IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11694 of 2021

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M/s Rajdeep Rice Mill Private Limited Near Bahadurpur More, Harnaut Chandi Road, Post - Sartha, Police Station- Chandi, District - Nalanda through the Director - Pradeep Kumar aged about 37 years, Male, Son of Late Ramesh Prasad, resident of Village - Dahi Bazar Ramgarhwa, Police Station - Ramgarhwa, District - East Champaran.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Industries Department, Government of Bihar, Patna.
2. The Commissioner, Commercial Taxes Department, Government of Bihar, Patna.
3. The Director Industries, Government of Bihar, Patna.
4. The State Investment Promotion Board, Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Manoj Kumar, Advocate
Ms. Namrata Mishra, Advocate
Mr. Chhotelal Mishra, Advocate
Mr. Rajnandan Kumar, Advocate

For the Respondent/s : Mr. Vikash Kumar, SC-11

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 01-05-2024

The petitioner is before this Court claiming reimbursement of the Value Added Tax/Central Service Tax/Entry Tax paid by the petitioner-Unit in terms of Clause 3(i) of the Industrial Incentive Policy, 2011, as brought out by the State.

2. The petitioner is a Private Limited Company which has been established within the State of Bihar eligible for incentive under the Policy of 2011, as claimed by the petitioner. The petitioner's contention is that on the recommendation of the State Investment Promotion Board (for brevity 'SIPB') to proactively promote investment in the State and to take a holistic review of proposals for setting up industrial units in the light of incentives and rebates available as against the investment proposal, a resolution was brought out by the State, produced at Annexure-1. Initially, all proposals up to Rs. 100 Crores were to be approved by the Chief Minister and above that the by the Cabinet. The Department of Industries then came out with a communication, Annexure-2 indicating all investment proposals to be made before the Industrial Development Commissioner (for brevity 'IDC') which shall then be placed before the SIPB. Applications for grant of incentives and subsidy was to be made before the Director of Industries as per Annexure-2. The Bihar Single Window Clearance Act, 2006

was also brought in envisaging multi levels of statutory authorities being a District Level Committee headed by the District Magistrate and the State Level Committee headed by the IDC apart from SIPB and a Nodal Agency headed by the Director, Technical Development, Department of Industries. The proposals above Rs. 100 lacs were to be placed before the SIPB for its approval and below that was to be vetted by the District Level Committee as per Annexure-5. When these notifications were in place, the Industrial Incentive Policy, 2011 was enacted, which is produced as Annexure-6.

3. The petitioner has elaborately dealt with the incentives provided in the 2011 Policy, but suffice it to notice that the new industries established were entitled to tax related incentives of 80 per cent reimbursement against the admitted VAT amount deposited in the account of the Government for a period of ten years. The ceiling for this reimbursement would be 300 per cent of the capital invested. In the year 2016, Bihar Industrial Investment Promotion Policy, 2016 came into vogue, wherein the incentives were akin to that provided in 2011 but the period prescribed was limited to five years from the date of commencement of commercial production; while as per the earlier Policy of 2011, it was ten years. The 2016 Policy also

provided that the existing Units covered under the Policy of 2011 will continue to draw the incentive at rates and conditions of the Incentive Policy of 2011 till their limit is exhausted or on completion of the eligibility period, whichever is earlier.

4. The petitioner claims that the total investment for the petitioner's Unit was Rs. 650 lacs and the petitioner was registered with the District Industry Centre, Nalanda. Annexure-8 is the project proposal of the petitioner approved in the SIPB meeting dated 05.03.2014. Annexure-9 is the communication issued by the Department of Industries indicating that in a meeting of the PAMC the DPR of the revised project was consented to.

5. Though the approvals were produced, there was nothing on record to indicate that the petitioner had commenced production which is crucial for the purpose of availing incentives under the Bihar Industrial Investment Promotion Policy.

6. Learned Counsel for the petitioner has specifically pointed out the Pass Book issued to the petitioner, produced as Annexure-15 along with the reply to the counter affidavit. We saw from the Pass Book under the Industrial Incentive Policy-2006; which it is submitted had been issued after the Industrial

Policy of 2011 which makes it clear that it is under the later policy. The date of production, as seen from the Pass Book, is 20-01-2016. However, this stands contrary to the specific contention of the petitioner in Paragraph 31 of the memorandum of writ petition that the Petitioner-Unit commenced on 17.02.2014, as is evident from Letter No. 1140 dated 22.07.2014 issued by the Director, Technical Development, Bihar, Patna. However, the said document has not been produced. We are also not inclined to accept the said date of production since the project proposal of the petitioner was approved by the SIPB even according to the petitioner only by Annexure-8 dated 30.06.2015; which is after the declared date of commencement of commercial production in the year 2014.

7. Even if we take the date of commencement of production as seen from the Pass Book, then the question arises as to whether the petitioner is entitled to the incentives.

8. The counter affidavit of the Government specifically points out that incentives would be available as reimbursement only for operational Units. According to the petitioner, as stated in Paragraph 27 of the memorandum of writ petition, the loan account of the petitioner was declared a Non-Performing Asset (NPA) on 31.05.2019 and the Unit was closed

down on December, 2019. The petitioner's entitlement also is thus doubtful.

9. On the totality of the circumstances as stated above, we are unable to issue a writ of mandamus under Article 226 of the Constitution of India. We hence dismiss the writ petition.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

P.K.P./-

AFR/NAFR	
CAV DATE	
Uploading Date	10.05.2024
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