IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14709 of 2016

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M/s Hotel U. S. Residency, a proprietary concern having its place of business at opposite LIC Office, M.G. Road, Aurangabad-824101 through its proprietor Smt. Urmila Devi wife of Shyam Kishore Prasad Resident of Urmila Villa, Surya Mandir Road, Sahpur, P.O., P.S., District Aurangabad 824101.

... ... Petitioner/s

Versus

1. The State of Bihar.
2. The Director of Industries, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
3. The Principal Secretary cum Commissioner of Commercial Taxes, Bihar, Patna.
4. The Deputy Commissioner of Commercial Taxes, Aurangabad Circle, Aurangabad.
5. The Assistant Commissioner of Commercial Taxes, Aurangabad Circle, Aurangabad.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S.D. Sanjay, Sr. Advocate
		Mr. Alok Kumar Agrawal, Advocate
For the Respondent/s	:	Mr. Vikash Kumar, S.C. 11

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 02-03-2022

Heard learned counsel for the parties.

Petitioner has prayed for the following relief:-

> "i. For a direction to the Respondents for reimbursement by the amount of subsidy up to 100% of the admitted Entry Tax/VAT in terms of the promise made in the Industrial Policy Resolution, 2011;
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> ii. For a direction to the respondents i.e. Department of Industry, to hand over funds to the Commercial Taxes Department for reimbursement of the subsidy amount to the extent of 100% of the under

> Industrial Incentive Policy 2011; and/or for any other relief(s) for which the petitioner may be found entitled to in the facts and circumstances of the present case."

Briefly stated the facts of the case is that petitioner is a proprietor concern of a Lady Entrepreneur and carrying on the business of Hotel & Restaurants Services in the name and style of Hotel U.S. Residency at Aurangabad in Bihar. Petitioner is registered as a dealer under the provisions of Bihar VAT Act-2005, Central Sales Tax Act, 1956 and Bihar Entry Tax Act, 1993, in Aurangabad Circle, Aurangabad.

It is submitted by the learned Senior Counsel on behalf of petitioner that Govt. of Bihar came out with an industrial policy resolution-2011, promising various incentives for potential promoters to invest in Bihar to set up industries other than prohibited industries and upon setting up of such industrial unit in Bihar, it will be entitled for the incentives as promised in the industrial Policy Resolution-2011.

In Industrial Policy Resolution-2011 various types of incentives have been promised by the State Government to the investors which includes 100% exemption from Stamp Duty and Registration Fee during pre-production phase, capital subsidy for Industrial Units, reimbursement of 80% of VAT/Entry Tax, 100% exemption in Luxury Tax etc.

It is specifically submitted that Clause-3 of the Industrial Policy Resolution-2011 clearly mentions about Tax Related Incentives by way of reimbursement of VAT/Entry Tax and 100% exemption in Luxury Tax, and such facility will be available to new MSME/Large Industries for which pass-book will be issued in which details of Bihar VAT paid to Bihar Commercial Taxes Department would be entered. Officials of Industry Department will issue the Pass-book after verification about the amount of VAT/Entry Tax deposited and on the basis of such certificate the Commercial Taxes Department will reimburse the amount of VAT. All new Units will be eligible to avail 80% per cent reimbursement against the admitted VAT/Entry Tax amount deposited in the account of Government for a period of 10 Years with the Ceiling upto 300% of the capital invested.

It is further submitted that petitioner is a women entrepreneur. Clause-iv of the Industrial Policy Resolution-2011 provides special incentives to women who shall be entitled for Additional Subsidy over and above the limit fixed in the Industrial Policy and it further provides that up to the limit of Rs. 30 Lacs as income from sale per annum a women entrepreneur who has set up Small Scale Industry will avail

100% reimbursement of the deposited amount in the Govt. account in the form of VAT/Entry Tax for the period of 10 years.

Petitioner's project was approved by the Industry Department and State investment promotion Board has given its consent on the proposal of petitioner for establishment of Hotel project. Petitioner was allotted a piece of land in the Industrial Area, Aurangabad and a certificate of registration was granted to the petitioner vide memo no. 744 dated 29.10.2013 for Hotel & Restaurant services. The date of production was mentioned as 19.08.2013 and was also granted certificate of eligibility to be entitled to avail the incentive of reimbursement against the deposit of VAT/Entry Tax to the extent of 100%.

Petitioner is paying Entry Tax, Bihar VAT from the date it took steps for setting up its unit and an amount of Rs. 16,81,691/- as VAT and amount of Rs. 2,69,370/- as Entry Tax has been paid and petitioner is entitled for 100% reimbursement, however, in spite of all her efforts same has not been reimbursed.

Counter affidavit has been filed on behalf of Commercial Taxes Department in which it has been stated that the prayer of the petitioner for reimbursement is being considered and as fund from the Commercial Taxes Department for the reimbursement of the subsidy amount is made available by department of Industries, Govt. of Bihar, same shall be reimbursed to the petitioner.

Counter affidavit has been filed on behalf of Department of Industries, Govt of Bihar, that benefit of incentive provided under the Industrial Policy Resolution-2011 has not been approved by the competent authority in the case of petitioner and incentives are given to such Units whose projects/investment proposals are approved by the competent authority as defined under notification no. 128 dated 16.01.2016.

A co-ordinate bench of this Hon'ble Court in a batch of writ petition being CWJC No. 12104 of 2018 M/s Sunny Stars Hotels Private Limited Vs. State of Bihar & Ors with its analogous cases set aside the decision of the State Government by which grant of incentive was denied on the ground that same was not approved by the competent authority and further directed to grant the incentive in terms of Incentive Policy, 2011 and operative part of said order is reproduced hereunder:-

> "For the reasons and discussions above and while quashing the order dated 13.10.2017 impugned at Annexure 19 to CWJC No.12104 of 2018, the order dated 26.06.2018/31.10.2017 impugned at Annexure 15 series and the order dated 13.10.2017 impugned at Annexure R/1A to the counter affidavit in CWJC No.2981 of 2019 in so far as it proceeds to reject the incentives admissible to the petitioners under the

> 'Industrial Policy, 2011', we hereby direct the State Government in its Industries department and the Commercial Taxes department to ensure that every incentive to which the 3 petitioners are found entitled under the 'Industrial Policy, 2011' shall be accorded to them within a maximum period of 3 months from today without either raising technicalities of approval or on the issue of change in payment procedure as raised by the Commercial Taxes department for in my opinion, the two arms of the State Government have to act within the stipulation present in 'Industrial Policy, 2011' for according benefits to these petitioners and not allow to these petitioners to either run around the corridors of the respective department or to approach this Court again specially where their admissibility to the incentives is not in question. The writ petition is allowed with the directions above."

SLP filed against aforesaid judgement and order stood dismissed by Hon'ble Apex court in its judgement and order dated 17.01.2020 passed in SLP (Civil) Diary NO. 43744 of 2019 titled as State of Bihar & Ors Vs M/s Sunny Stars Hotels Private Limited.

Case of petitioner being similarly placed is also entitled for similar relief as granted to petitioners in aforesaid CWJC No. 12104 of 2018 M/s Sunny Stars Hotels Private Limited Vs. State of Bihar & Ors and accordingly, respondent no. 2 Director of Industries, Govt. of Bihar, Patna is directed to grant all benefits/incentives to the petitioner in terms of Industrial Incentive Policy 2011 for which petitioner is found eligible and entitled for the said years within three months from the date of receipt/production of a copy of the order passed by this Court.

The writ petition is allowed to the extent indicated above.

(S. Kumar, J)

ranjan/-

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