

Court No. - 3

Case :- WRIT - C No. - 8924 of 2023

Petitioner :- M/S Sharda Containers Pvt. Ltd. Thru. Authorized Person

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Energy, Lucknow And 4 Others

Counsel for Petitioner :- Hari Om Pandey

Counsel for Respondent :- C.S.C., Neerav Chitravanshi

Hon'ble Vivek Chaudhary, J.

Hon'ble Manish Kumar, J.

(1) Heard the learned counsel for the petitioner and Shri Neerav Chitravanshi, who appears on behalf of the U.P. Power Corporation Ltd.-Opposite party no.3 and the learned Standing counsel who appears on behalf of the State-respondents.

(2) This petition has been filed by the petitioner for the following main prayer:-

"(i) Issue a writ, order or direction in the nature of Certiorari quashing the impugned order dated 16.09.2019 passed by the Respondent no.2 as contained in Annexure No.1 to the petition so far it relates to adjustment of the electricity duty deposited by the petitioner before 16.09.2019."

(3) It is the case of the petitioner that the petitioner had set up an Industry on the basis of U.P. Industrial and Service Sector Policy 2004, which had proposed exemption from electricity duty for certain Industries with effect from 21.01.2010.

(4) It has been submitted that the benefit of the Policy was undertaken by similarly situated Industrialists and this Court had granted relief and the matter was finalized by the judgment of the Supreme Court. The counsel for the petitioner seeks the benefit of judgment dated 29.05.2019 passed by a Co-ordinate Bench of this Court in Writ-C No.13801 of 2022 [***M/s Basant Exports, Noida, Thru Auth. Person Vs. State of U.P. and others***]. The relevant part of the order is extracted hereinbelow:-

"The petitioner's counsel seeks the benefit of a judgement dated 29.5.2019 passed by a co-ordinate bench of this court in Writ-C No. 18918 of 2019, (Swarup Rolling Mills Ltd. and ors. vs State of U.P. and 2 ors.) as according to her the subject matter in issue which is involved in this writ petition has already been settled by the said judgement.

On being confronted, learned counsel for the opposite parties Shri Manish Jauhari and Shri Neerav Chitranshi, Advocates fairly submitted that the matter is in fact covered by the said judgement and it can be disposed of in terms thereof.

The judgement dated 29-5-2019 referred hereinabove reads as under:

"Heard Sri Mayank Kumar Agrawal, learned counsel for the petitioners, learned Standing counsel for respondents nos. 1 and 3 and Sri A.K. Saxena, learned counsel for respondent no. 2.

Under the U.P. Industrial and Service Sector Investment Policy, 2004 a new industry set up after the enforcement of the said policy was entitled to exemption of duty or electricity for a period of 10 years. The notification with regard to exemption was issued by the State Government on 21.1.2010. A dispute arose as to the date from which the exemption would be granted ie., either from the date of the commencement of the policy or from the issuance of the notification. The matter travelled upto the Supreme Court and it was decided that the exemption from the electricity duty would be admissible to all eligible industries set-up after the enforcement of the above policy for a period of 10 years from the date of the notification ie. 21.1.2010 till 21.1.2020.

The petitioner no. 1 is an industry which was set-up after the enforcement of the above policy and has been granted the eligibility certificate from the exemption of electricity duty. However, pending the above duty the petitioner continued to pay the electricity duty for the period 21.1.2010 to 5.2.2018, though he is getting the exemption thereafter.

The petitioner therefore wants that the electricity duty paid by him during the above period from 21.1.2010 till 5.1.2018 be refunded to him.

The further submission is that in respect of similar matters respondent no. 3 is ordinarily directing for refund of duties but in the case of the petitioner he is sitting tight over the matter. The petitioner has applied for refund of the electricity duty as aforesaid vide application dated 14.5.2018 but till date no order has been passed on it. The amount deposited by the petitioner as electricity duty is a huge amount deposited and non refund of the same is causing great financial hardship to the petitioner affecting his business.

We fail to understand the attitude of respondent no. 3 in not dealing the above application of the petitioner when the matter had already been settled by the Supreme Court and it has been held that all such industries which have been established after the enforcement of the policy are eligible to exemption from the date of the notification dated 21.1.2010 for a period of 10 years thereafter, meaning thereby that in case the petitioner has paid any duty during the said period, he is entitled to refund of the same.

In view of the aforesaid facts and circumstances, we dispose of the writ petition with the direction to respondent no. 3 to consider the matter of refund of the electricity duty paid by the petitioner for the above period in accordance with law most expeditiously within a period one month from the date a copy of this order is produced before him. In the event of any delay in consideration of the matter, respondent no. 3 shall be held personally liable for the same and it will be open for the petitioner to move application in this petition itself for necessary further action."

The writ petition is disposed of."

(5) In view of the above, this writ petition is also **disposed of** in terms of the aforesaid judgement dated 29.05.2019 in the same terms, meaning thereby the petitioner shall be entitled to the observations/directions contained therein and the opposite parties shall also be obliged to comply with the same accordingly on the same terms, i.e. the opposite party no. 2 herein shall consider the matter relating to the electricity dues to be paid by the petitioner for the period in question, in accordance with law, within a period of 2 months from the date an copy of this order downloaded from the official website of

the High Court is produced before him and shall take a decision thereon which shall be communicated to the petitioner. Based on such decision consequences shall follow accordingly as per law.

.

[Manish Kumar,J.] [Vivek Chaudhary,J.]

Order Date :- 18.10.2023

S. Kumar