



CGHC010382562018



2026:CGHC:30792

**NAFR****HIGH COURT OF CHHATTISGARH AT BILASPUR****WPT No. 239 of 2018**

**1 - M/s Bhilai Jaypee Cement Limited A Company Duly Incorporated Under The Companies Act, 1956 Having Its Office At Bsp Premises, Slag Yard Road, Opp. Sector-4, Near Nmoh, Bhilai, Through Its Authrized Signatory Shri Niraj Kumar Shrivastava, S/o Late Shri A B L Shrivastava, Aged About 54 Years, R/o Bhilai, Chhattisgarh., District : Durg, Chhattisgarh**

**--- Petitioner(s)****versus**

**1 - State Of Chhattisgarh Through Secretary, Commercial Tax Department, Mahanadi Bhawan Naya Raipur, Chhattisgarh., District : Raipur, Chhattisgarh**

**2 - State Of Chhattisgarh Through The Secretary Industries And Commerce Department, Naya Raipur, Chhattisgarh., District : Raipur, Chhattisgarh**

**3 - Director Of Industries Udyog Bhawan, Ring Road No. 1, Opposite Sonakhan Buiding, Raipur, Chhattisgarh., District : Raipur, Chhattisgarh**

**4 - Additional Commissioner Commercial Tax, Atal Nagar, Raipur, Chhattisgarh., District : Raipur, Chhattisgarh**

**5 - Commissioner Commercial Tax Department, Raipur, Chhattisgarh., District : Raipur, Chhattisgarh**

**6 - Assistant Commissioner Commercial Tax, Durg, Chhattisgarh., District : Durg, Chhattisgarh**

**--- Respondent(s)****WITH**

**WPT No. 250 of 2018**

**1** - M/s Bhilai Jaypee Cement Limited A Company Duly Incorporated Under The Companies Act. 1956 Having Its Office At Bsp Premises, Slag Yard Road, Opp. Sector-4, Near Nmoh, Bhilai, Through Its Authorized Signatory Shrhi Niraj Kumar Shrivastava, S/o Late Shri A B L Shrivastava, Aged About 54 Years, R/o Bhilai, Chhattisgarh., District : Durg, Chhattisgarh

---**Petitioner(s)**

**Versus**

**1** - State Of Chhattisgarh Through Secretary, Commercial Tax Department, Mahanadi Bhawan Naya Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

**2** - State Of Chhattisgarh Through The Secretary Industries And Commerce Department, Naya Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

**3** - Director Of Industries Udyog Bhawan, Ring Road No.1, Opposite Sonakhan Building, Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

**4** - Additional Commissioner Commercial Tax, Atal Nagar, Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

**5** - Commissioner Commercial Tax Department, Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

**6** - Assistant Commissioner Commercial Tax, Durg, Chhattisgarh., District : Durg, Chhattisgarh

--- **Respondent(s)**

**WITH****WPT No. 217 of 2023**

**1** - M/s Bhilai Jaypee Cement Limited A Company Duly Incorporated Under The Companies Act, 1956 Having Its Office At Bsp Premises, Slag Yard Road, Opposite Sector -6, Near Nmoh, Bhilai, Through Its Authorized Representative Shri Kamal Kishore Jhanwar, S/. Late Shri Ram Swaroop Jhanwar, Aged About 60 Years, R/o. Sector 107, Noida, (Up).

---**Petitioner(s)**

**Versus**

**1** - State Of Chhattisgarh Through Secretary, Commercial Tax Department, Mahanadi Bhawan Naya Raipur, Chhattisgarh.

**2** - State Of Chhattisgarh, Through The Secretary Department Of Commerce And Industries, Mantralaya, Naya Raipur, Chhattisgarh.

**3** - Director Of Industries, Directorate Industries, Udyog Bhawan, Ring Road No. 1, Opposite Sonakhan Building, Raipur, Chhattisgarh.

**4** - Industries Commissioner, Directorate Industries, Raipur, Chhattisgarh.

**5** - Chief General Manager, District Trade And Industries Centre, Durg, Chhattisgarh.

**6** - Commissioner, Commercial Tax Department, Raipur, Chhattisgarh.

--- **Respondent(s)**

|                 |   |                                                                           |
|-----------------|---|---------------------------------------------------------------------------|
| For Petitioner  | : | Mr. Neelabh Dubey, Senior Advocate assisted by Ms. Smiti Sharma, Advocate |
| For Respondents | : | Ms. Anuradha Jain, Dy. G.A.                                               |

**Hon'ble Shri Justice Rakesh Mohan Pandey**

**Judgment On Board**

**20.7.2026**

**1)** In WPT No. 217 of 2023, petitioner has challenged the order passed by State Appellate Forum/ Secretary, Department Of Commerce And Industries, State of Chhattisgarh dated 20.6.2023 whereby the appeal preferred by the petitioner against order dated 3.7.2018 passed by State Level Committee to decide the issue of exemption was dismissed.

**2)** Facts, in brief are that pursuant to Industrial Policy of 2004-09 and Notification No. 41 dated 1.9.2005, petitioner set up a Mega

Project in the State of Chhattisgarh. Petitioner was assured exemption from payment of Entry Tax and grant of other incentives. The industry started commercial production in the year 2010 after the original cut-off date i.e. 31.10.2009 enunciated in Notification No. 41. According to this notification, if an industry has started its production prior to cut-off date, it would be entitled to receive exemption and other benefits. However, cut-off date was extended up to 31.10.2010 vide Notification No. 32 dated 12.5.2011. As petitioner-industry started commercial production in the year 2010 prior to 31.10.2010 therefore an application for grant of certificate of commercial production was moved before the respondent No. 3 on 1.7.2011 and same was issued in favor of petitioner on 30.1.2013. Immediately thereafter, petitioner applied for exemption in prescribed format before the authority along with the certificate of commercial production. The application remained pending before the State Level Committee for considerable period and it was rejected vide order dated 3.7.2018. Thereafter, petitioner preferred appeal before the State Appellate Forum and same was dismissed vide order dated 20.6.2023.

- 3)** In the meantime, Assessment Officer passed the orders of assessment for financial years 2012-13 and 2013-14 and levied Entry Tax and those orders have been challenged in WPT No. 250 of 2018 and WPT No. 239 of 2018 respectively.

4) Mr. Neelabh Dubey, learned Senior counsel appearing for the petitioner-company submits that petitioner invested huge amount of Rs. 385.69 crores pursuant to the Industrial Policy floated by the State Government dated 1.9.2005 and subsequent notification dated 31.10.2009. He further submits that according to notification dated 1.9.2005, petitioner was ordinarily required to move an application before the competent authority for grant of exemption from levy of Entry Tax within period of 90 days from the date of commencement of commercial production. However, before that, companies were required to obtain IEM or Industrial Entrepreneur Memorandum from Government of India and certificate of production from the Directorate of Industries. He also submits that certificate of commercial production was a mandatory requirement to apply for exemption of Entry Tax and the Notification No. 32 dated 12.5.2011 was promulgated extending the benefit of Notification No. 41 to the industries commencing production till 31.10.2010. He contends that petitioner-company commenced industrial production on 30.9.2010 and applied for grant of certificate of commercial production before respondent No. 2 immediately after issuance of notification dated 12.5.2011 and the same was issued in its favor on 30.1.2013. He further contends that application for grant of exemption could have been moved in the prescribed format/ proforma along with the certificate of commercial production as the certificate of commercial production was part of application for

grant of exemption. He also contends that certificate of production was granted on 30.1.2013 and petitioner applied for grant of eligibility certificate on 23.4.2013 before expiry of limitation period thus, the application moved by the petitioner seeking exemption from Entry Tax was within period of limitation. He argues that the expression “ordinarily” has been interpreted by the Hon’ble Supreme Court in the matter of ***Union of India and Others versus Majji Jangamayya and Others***<sup>1</sup> wherein it is held that the expression “ordinarily” in the requirement of 10 years’ experience shows that there can be a deviation from the requirement and such deviation can be justified by reasons. He further argues that respondent authorities ought to construed the true meaning of expression “ordinarily” before rejecting the application of the petitioner. He also argues that as there was wrongful rejection of application moved by the petitioner therefore the subsequent assessment orders are also bad in law. He prays to allow these petitions.

- 5) On the other hand, Ms. Anuradha Jain, Dy. Govt. Advocate appearing for the respondents submits that petitioner commenced commercial production in the year 2010 and Annexure-II of Notification No. 41 specifically provided that petitioner had to apply for exemption within 90 days from the date of commencement of commercial production but the petitioner moved application for issuance of exemption certificate in the

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1. (1977) 1 SCC 606

year 2013 without explaining the delay part properly, whereas it should have approached the respondent authorities for issuance of such certificate in the years 2010 or 2011 itself and there was no bar to approach the respondent authorities claiming exemption therein. She further submits that Notification No. 32 was promulgated on 12.5.2011 which merely enlarged the class of industrial units eligible for claiming exemption by extending benefit to unit commencing production before 31.10.2010 but it did not dispense with the period of limitation regarding submission of application. She also submits that in the Industrial Policy 2009-14, a circular dated 4.5.2011 was issued which also reiterated that application for exemption has to be preferred within a period of 90 days from the date of commencement of commercial production, however petitioner submitted application only on 25.4.2013. She has placed reliance on the judgment rendered by the Hon'ble Supreme Court in the matter of ***State of Jharkhand and Others Versus Ambay Cements and Another***<sup>2</sup> wherein it is held that the conditions prescribed by the authorities for grant of exemption are mandatory for availing the exemption and the High Court exercising jurisdiction under Article 226 of the Constitution cannot direct the grant of exemption in favor of an industry overlooking the statutory conditions. She has also placed reliance on the judgment rendered by the Hon'ble Supreme Court in the matter of ***Commissioner of Customs (Import), Mumbai Versus***

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2. (2005) 1 SCC 368

***Dilip Kumar and Company and Others***<sup>3</sup> wherein it is held that exemption notification should be interpreted strictly and when there is ambiguity in exemption notification, the benefit of such ambiguity cannot be claimed by the subject/ assessee and it must be interpreted in favor of the Revenue.

- 6) I have heard learned counsel for the parties and perused the material available on record.
- 7) The schedule appended to notification dated 1.9.2005 deals with categories of eligible industrial units, namely, new small industrial Unit, medium/ large industrial Unit or Mega Project as well as existing industrial units undertaking expansion for grant of benefits and incentives under the policy. The notification envisaged grant of exemption to eligible industrial units commencing commercial production during prescribed period under policy, which was initially five years. Clause (x) deals with “Mega Project”. It states that Mega Project means an industrial unit, which has fixed capital investment of more than Rupees 100 crore, has obtained, as the case may be, industrial entrepreneur memorandum certificate, industrial license or letter of intent from Government of India and holds a production certificate issued by State's Directorate of Industries.
- 8) Clause (i) of Annexure-II appended to the notification states that application claiming exemption from Entry Tax shall be made

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3. (2018) 9 SCC 1

ordinarily within 90 days from the date of commencement of commercial production in the units and Clause (ii) states that where such an application is made after the prescribed time limit and the Committee competent to consider such application and to take a decision with regard to the grant of an eligibility certificate, is satisfied that the application could not be submitted by the dealer in time for sufficient reasons, then it may, for reasons to be recorded in writing, condone such delay and consider and dispose off the application on merits.

- 9)** The petitioner-company commenced production on 30.9.2010 and vide Notification No. 32 dated 12.5.2011, the benefit of Notification No. 41 was extended up to 31.10.2010. Thus, it is very much clear that petitioner started its production prior to the cut-off date. The application for grant of certificate of commercial production was moved before the District Trade and Industry Centre (DTIC) and same was granted on 30.1.2013 and thereafter, application for grant of eligibility certificate was moved before the State Level Committee on 23.4.2013 but the authority concerned sit over the matter for more than five years and rejected the application vide order dated 3.7.2018 only on the ground that application was moved after expiry of limitation provided in the notification dated 1.9.2005. Petitioner-company preferred appeal before the State Appellate Forum and same was dismissed on similar grounds vide order dated 20.6.2023

**10)** It is not in dispute that application for grant of exemption could not have been moved in absence of certificate of commercial production. The State Level Committee and the State Appellate Forum failed to assign any reason and rejected the application only on the ground that application was moved after 90 days whereas they ought to have considered the reasons assigned by the petitioner for not moving the application within the period of 90 days as contemplated in Clause (ii) of Annexure-II appended to the notification.

**11)** In **Majji Jangamayya** (supra), Hon'ble Supreme Court while dealing with the expression "ordinarily" held as under :-

**36.** *The expression "ordinarily" in the requirement of 10 years' experience shows that there can be a deviation from the requirement and such deviation can be justified by reasons. Administrative instructions if not carried into effect for good reasons cannot confer a right. (See P.C. Sethi & Ors. v. Union of India & Ors.). The requirement of 10 years' experience cannot be considered by itself. It is to be read along with administrative instructions of 16 May, 1957. The reason is that the requirement of 10 years' experience is for being considered for promotion. In paragraph 2 of the letter of 16 May, 1957 containing the said instructions it is said that the Committee should first decide the field of choice. namely, the number of eligible officers awaiting promotion who should be considered to be included in the seniority list provided that an officer of outstanding merit may be included in the list even if he is outside the normal List.*

**12)** In **Ambay Cements** (supra), Hon'ble Supreme Court while enforcing statutory compliance held as under :-

**19.** *In our view, the conditions prescribed by the*

*authorities for grant of exemption are mandatory for availing the exemption and the High Court exercising jurisdiction under Article 226 of the Constitution cannot direct the grant of exemption in favour of the respondent overlooking the statutory conditions prescribed for such grant and that too in the absence of any challenge to the validity of such conditions.*

**13)** Admittedly, petitioner has filed WPT No. 217 of 2023 assailing the orders passed by the State Level Committee and the State Appellate Forum whereby application seeking grant of exemption has been rejected. In this petition, petitioner has not claimed grant of exemption rather a relief has been sought seeking quashment of said orders, thus facts of the present case are entirely distinguishable from the facts of **Ambay Cements** (supra).

**14)** In **Dilip Kumar** (supra), a five-Judge Bench of the Hon'ble Supreme Court while adjudicating a reference before it held that exemption notifications should be interpreted strictly and the burden of proving applicability would be on the assessee and the benefit of ambiguity would not go in favor of the assessee. Relevant paragraph 66 reads as under :-

**66.** *To sum up, we answer the reference holding as under:*

**66.1.** *Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.*

**66.2.** *When there is ambiguity in exemption notification which is subject to strict*

*interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the Revenue.*

*66.3 The ratio in Sub Export case is not correct and all the decisions which took similar view as in Sub Export case stand overruled.*

**15)** In the case at hand, petitioner has not sought any relief to dilute any of the conditions of the Industrial Policy rather a prayer has been made for interpretation of expression “ordinarily” as that expression has been made the sole ground while rejecting the application for grant of eligibility certificate and said order was affirmed by the State Appellate Forum as well.

**16)** Keeping in view the aforesaid settled legal position coupled with the peculiar facts and circumstances of the case, in my opinion, the authorities concerned failed to consider the Clause (ii) of Annexure-II appended to the notification dated 1.9.2005 and misinterpreted the expression “ordinarily” while considering the application moved by the petitioner, therefore the orders passed by the State Level Committee and State Appellate Forum dated 3.7.2018 and 20.6.2023 respectively, are hereby quashed. The matter is remitted back to the State Level Committee to pass a fresh order after affording due opportunity of hearing to the interested parties keeping in mind the observations made herein-above.

**17)** In result, WPT No. 217 of 2023 is **allowed**.

**18)** Since the eligibility matter has been remitted to the State Level Committee, the respondent authorities are restrained from taking any action pursuant to the assessment orders which are the subject matters of WPT No. 239 of 2018 and WPT No. 250 of 2018, till decision is taken with regard to eligibility certificate.

**19)** Accordingly, WPT No. 239 of 2018 and WPT No. 250 of 2018 are **disposed.**

**Sd/-**  
**(Rakesh Mohan Pandey)**  
JUDGE

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