IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.576 of 2024
In
Civil Writ Jurisdiction Case No.10038 of 2020

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1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department of Industries, Government of Bihar, Patna.
3. The Commissioner-cum-Secretary, Department of State Taxes, Government of Bihar, Patna.
4. The Director, Industries, Department of Industry, Government of Bihar, Patna.
5. The Director (Technical Development), Department of Industry, Government of Bihar, Patna.
6. The General Manager, District Industries Centre, Aurangabad.

... ... Appellant/s

Versus

M/S Essell Lubricants and Chemicals Private Limited having its office at Eyhari Road Farm, Aurangabad- 8204101, through its Managing Director, Laxmi Prasad, aged about-57 years, S/o- Late Gupteshwar Ram, resident of village- Nawadih Road, near Kali Club, P.S.- Aurangabad, District- Aurangabad.

... ... Respondent/s

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Appearance :

For the Appellant/s : Mr. Shankar Kumar, AC to AAG-7

For the Respondent/s : Mr. Abhishek Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

5 26-02-2026 Heard the parties.

2. The present *intra* Court appeal is being directed against the judgment/order dated 22.03.2024 and modified order dated 16.05.2024 passed in C.W.J.C. No. 10038/2020, passed by Hon'ble Single Judge, whereby and whereunder the appellants (writ respondents) were directed to reimburse the 80% of the VAT amount paid by the respondent (writ petitioner/company) for the period 2012-13, 2013-14 and 2014-15 after adjusting the amount which has already been paid.

3. The brief facts leading to filing of the present *intra court* appeal are that the Bihar government published 2006 Policy for increasing the industrial growth of the State and to revive the sick and closed unit by creating favourable environment to attract domestic and foreign investment. As per Clause 2 (vi) read with Clause 10 of the Policy, new units which commence the commercial production within five years from 01.04.2006 were given the incentive of 80% of reimbursement against the admitted VAT amount deposited by the unit in the account of the State Government. This facility was made available for a period of ten years. The petitioner, on the basis of promise made under the Policy, setup a manufacturing unit of refined petroleum products for which production commenced on

01.07.2008. *Vide* letter no. 546, dated 31.07.2010, the petitioner was issued eligibility certificate under the 2006 Policy by the General Manager, District Industrial Centre, Aurangabad, certifying that the petitioner/company is eligible to receive reimbursement of 80% of VAT paid under the 2006 Policy.

4. The learned Single Judge passed the following order after hearing the parties and upon consideration of the materials available on record:

> *"15. In the present case, under 2006 Policy, the unequivocal promise made by the State was that the new industrial unit which commences production within five years from the cut off date fixed under the Policy i.e.. 01.04.2006, shall be entitled for VAT reimbursement to the extent of 80%. In response to the Policy, the petitioner/unit established an industrial unit for manufacture of refined petroleum products (lubricants) and admittedly, commenced production within two years from the date of coming into force the Industrial Policy i.e., of 01.07.2008. The State Government granted eligibility certificate under the 2006 Policy to the petitioner/company certifying that the petitioner/unit is eligible to receive reimbursement of 80% of VAT paid under the Industrial Policy, 2006. The Policy was acted upon and the petitioner/unit based on the promise, made under the policy, altered/changed its position by establishing the manufacturing unit. It invested a lot of amount also on the basis of promise made in the Policy. The respondent/State reimbursed 80% of the*

VAT paid by the unit for the year 2010-11 and 2011-12, thereafter. for the financial year 2012-13, 2013-14 and 2014- 15. it has been denied on the basis of subsequent Policy of 2011 that the unit is only entitled for 25% of reimbursement and not 80%. The decision taken by the Authority in letter no. 649 dated 27.08.2021, which has been challenged by way of I.A., is arbitrary and whimsical decision. lacking application of mind inasmuch as the respondent/state itself granted eligibility certificate to the petitioner/unit for grant of incentive/reimbursement of VAT amount and in fact reimbursed the amount also to the extent of 80% for two financial years i.e., 2010-11 and 2011-12 and 25% for another financial years upto 2014-15. Therefore, the plea that the petitioner/unit was not having the single window clearance by S.I.P.B./District Committee. is preposterous and is not acceptable. accordingly, letter No. 649, dated 27.08.2001, is quashed.

16. Considering the aforesaid submissions of the parties and the law laid down by the Apex Court. in my opinion, the State, having made a promise under the Industrial Policy, 2006, to extend the incentive benefits to the industrial unit for a period of ten years and the petitioner/company having acted on the promise made investment, fulfilled the criteria for grant of incentive, the respondent/State cannot deny the benefits arising out of 2006 Policy on the principles of promissory estoppel/legitimate expectation. accordingly, I direct respondent/authorities to reimburse the 80% of the VAT amount paid by the petitioner/company for the period 2012- 13. 2013-14 and 2014-15 alter adjusting the amount which has already been paid *by the respondents to the petitioner. The amount towards incentive arrived at for the aforesaid period must be paid by the respondents within a period of two months from the date of receipt/ production of a copy of this order."*

5. Learned counsel for the appellants submits that learned Single Judge has not appreciated the fact that earlier the Commercial Taxes Department used to directly settle the reimbursement claim of the units under the 2006 and 2011 policy but from FY 2016-17, this process was stopped and the system of online application was introduced. He further submits that the writ petitioner (herein respondent) has applied on online portal on 21.03.2018 and during such processing the unit was recommended for VAT reimbursement as presently working unit in terms of the provisions contained under Clause 3 (iii) of the Industrial Incentive Policy, 2011. He further points out that the writ petitioner (respondent herein) was not entitled for 80% of VAT/ Entry Tax Reimbursement as it has failed to take clearance from District Level Single Window Clearance Committee.

6. Learned counsel for respondent submits that after the coming into force of the Policy of 2006, the respondent–company set up a manufacturing unit for refined petroleum and, in accordance with the said policy, commenced commercial production on 01.07.2008, i.e., within five years from the cut-off

date of 01.04.2006. It is submitted that the respondent's unit was fully covered under the 2006 Policy and, as such, was eligible for reimbursement of 80% of the VAT.

7. The limited issue that arises for consideration is whether, in the facts and circumstances of the present case, the impugned order passed by the learned Single Judge suffers from any legal infirmity warranting interference by this Court in exercise of its *intra* court appellate jurisdiction.

8. Upon perusal of the materials available on record, it is apparent that under the Industrial Policy of 2006, the State had clearly assured that any new industrial unit commencing production within five years from the cut-off date of 01.04.2006 would be entitled to reimbursement of VAT to the extent of 80%. Acting on the said assurance, the respondent established an industrial unit for the manufacture of refined petroleum products (lubricants) and commenced commercial production on 01.07.2008, which is well within the period stipulated under the Policy.

9. Further, it is not in dispute that the State Government granted an eligibility certificate to the petitioner under the 2006 Policy, certifying that the petitioner's unit was entitled to reimbursement of 80% of the VAT. Moreover, it is

apparent that the appellant reimbursed VAT at the rate of 80% for the financial years 2010-11 and 2011-12. However, for the subsequent financial years 2012-13, 2013-14, and 2014-15, the authorities restricted the reimbursement to 25% by applying the subsequent Industrial Policy of 2011.

10. In view of the submissions advanced and the discussion made hereinabove, having once granted an eligibility certificate under the Industrial Policy of 2006 and, in furtherance thereof, extended the benefit of reimbursement of VAT at the rate of 80% for two financial years, the appellant–State could not have curtailed or withdrawn such benefit by placing reliance on a subsequent policy. The entitlement of the respondent, having been duly recognized and acted upon by the State itself, could not thereafter be denied or restricted, as such an action would run contrary to the assurances held out under the 2006 Policy.

11. We, therefore, find that the learned Single Judge has correctly appreciated the factual matrix as well as the applicable legal position and there is no error, illegality, or perversity warranting interference by this Court.

12. Accordingly, the present *intra* court appeal stands dismissed.

13. Pending application(s), if any, shall also stand disposed of.

(Sudhir Singh, J)

(Rajesh Kumar Verma, J)

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