April 2021 to September 2021 is ostensibly on the ground that the production of the unit of the petitioner was less than 25%. Learned counsel has stated that once the petitioner is found eligible for reimbursement of the



VAT/SGST as per the Bihar Industrial Incentive Policy 2011, the rejection of the claim for the months of April 2021 to September 2021 on the ground that the production in the unit of the petitioner is less than 25% is contrary to the policy. Learned counsel has stated that the subsequent amendments, if any, made will not be applicable to the petitioner as the petitioner has established the unit based on the promises given by the Government of Bihar under the Bihar Industrial Incentive Policy, 2011. Learned counsel has therefore, prayed this Hon'ble Court to allow the present writ petition and direct the respondents to reimburse the VAT/SGST for the months of April 2021 to September 2021.

4. *Per contra*, the learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the present writ petition and stated that as per the Resolution No. 108 dated 20.01.2020 (Annexure-A), there was a modification to the Bihar Industrial Incentive Policy, 2011. As per the said modification those units which are having less than 25% production cannot be granted the reimbursement of VAT/SGST. Further, it is stated that the law as applicable as on the date of considering the application will govern and, therefore, the Resolution No. 108 dated 20.01.2020 will be applicable to the facts of the present case and the petitioner's case was rightly



rejected the incentive of reimbursement for the months of April 2021 to September 2021. Further, it is stated that the petitioner himself has admitted that the production of the unit was less than 25% for the months of April 2021 and the same is evidenced from the certificate issued by the Chartered Accountant. Learned counsel has therefore, prayed this Hon'ble Court to dismiss the present writ petition.

5. Admittedly, in the present case, the petitioner has established the unit and started commercial production after obtaining necessary permission from the SIPB in the year 2010. As per the Industrial Incentive Policy, 2011, the petitioner is entitled to some incentives for setting up the industry which includes, reimbursement of VAT/SGST for a period of ten years from the date of production. That the unit of the petitioner has started commercial production on 08.11.2011 has not been denied by the authorities. The only question in the present writ petition is as to whether the amendment made to Bihar Industrial Incentive Policy, 2011 vide Resolution No. 108 dated 20.01.2020 is applicable retrospectively or not. It is apt to cite the judgments of the Hon'ble Supreme Court on this issue. The Hon'ble Supreme Court in the case of ***Pournami Oil Mills And Others V. State of Kerala And Another*** reported in ***1986 SUPP SCC 728*** has held as under;



“8. It is not disputed that the first order namely, the one dated April 11, 1979 gave more of tax exemption than the second one. The second notification withdrew the exemption relating to purchase tax and confined the exemption from sales tax to the limit specified in the proviso of the notification. All parties before us who in response to the order of April 11, 1979 set up their industries prior to October 21, 1980 within the State of Kerala would thus be entitled to the exemption extended and/ or promised under that order. Such exemption would continue for the full period of five years from the date they started production. New industries set up after October 21, 1980 obviously would not be entitled to that benefit as they had notice of the curtailment in the exemption before they came to set up their industries.”

6. This Hon'ble Court vide judgment dated 22.03.2024

passed in CWJC No. 10038 of 2020 has held as under;

“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.

***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.

***Kasinka Trading's Case (Supra) and Rom Industries vs. The State of Jammu & Kashmir*, reported in (2005) 7 SCC 348,**

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.

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”

7. A reading of the above judgments clearly postulates that once an incentive has been promised under a particular scheme, the same shall have to be continued till the end of the period for which the incentive was granted. The authorities by relying on subsequent amendments cannot deny the claim of the petitioner. In this particular case, the petitioner was given the incentive of reimbursement of VAT/SGST after he has started commercial production on 08.11.2011, even if there is any subsequent amendment made in the year 2020, the same would not be applicable to the petitioner's case.

8. Further, a perusal of the Resolution No. 108 dated 21.01.2020 reveals that the said amendment has been made to the Industrial Incentive Policy of 2016 and not to Policy of 2011. Therefore, the contention of the respondents that the Resolution No. 108 dated 21.01.2020 will be applicable to the facts of the



case and as on the date of taking decision, the same shall be applicable to the petitioner is misconstrued and legally not tenable.

9. Having regard to the above mentioned facts and circumstances, the impugned order dated 05.04.2023 (Annexure-R/1) is set aside, the authorities are directed to calculate the reimbursement of VAT/SGST for the months of April 2021 to September 2021 and pay the same to the petitioner as expeditiously as possible preferably within a period of four weeks from the date of receipt of a copy of this order.

10. With the above direction, the present writ petition stands allowed to the extent indicated.

(A. Abhishek Reddy, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.09.2024.
Transmission Date	NA

