(2022) 03 OHC CK 0016

In the Orissa High Court

Case No : Writ Petition (Civil) No. 17059 Of 2006

M/s. Shiva Cement Ltd — APPELLANT

Vs

State Of Odisha And Others — RESPONDENT

Date of Decision : 03-03-2022

Acts Referred:

Citation : (2022) 03 OHC CK 0016

Hon'ble Judges : Dr. S. Muralidhar, CJ;A.K.Mohapatra, J

Bench : Division Bench

Advocate : Sidhartha Ray, S.K. Pattanaik

Final Decision : Allowed

Judgement

1. The short prayer in the present petition is for a direction to quash a letter dated 28th September, 2006 issued by Director of Industries, Odisha (Opposite Party No.2) declining the Petitioner's application for grant of an eligibility certificate for the sales tax exemption in terms of the Industrial Policy, 1996 on the basis that the Petitioner's industry is a 'pipeline' industry.

2. In the impugned order, Opposite Party No.2 has referred to an order dated 11th May, 2006 of the Industries Department, Government of Odisha in terms of which it has been decided "not to issue any further eligibility certificate for the industries in the pipeline."

3. That the Petitioner is a pipeline industry stands acknowledged by the District Industries Center (DIC), Sundargarh which wrote to the Director of Industries on 20th January, 2006 pointing out that the Petitioner had taken over the erstwhile IPI – S.P. Cement Company Ltd. under the Rehabilitation package and that eligibility certificate for exemption of sales tax had been issued on 28th July, 2000 under IPR 1992. An amended eligibility certificate in favour of the Petitioner unit was issued on 31st July, 2004.

4. Subsequently, the Petitioner took up expansion under IPR 1996 and a revised

commercial production certificate was issued in its favour on 8th December, 2005 with an enhanced installed capacity. The fact that the Petitioner unit started commercial production with effect from 24th December, 2001 has been accepted by the DIC, Sundargarh.

5. Mr. Ray, learned counsel appearing for the Petitioner has drawn the attention of the Court to the Finance Department Notification dated 17th February, 2000 whereby even while the State Government directed that no exemption of payment of sales tax on purchase of raw materials, machinery and spare parts, packing materials and finished products by any industrial unit shall be allowed, a proviso was introduced whereby an industrial unit certified as a ‘pipeline’ unit as on 1st January, 2000 would be entitled to the incentives as long as it fulfilled the four criteria specified therein. Mr. Ray further points out that the Petitioner satisfied each of the above criteria and this was again acknowledged by the General Manager, DIC by a letter dated 28th July, 2003. In that letter it was stated that the Petitioner unit’s name had been submitted to the Government for inclusion in the list of Pipeline industries as on 1st January, 2000.

6. Despite notice having been issued in the present petition way back on 18th March, 2008 till date no reply has been filed. In other words, the averments in the writ petition are not contradicted.

7. Mr. S.K. Pattanaik, learned Senior Counsel appearing for the Opposite Parties states that he has received no instructions in the matter. Therefore, the factual assertion that the Petitioner satisfies the criteria spelt out in the 2nd proviso to the notification dated 7th February, 2000 is unable to be disputed by him.

8. If indeed, the Petitioner satisfies all of the above four criteria specified in the proviso to the said notification, there is no reason why it should not be issued an eligibility certificate notwithstanding the order dated 11th May, 2006 of the Industries Department.

9. In that view of the matter, the impugned order dated 28th September, 2006 is hereby set aside and a direction is issued to the Opposite Parties to issue the necessary eligibility certificate in favour of the Petitioner to enable it to avail of the sales tax exemption for the period in question. The necessary orders be issued not later than four weeks from today.

10. The petition is allowed in the above terms, but in the circumstances, with no order as to costs.

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