IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17675 of 2022

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M/s. Jyoti Moulders Pvt. Ltd. a Private Limited Company incorporated under the provisions of Companies Act, 1956, having its registered office at 4th Floor, 95-97, Khetan Super Market, Birla Mandir Road, Town and District Patna and having its production unit at Mohammadpur, Gyanchak, P.O. - Kothi, Didarganj, Patna through its authorized Signatory, namely Rajesh Ranjan, aged about 45 years, Male, son of Shri Kapileshwar Mandal, Resident of 96 C, Naya Tola, Kumharar Talab Par, Bahdurpur Housing Colony, P.S. Kankarbagh, District Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department of Industry, Government of Bihar, Patna.
3. The Principal Secretary, Department of Commercial Taxes, Government of Bihar, Patna.
4. The Director of Industries, Department of Industry, Government of Bihar, Patna.
5. The Deputy Commissioner of State Taxes, Patna City East Circle, Patna.
6. The General Manager, District Industry Centre, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Mohit Agarwal
For the Respondent/s	:	Mr.Yogendra Pd. Sinha (Aag7)

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY

ORAL ORDER

5 04-07-2023 The present writ petition is being filed for the following reliefs:-

"(i) For quashing the order bearing Memo No. SIPB/1404 dated 15.11.2022 issued under the signature of the Respondent No. 2 whereby the claim of disbursement of incentives promised under Bihar Industrial Incentive Policy, 2011 on 1 & 2nd expansion of the Petitioner's unit was reject on the ground that the proposal for said expansions were not approved by the SIPB ignoring the Resolution bearing Memo No. 2447 dated 15.07.2011 issued by the said Respondent wherein detailed procedure for

eligibility and grant of incentives under Bihar Industrial Incentive Policy, 2011 on expansion of an existing unit was laid down wherein no such requirement of approval from SIPB was laid down;

(ii) For holding that the Petitioner is entitled for incentives as promised under the Bihar Industrial Incentive Policy, 2011 on expansions of its existing units as the Petitioner has fulfilled and complied the procedure laid down by the Respondent No. 2 vide Resolution bearing Memo No. 2447 dt. 15.07.2011 wherein no requirement of placing the proposal of expansion before the SIPB was provided;

(iii) For holding that the competent authority for grant of approval/consideration of proposal of expansion of an existing unit is Director Industry in case of Large Industry and General Manager, District Industry Center/ Principal Director, BIADA in case of Small, Medium & Macro Industry as laid down by the Respondent No. 2 vide Resolution bearing Memo No. 2447 dt.15.07.2011 issued in respect of the Bihar Industrial Incentive Policy, 2011;

(iv) For issuance of an appropriate writ or direction upon the Respondent Commissioner of Commercial Taxes now known as Commissioner of State Taxes as also the Deputy Commissioner of Commercial Taxes now known as Joint Commissioner of State Taxes/ Director of Industries to reimburse 80% of the State Goods and Service Tax (hereinafter referred as SGST) deposited by the Petitioner, as promised to be granted, after implementation of the Bihar State Goods and Services Tax Act, 2017 (hereinafter referred as BSGST Act) (in the GST regime), by the Respondent State in terms of the Bihar Industrial Policy, 2011 (hereinafter referred as Policy, 2011), as the same has been abruptly not being reimbursed in most arbitrary and illegal manner;

(v) For a direction to the Respondents i.e. Department of Industry, Government of Bihar for grant of the Capital Subsidy on the capital investment made in 1 & 2nd expansion of the industrial unit of the Petitioner Company and other subsidies as promised by the Respondent State of Bihar under the Policy, 2011;

(vi) For a direction to the Respondents for grant of the subsidies at the earliest to save the Petitioner's unit as it is suffering due to discontinuance of reimbursement of the amount of VAT deposited by the Petitioner and also for non grant of the amount of capital subsidy and other subsidies; and/or for any other relief(s) for which the petitioner may be found entitled to in the facts & circumstances of the present case."

Learned counsel for the petitioner has stated that the authority concerned without verifying the legal position has rejected the case of the petitioner vide Annexure-13. Learned counsel for the petitioner has stated that the Principal Secretary, Department of Industries, under the mistaken impression that the approval of State Investment Promotion Board (SIPB) is not there, has rejected the case of the petitioner. Learned counsel for the petitioner has stated that the petitioner’s industry is an existing industry and it was only a second expansion that has been done for which the authorities were bound to release the subsidy. Learned counsel has relied on the letter vide Annexure-5 issued by the then Principal Secretary, Department of Industries dated 15.07.2011 to buttress his contention that for the purpose of expansion and diversification programme, no fresh approval of the State Investment Promotion Board has to be taken. Learned counsel has further stated that he has already made a representation to the authority concerned vide

Annexure-12 to reconsider the case of the petitioner duly taking into account the letter dated 15.07.2011 (Annexure-5) but till date there is no response from the authority concerned and, therefore, prayed to this Hon'ble Court to allow the present by setting aside the impugned order.

Per contra, the learned counsel appearing on behalf of the respondents while trying to defend the orders passed by the authority concerned which is impugned in the present writ petition has fairly conceded that the letter dated 15.07.2011 (Annexure-5) has been issued by the then Principal Secretary, Department of Industries and as per the same, the approval of the State Investment Promotion Board is not needed for expansion and diversification programme of an existing industry.

Perusal of the impugned order reveals that the authority concerned has not taken into consideration the letter dated 15.07.2011 (Annexure-5), which clearly states that for the purpose of expansion and diversification of an existing industry no separate approval of State Investment Promotion Board is necessary.

Having regard to the same, this Court deems it appropriate the impugned order needs to be set aside and the matter remanded back to the authority concerned for reconsidering the matter afresh duly taking into consideration the letter dated 15.07.2011 (Annexure-5). Therefore, the impugned order is set aside, the matter is remanded back to the authority concerned to pass an appropriate order duly taking consideration the letter dated 15.07.2011 (Annexure-5) as expeditiously as possible preferably within a period of eight weeks from the date of receipt of a copy of this order. It is needless to mention that before passing any order the petitioner shall be given an opportunity of hearing and necessary orders pass.

With the above observation, the writ petition is allowed to the extent indicated.

(A. Abhishek Reddy, J)

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