IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13882 of 2016

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M/s Maa Mundeshawri Cycle Udyog Pvt. Ltd. a Company registered under the provisions of Companies Act, having its place of business at Industrial Area Aurangabad through one of its Directors, Shyam Kishore Prasad, son of Late Deo Nandan Prasad, Resident of Urmilla Villa, Surya Mandir Road, P.O., P.S., District- Aurangabad. 824101.

... ... Petitioner/s

Versus

1. The State of Bihar.
2. The Director of Industries, Government of Bihar, Vikas Bhavan, Bailey Road, Patna.
3. The Principal Secretary Cum Commissioner of Commercial taxes, Bihar, Patna.
4. The Deputy commissioner of Commercial Taxes, Aurangabad Cirele, 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(s):-

> "(i) For a direction to the Respondents i.e. Department of Industry, Bihar to disburse funds to the Commercial Taxes Department so that the Commercial Taxes Department is able to discharge its obligation under the Bihar Industrial Policy, 2011 by making disbursement by way of subsidy to the extent of 80% of the admitted VAT amount deposited by the petitioner in the account of the Government as per the

solemn promise made in the Industrial Policy Resolution, 2011;

(ii) For a direction to the respondents i.e. Commercial Taxes Department for reimbursement of the subsidy amount to the extent of 80% of the admitted VAT amount deposited by the petitioner in the account of of the Government as petitioner’s has already been declared an eligible unit for disbursement of the amount to the extent of 80% of admitted VAT by the competent authority under Industrial Incentive Policy, 2011;

(iii) For a direction to the Respondent to make disbursement of the payment of the amount by way of reimbursement of the amount of VAT deposited by the petitioner at the earliest to save the petitioner’s unit as the petitioner had taken loan from the bank and is suffering due to non disbursal of the amount of VAT; and/or for any other relief(s) for which the petitioner may be found entitled to in the facts & circumstances of the present case.”

It is submitted by the learned Senior Counsel on behalf of petitioner that Government of Bihar, came out with an Industrial Policy Resolution, 2011 promising various incentives for potential promoters to invest in Bihar to set up industries and on setting up of Industrial Unit in Bihar, it will be entitled for the incentives as promised in the Industrial Policy Resolution which includes 100% exemption from Stamp Duty and registration fee during pre-production phase, capital subsidy for industrial units, inclusion of entry tax in the reimbursement of

80% of VAT and incentives for existing unit also.

To avail the benefits of various incentives promised in the Industrial Policy Resolution-2011, petitioner decided to set up an industrial unit for manufacturing and assembling of bicycles and Department of Industry, Govt. of Bihar, granted its approval vide letter dated 14.11.2011, after approval by State Investment Promotion Board.

Petitioner was granted certificate of registration dated 14.12.2011 under Bihar VAT Act, 2005 as well as certificate of Registration under Central Sales Tax Act and certificate of Registration dated 29.12.2011 under Bihar Entry Tax Act, 1993.

Petitioner obtained registration from the Industry Department through Bihar Industrial Area Development Authority and was allotted piece of land in the Industrial Area, Aurangabad, for which certification of registration dated 30.10.2013 for manufacturing and assembling of bicycle was granted under the Medium Scale Industry in which date of production has been mentioned as 18.09.2013. Petitioner was also granted certificate of eligibility to become entitled to avail the incentive of reimbursement against the deposit of VAT to the extent of 80% of the Entry Tax and same was intimated to petitioner vide memo no. 968 dated 14.02.2014 by Bihar

Industrial Area Development Authority.

Clause-3 of the Industrial Policy is with respect to tax related incentives by way of reimbursement of VAT and Entry Tax for which a pass-book was to be issued to the eligible industrial unit in which details of Bihar VAT paid to the Commercial Taxes Department would be entered and certificate to be issued by the competent authority on the basis of which the Commercial Taxes Department will reimburse 80% of the amount of VAT for 10 years with sealing up to 300% of the capital invested. State Government issued another resolution vide letter no. 2446 dated 15.07.2011 with regard to grant of incentive by way of reimbursement of VAT for which procedure was prescribed for availing the incentive.

Petitioner has been paying the entry tax and Bihar VAT from the date it took steps for setting up its Industrial Unit and an amount of Rs. 25,76,304/- has become due on deposit of Entry Tax and VAT which is to be reimbursed being 80% of the Entry Tax and VAT, but same has not been reimbursed to the petitioner.

Petitioner further states that the Principal Secretary cum Commercial Taxes Commissioner, Bihar, Patna vide letter dated 18.05.2016 wrote to the Principal Secretary, Department of

Industry, Govt of Bihar for providing funds for reimbursement of VAT and Entry Tax in terms of Industrial Incentive Policy-2011. Assistant Commissioner of commercial taxes, Aurangabad Circle, vide letter dated 19.05.2016 giving details of amount of reimbursement payable to industrial units in terms of industrial policy-2011, which comes to Rs. 25,76,304/- from the financial year 2011-12 to 2014-15.

Counter affidavit has been filed on behalf of Assistant Commissioner of Commercial Taxes, Aurangabad Circle, that the VAT and Entry Tax for the financial year 2012-13, 2013-14 and 2014-15 has been paid on 15.09.2016. For the financial year 2012-13, payment of VAT was not admissible as petitioner mentioned Zero VAT for that period, however, Entry Tax on plant and machinery of Rs. 4,19,860/- were reimbursed.

It is further stated that 80% of VAT and entry tax for the financial year 2013-14 which is to Rs. 5,93,970/- and 100% of entry tax on plant and machinery which is Rs. 3,23,250/- has been reimbursed by office order dated 10.09.2016. 80% Vat and Entry Tax for the financial year-2014-15 which is Rs. 12, 78,160/- has been reimbursed and 100% of entry tax on plant and machinery which is Rs. 2234/- has been reimbursed by office order dated 10.09.2016.

A counter affidavit has also been filed on behalf of Department of Industry in which it has been stated that Industry Department does not reimburse VAT or Entry Tax on individual basis rather same is paid directly to the Commercial Tax Department. It is further stated that during the financial year 2016-17 by allotment order dated 19.09.2016 a sum of Rs. 18351 Lacs by allotment order dated 19.07.2016 a sum of Rs. 132 Lacs by allotment order dated 19.07.2016, a sum of Rs. 5070 Lacs and by allotment order dated 22.02.2017 a sum of Rs. 1400 Lacs were allotted to the Commercial Taxes Department towards the reimbursement for VAT Entry Tax and follow up actions were to be taken by the Commercial Taxes Department for reimbursement as per entitlement on individual basis.

Petitioner in his supplementary affidavit has admitted that during pendency of writ petition reimbursement of VAT and Entry Tax for the financial year 2012-13, 2013-14 and 2014-15 has been paid on 15.09.2016 but states that full amount i.e. 80% of VAT and Entry Tax Amount has not been paid.

He further states that during the pendency of writ petition he has filed fresh representation dated 08.03.2017, 12.04.2017, 07.12.2017 and 25.05.2018 for reimbursement of VAT and Entry Tax for the Financial Year-2015-16, 2016-17 and 2017-18 and as per Industrial Incentive Policy-2011 he is entitled for 80% reimbursement against the amount deposited as VAT and Entry Tax for ten years i.e. from the financial year 2015-16 till 2020-21.

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 incentive granted to the Industrial Units which were eligible and granted incentive were denied further incentive for the period covered under the Industrial Incentive Policy-2011 and directed similarly situated petitioners to grant incentive in terms of Industrial 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 judgment and order stood dismissed by Hon'ble Apex court by its judgment 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, and in the manner by which petitioner has been granted 80% reimbursement of the amount deposited by the petitioners for the financial Year 2012-13, 2013-14 and 2014-15 and same to be granted for the remaining years for which petitioner is found eligible and entitled 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