IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.19/2018

PETITIONER : M/S SHRI. BALAJI BUILDICON, (Partnership firm) The Eligible Industrial Unit under the package scheme of Incentives – 2007, situated at Khasra No.146, PC No.67, at Haladgaon, Tah. Hingna, District Nagpur, through its Partner Shri Sanjay Chiranjilal Heliwal, Aged about 49 years, Occ : Business, Office at present, 20, Heliwal Sadan, near Lata Mangeshkar Garden, Surya Nagar, Bhandara Road, Nagpur – 440035.

...VERSUS...

RESPONDENTS :

1. The State of Maharashtra, Through its Secretary, Department of Industry, Energy and Labour, Mantralaya, Mumbai – 440 032.

2. The Director of Industry, Opposite Mantralaya, Kolaba, Mumbai.

3. The Joint Director of Industry, Regional Office of Industries, Nagpur.

4. The General Manager, District Industrial Centre, Nagpur, Tah. and District Nagpur.

WITH

WRIT PETITION NO.2106/2018

PETITIONER : M/S JAY GAJANAN STONE CRUSHER, The Eligible Industrial Unit under the package scheme of incentives- 2007, situated at Gut No.30, Hingna Kumbhari, Tah. & District Akola through its Proprietor Sau Nanda w/o Sureshrao Wankhede, Aged about 40 years, Occ. Business, Office at Kinkhed, Tq. Akot, District Akola.

...VERSUS...

RESPONDENTS :

1. The State of Maharashtra, Through its Secretary, Department of Industry, Energy and Labour, Mantralaya, Mumbai – 440 032.
2. The Director of Industry, Opposite Mantralaya, Kolaba, Mumbai-32.
3. The Joint Director of Industry, Regional Office of Industries, Amravati.
4. The General Manager, District Industrial Centre, Nagpur, Tah. and District Akola.

WITH
WRIT PETITION NO.2108/2018

PETITIONER : SHRI BIJWE STONE CRUSHER, The Eligible Industrial Unit under the package scheme of incentives-2007, situated at Gut No.130, Sarav, Tah. Barshitakli, District Akola, (the partnership firm) through its Partner Shri Abhay S/o Prabhakar Bijwe, the partner of Shri Bijwe Stone Crusher, Aged about 46 years, Occ. Business, Office at Gut. No.130, Sarav, Tah. Barshitakli, District Akola.

...VERSUS...

RESPONDENTS : 1. The State of Maharashtra, Through its Secretary, Department of Industry, Energy and Labour, Mantralaya, Mumbai – 440 032.

2. The Director of Industry, Opposite Mantralaya, Kolaba, Mumbai-32.

3. The Joint Director of Industry, Regional Office of Industries, Amravati.

4. The General Manager, District Industrial Centre, Akola, Tah. and District Akola.

WITH
WRIT PETITION NO.2109/2018

PETITIONER : M/s Shri Sai Minerals, The Eligible Industrial Unit, situated at Survey No. 88/1, 88/2, 88/3, 87, 29, 28/3, 17, 89/2 at Post Mohada, Tq. Wani, District : Yavatmal, through its Proprietor Shri Rajesh S/o Nandlal Biyani, Aged about 39 years, Occ : Business, Office at "Gokuldham", D.G. Tukum, Tadoba Road, Chandrapur, Tahsil and District Chandrapur – 442401.

...VERSUS...

RESPONDENTS : 1. The State of Maharashtra, Through its Secretary, Department of Industry, Energy and Labour, Mantralaya, Mumbai – 440 032.

2. The Director of Industry, Opposite Mantralaya, Kolaba, Mumbai-32.

3. The Joint Director of Industry, Regional Office of Industries, Amravati.

4. The General Manager, District Industrial Centre, Yavatmal.

WITH
WRIT PETITION NO.2107/2018

PETITIONER : M/s Shri Sai Minerals, The Eligible Industrial Unit, situated at Survey No. 88/1, 88/2, 88/3, 87, 29, 28/3, 17, 89/2 at Post Mohada, Tq. Wani, District : Yavatmal, through its Proprietor Shri Rajesh S/o Nandlal Biyani, Aged about 39 years, Occ : Business, Office at "Gokuldham", D.G. Tukum, Tadoba Road, Chandrapur, Tahsil and District Chandrapur – 442401.

...VERSUS...

RESPONDENTS :

1. The State of Maharashtra, Through its Secretary, Department of Industry, Energy and Labour, Mantralaya, Mumbai – 440 032.

2. The Director of Industry, Opposite Mantralaya, Kolaba, Mumbai.

3. The Joint Director of Industry, Regional Office of Industries, Amravati.

4. The General Manager, District Industrial Centre, Yavatmal.

WITH
WRIT PETITION NO.55/2018

PETITIONER : M/s SAI STONE CRUSHER, The Eligible Industrial Unit, situated at Survey No.54, Gut No.292, Pimpala vihar Tal. Amravati, District Amravati through its Proprietor

Shri Suresh S/o Lahorimal Khatri,
Aged about 47 years, Occ : Business,
O/at Deshna Nagar, Chatri Talo Road,
Amravati, Tah. and District Amravati.

...VERSUS...

RESPONDENTS :

1. The State of Maharashtra,
   Through its Secretary, Department of
   Industry, Energy and Labour,
   Mantralaya, Mumbai – 440 032.

2. The Director of Industry,
   Opposite Mantralaya, Kolaba, Mumbai.

3. The Joint Director of Industry, Regional
   Office of Industries, Amravati.

4. The General Manager, District
   Industrial Centre, Amravti Tah. And
   District Amravati.

WITH
WRIT PETITION NO.242/2018

PETITIONER :

PANPALIA METELS, The Eligible
Industrial Unit under the Package
Scheme of of Incentives-2007,
situated at Survey No.47, Gittikhadan, at
Post Kharda, Tah. Seloo, Wardha, Through
its proprietor, Shri Sandeep S/o Nandlalji
Panpalia, aged about 49 years, Occ. Business,
R/o near Pantanjali Shop, Snehal Nagar,
Mahila Ashram, Seva Gram Road, Wardha,
District, Wardha.

...VERSUS...

RESPONDENTS :

1. The State of Maharashtra,
   Through its Secretary, Department of

Industry, Energy and Labour,
Mantralaya, Mumbai – 440 032.

2. The Director of Industry,
Opposite Mantralaya, Kolaba, Mumbai.

3. The Joint Director of Industry, Regional
Office of Industries, Wardha.

4. The General Manager, District
Industrial Centre, Wardha, Tah. And
District Wardha.

WITH
WRIT PETITION NO.401/2018

PETITIONER : M/s. Shri Govindkrupa Stone Crusher,
The Eligible Industrial Unit, situated at
Gut No.384, at Shevti, Ta. Amravati,
District Amravati (the partnership firm)
through its Partner Shri Rajesh S/o
Ghanshyamji Kasat, Aged about 47 years,
Occ : Business, Office at near Vasant
Talkies, Amravati, Tah. and District Amravati.

...VERSUS...

RESPONDENTS :
1. The State of Maharashtra,
Through its Secretary, Department of
Industry, Energy and Labour,
Mantralaya, Mumbai – 440 032.

2. The Director of Industry,
Opposite Mantralaya, Kolaba, Mumbai.

3. The Joint Director of Industry, Regional
Office of Industries, Amravati.

4. The General Manager, District Industrial
Centre, Amravati Tah. And District Amravati.

Mr. Firdos Mirza & Mr. A.B. Moon, Advocates for petitioners
Mr. M.K. Pathan, AGP for respondent nos.1 to 3/State

<u>CORAM</u> : AVINASH G. GHAROTE, AND M.W. CHANDWANI, JJ.

<u>Date of reserving the order</u> : 10/08/2023
<u>Date of pronouncing the order</u> : 18/08/2023

<u>O R D E R</u> (PER : AVINASH G. GHAROTE, J.)

1. Heard Mr. Firdos Mirza, learned counsel for the petitioners and Mr. M.K. Pathan, learned Assistant Government Pleader for the respondent nos.1 to 3/State. None appears for the respondent no.4, though served.

2. All these petitions question the denial of the Package Scheme of Incentives, 2007 to the petitioners - Industry, who are admittedly dealing with minor minerals. It is not in dispute that prior to the subsequent Government Circular dated 17/06/2011, the petitioners were being granted the incentive without any time- frame for applying for the same. However, on account of the Government Circular dated 17/06/2011, the benefit of the scheme is denied to them on the ground that there has been delay in making the application in view of clause 4.2 (3) of the Government Circular

dated 17/06/2011. Clause 4.2 (3) of the said Circular contemplates that valid claim should be filed with the implementing agency within six months from the expiry of the financial year and if the claims are filed after six months, the amount of Royalty Refund will be 90% of the admissible amount. The claims filed after one year of the expiry of financial year will not be admissible (pg.88). It is on the basis of this Clause, the claims filed by the petitioner/s beyond the period of one year were rejected.

3. It is necessary to note that on an earlier occasion, on declining to accept the claims, a challenge was raised before this Court in ***Writ Petition No.137/2015 (M/s. Prerna Stone Crusher Vs. The Government of Maharashtra through its Secretary, Ministry of Industries, Energy and Labour Department, Mantralaya, Mumbai - 32 and others)*** in which by judgment dated 18/03/2016 it was held that the petitioners were governed by Clause 5.5 of the Government Resolution dated 30/03/2007 and therefore, as the said Government Resolution did not make any difference for refund of royalty between major or minor minerals, nor prescribed any time period for applying the petitioners would be entitled to refund. It is consequent to this judgment the petitioner applied to be considered for refund,

consequent to which, the claim submitted by the petitioners is rejected, which is subject matter of challenge in these petitions.

4. Mr. Mirza, learned counsel for the petitioners submits that the case of ***M/s. Chinteshwar Steel Private Ltd. and another Vs. State of Maharashtra through Secretary, Industries, Energy and Labour Department, Mantralaya, Mumbai – 400 032 and others, (Writ Petition No.1010/2016 decided on 07/04/2017)*** has been decided in the context of factual background that the matter under consideration therein is in respect of major minerals and not otherwise. He therefore contends that the petitioner/s would continue to be governed by 2007 Government Resolution and the judgment in the case of ***M/s. Prerna Stone Crusher*** (supra) and so also judgment of this court in the case of ***M/s. Shri Sai Minerals Vs. State of Maharashtra and others (Writ Petition No.5220/2016 and other matters, decided on 07/03/2017)***.

5. Mr. Pathan, learned Assistant Government Pleader in reference to ***M/s Chinteshwar Steel Private Limited*** (supra) submits that since it has been held in para 10 thereof that Circular dated 17/06/2011 was in no way subordinate to Government Resolution dated 30/03/2007 but complimentary to it, the time limit as fixed in the Circular dated 17/06/2011 was applicable and therefore, denial

was justified. He further submits that considering what has been held in the case of ***M/s. Chinteshwar Steel Private Ltd.*** (supra), the relief claimed in prayer clause no. 1 cannot be granted. It is also his contention that there is no plea in the petition that the 2011 Circular is restricted only to major minerals.

6. The scheme formulated under the Government Resolution dated 30/03/2007 by the State entitles an industrial unit registered as a small scale industry the advantage of a Package Incentives Scheme, according to which, the industrial unit is entitled to royalty refund on purchase of minerals from mine owners within the State of Maharashtra for a period of five years. The relevant clause in the Government Resolution dated 30/03/2007, namely, Clause - 5.5 reads as under :

> *"**5.5 Royalty Refund**.*
> *All eligible units, new as well as units undertaking expansion in Vidarbha region will be eligible for refund of royalty paid on purchase of minerals from mine owners within the State of Maharashtra for a period of five years from the date of commencement of commercial production."*

7. It is equally evident from perusal of the said Government Resolution dated 30/03/2007 that the same is of universal applicability and is applicable to an industrial unit dealing in minerals. It does not make any distinction between industrial

units on the basis of they dealing in major or minor minerals. It is equally an admitted position as conceded by Mr. Pathan, learned Assistant Government Pleader that under the Government Resolution dated 30/03/2007 the petitioner industrial units, which are dealing in minor minerals were granted the royalty refund under the Package Scheme of Incentives, 2007 and therefore their coverage under the said Government Resolution cannot be disputed. A perusal of Clause-5.5. above of the Government Resolution dated 30/03/2007 indicates that it does not provide any time restriction for claiming the royalty refund.

8. The circular dated 17/06/2011 (pg.82) defines eligible units to be units established in Virdarbha Region and holding eligibility certificate under PSI-2007, which are using major minerals purchased from mine owners from the State including captive mines and MSSIDC, as raw material required for manufacturing of the finished products. Clause - 4.2 therein reads as under:

> "***4.2 Application for sanction of Royalty Refund :***
>
> *1) An eligible unit shall prefer claim for each financial year in Annexure-I.*
>
> *2) A valid claim shall be supported with the following documents.*
>
> *a) Certificate from Sr. Deputy Director, Directorate of Geology & Mining giving details of Royalty paid to the State Government on major minerals (Annexure-II).*

b) Certified copies of challans/invoices of Royalty paid to the State Government.

c) Auditor's Certificate with regards to Royalty paid and major minerals used in production. (Annexure-III).

d) Affidavit in prescribed format. (Annexure-IV)

All the enclosures shall be self certified/duly signed by the authorized signatory.

3) The valid claim should be filed with the implementing agency within 6 months from the expiry of the financial year. If the claims are filled after 6 months, the amount of Royalty Refund admissible in such cases will be 90% of admissible amount.

The claims filed after 1 year of the expiry of financial year of the claim will not be admissible.

4) The units which are granted Eligibility Certificate before the issue of Royalty Refund modalities GR, shall file all due claims within 6 months from the date of the GR.

5) However, all due claims shall be filed within 6 months from the date of Eligibility Certificate, if Eligibility Certificate is issued after the date of the GR."

9. Since consequent to the circular dated 17/06/2011 there was a denial for the refund of royalty, the same came up for consideration before this Court in ***M/s. Prerna Stone Crusher*** (supra) in which after considering the circular dated 17/06/2011 and so also the language of the Government Resolution dated 30/03/2007 it has been held that Clause-5.5 of the Government Resolution dated 30/03/2007 does not restrict the refund of royalty only for major minerals and therefore as the petitioner therein has been permitted to start its unit on the basis of package incentive scheme of 2007 as prescribed by the Government Resolution dated

30/03/2007, without appropriately modifying that Government Resolution and that too retrospectively, the benefit of royalty refund could not be denied. This has been followed subsequently in Writ Petition No.5220/2016 and connected petitions decided on 07/03/2017.

10. ***M/s Chinteshwar Steel Private Limited*** (supra) considers both the policies as laid down in the Government Resolution dated 30/03/2007 and he subsequent circular dated 17/06/2011 and holds as under :

> *"10. Government Circular dated 17.06.2011 incorporates the decision of this Committee. This circular deals with various facets of royalty refund and therefore appears to be a more comprehensive decision on that subject. Because of its this nature, it has been issued by order of in the name of the Governor of Maharashtra. <u>We, therefore, find that this decision dated 17.06.2011 styled as Government Circular is in no way subordinate to the Government Resolution dated 30.03.2007. On the contrary, it is complimentary to it and mandates adherence similarly. In view of this arrangement and object inherent in 2007 Scheme, the exercise of the committee dated 17.06.2011, though styles as circular, can contain both procedural and substantive provisions</u>. The Committee functioning under Clause 7 has to understand and meet the problems faced while translating the 2007 Scheme into practical. It can take all necessary decisions in the public interest subject only to rider that such decisions must be ratified by the competent authority. There is no challenge to this arrangement and it needs to be honoured as it is neither unconstitutional nor arbitrary.*
>
> *11. <u>Eligibility certificate of the petitioner dated 22.04.1989, vide its condition 17(iv) obliges it to comply with all terms, conditions and provisions of 2007 Scheme, all</u>*

stipulations as may be made from time to time as also the procedure prescribed thereunder and in force from time to time. Thus, petitioners have already subjected themselves to such stipulations and procedure or change therein. We have already found that whether exercise in government circular dated 17.06.2011 is procedural or substantive can not form the bone of contention in as much as the scheme and later circular stand at same pedestal as far as the petitioners are concerned. The circular does not extinguish the right to claim refund but regulates it in larger public interest by prohibiting the stale claims. When the refund has to be out of public revenue, verification of the records and documents at various levels is must. Similarly, the Government must know the liabilities to be discharged within reasonable time so as to rule out any manipulations and other mischief. When the arrangement and appropriation of the funds is always a problem and transparency is desired, time bound processing of such cases is the only solution. Petitioners do not even state why period of one year or outer limit of one year for filing refund claim is arbitrary. At the end of production year, raw material consumed is matter of record. Hence, choice of this period of one year as period of limitation after expiry of financial year does not seem to be either arbitrary or unreasonable. Petitioners have not taken any pains to demonstrate how or why this period is insufficient. In fact, there are no arguments on these lines. Legally, we do not see any prejudice caused to any industry by prescribing this limitation. Contention that benefit of refund of royalty is being taken away by the government circular dated 17.06.2011 therefore, is, wholly erroneous and misconceived. We find that said benefit is to be availed by the petitioners as per 30.03. 2007 Scheme read with government circular dated 17.06.2011.

12. Claim for benefit of royalty refund for year 2011-2012 ought to have been filed by them by 31.12.2013 but, it came to be filed on 07.12.2013. In the meanwhile, petitioners did not challenge the government circular dated 17.06.2011 for about 2 years. The challenge is therefore belated. We find substance in the contention of Ms. Khan, learned A.G.P. that this delay has not been explained.

13. The refusal to refund due to expiry of period of limitation is not questioned by pointing out that some dispute

> *about availability of the benefit or about eligibility of raw material consumed by the petitioners, was then pending and hence, no refund was claimed. The respondents in reply point out that refund for years 2009 2010 and 2010-2011 got delayed due to lack of some documents as quantity of coal shown as consumed was found excessive. This assertion by the respondents of alleged noncompliance by the petitioners is not dealt with and not in dispute before us. Late clearance of refund proposal by itself can not be a ground for nonsubmission of the further claims within time. Justification therefor pleaded in paragraph 8 of the writ petition does not advance the case and cause of the petitioners. Petitioners having submitted the claims earlier can not raise any challenge to the prescription of time limit on 17.06.2011. Claim for year 2011-2012 was to be submitted within one year from 31.03.2012 i.e., by 31.03.2013. Though their claim has been declined by the reasoned orders, petitioners do not plead or point out any difficulty or inability for their failure to submit it within time. They do not care to explain why it could not be filed before 31.03.2013 or before 07.12.2013."*

11. What is material to note is that ***M/s Chinteshwar Steel Private Limited*** (supra) was a case in which a claim for refund of royalty for the year 2011-12 under the package scheme of incentive 2007 by ignoring the condition prescribing the limitation for raising it as contained in the circular dated 17/06/2011 was raised and a relief was sought that the limitation provided for the first time vide circular dated 17/06/2011 should be quashed or it be declared that it cannot apply to the case of the petitioner therein as their eligibility certificate was dated 22/04/2009. A reading of the fact position in ***M/s Chinteshwar Steel Private Limited*** (supra) does not reveal that

what was being considered as a claim for refund of royalty was in respect of a minor minerals. As indicated above, it was held that the claim for benefit of royalty refund for the year 2011-12 ought to have been filed by 31/12/2013. It is however material to note, that ***M/s Chinteshwar Steel Private Limited*** (supra) does not take into consideration that the circular dated 17/6/2011 in clause – I which speaks about eligible units defines eligible units to mean units established to vidarbha region and holding eligibility certificate under PSI – 2007 which are using major minerals. This would clearly indicate that the circular dated 17/6/2011, was clearly meant for units using major minerals purchased from mine owners as raw material for manufacturing of the finished products. This is further substantiated from the language of clause 4.2 of the said circular which in relation to a valid claim to be submitted by an eligible unit, requires a certificate from the senior deputy director, directorate of geology and mining giving details to royalty paid to the State on major minerals and so also an auditor's certificate in that regard, as contemplated by Clause 4.2 (2-a) and (2-c). Thus, though ***M/s Chinteshwar Steel Private Limited*** (supra) holds that the Government circular dated 17/06/2011 is complementary to the

Government Resolution dated 30/03/2007 it has to be read in the contextual background of the circular dated 17/06/2011 creating an exception for refund of royalty vis-a-vis units using major minerals, on the basis of an application for the same being filed within the time prescribed therein, the rest of the policy remaining the same. Had it been the intention of the State to provide a uniform time-lime for industrial units to apply for refund of royalty, irrespective of whether they were using minor or major minerals for manufacturing purposes, nothing prevented the State to say so in the circular dated 17/06/2011. By the very fact that the circular dated 17/06/2011 speaks about units using major minerals for manufacturing of finished products and does not include units using minor minerals, indicates the intention of the State, not to apply the time-frame as contained in the Government circular dated 17/06/2011 to units using minor minerals. The language therefore as used in clause -1 and clause 4 of the circular dated 17/06/2011 did not fell for consideration by the learned Court in ***M/s Chinteshwar Steel Private Limited*** (supra) as is evident from a perusal thereof.

12. The setting up of an Industry based upon a policy prevailing at that point of time providing incentives, would indicate that the incentives are built into the financial complications of the

Industry and denial would lead to a disarray in the financial health of the Industry. When the policy is for promotion of Industry, denying such incentive, merely on account of delay in applying for it would be a retrograde step in implementation of the policy, specifically so when the exception carved out later is for a particular category of Industry, based upon the nature of raw material used, and the Industry claiming such benefit does not fall in such exception.

13. It is not disputed by learned Assistant Government Pleader Mr. Pathan, that except for the delay in filing an application for refund of royalty in view of Clause-4.2 of the Government Circular dated 17/06/2011 the petitioners/units are otherwise eligible for refund of royalty. In that view of the matter, we do not see any reason why the said benefit should not be granted to them specifically when no time-limit is fixed in Clause -5.5 of the Government Resolution dated 30/03/2007 and the Government Circular dated 17/06/2011 is made applicable only to units using major minerals for the purpose of manufacturing finished products.

14. In view of the above discussion, the writ petitions are allowed. The respondents are directed to refund the royalty in terms of Clause 5.5. of the Government Resolution dated 30/03/2007 to

the petitioners, if they are otherwise so entitled, irrespective of the date on which the application was made. Any refund would not carry any interest, whatsoever.

(M.W. CHANDWANI, J.) **(AVINASH G. GHAROTE, J.)**

Wadkar