(2003) 08 PAT CK 0014

In the Patna High Court

Case No : C.W.J.C. No. 3872 of 2003

Sai Iron (India) Limited APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 06-08-2003

Acts Referred:

Citation : (2003) 3 BLJR 1748 : (2003) 4 PLJR 38

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : S.D. Sanjay and Suraj Samdarshi, for the Appellant; R.P. Bhagat, G.P. 4, for the Respondent

Final Decision : Allowed

Judgement

Aftab Alam, J.—This writ petition has been filed challenging the order, dated 21-2-2003 passed by the Director of Industries, Bihar (Copy at Annexure-13/A). By the impugned order the Director of Industries rejected the claim of power subsidy for the period March 1996 to December, 2000 amounting to Rs. 8,00,500/-, made by the petitioner under the State Government''s Industrial Incentive Policy, 1993. The claim is rejected on two grounds: (i) on corning into force of the industrial Policy, 1995 the petitioner failed to exercise its option and did not give in writing that it would avail of the benefits under the Industrial Policy, 1993 and (ii) in any event the industrial Policy, 1993 had expired on 31-3-1998 while the claim of the petitioner was upto December 2000 i.e. for a period beyond the term of 1993 Policy.

2. The State Government in the department of Industries announced Industrial Policy, 1993 under which a number of incentives/benefits were promised and provided to the industrial units being set up and coming into production between the period April, 1993 to March, 1998. On behalf of the petitioner, which is a company incorporated under the Companies Act, 1956 it is stated that attracted and induced by the promises made in the industrial Policy, 1993 it set up an industrial unit for manufacture of M.S. Tor Steel, Angles, Channels and

Agricultural implements. A temporary registration certificate for the unit was obtained from the District Industries Centre, Patna on 24-5-1994. For the purchase of Plant and Machinery, electrical equipments and construction of factory shed the petitioner applied for Bank loan and a term loan of Rs. 94 lacs was sanctioned by the Central Bank of India, Patna branch by letter dated 3-4-1995. The petitioner made its own investments of Rs. 73,21,587/- upto 31-8-1995 which was further increased upto Rs. 1,09,80,317/- upto 18-3-1996. It is stated on behalf of the petitioner and not denied by the respondents, that the newly set up unit started commercial production from 18-3-1996 and the petitioner was given permanent registration certificate by the General Manager, District Industries Centre, Patna by letter dated 20-3-1996. Thus the date on which the unit came into commercial production falls firmly between the period stipulated by the Industrial Policy, 1993 and according to the petitioner, it is entitled to the incentives benefits and privileges provided under the 1993 Policy.

3. It is further stated on behalf of the petitioner that its entitlement to the benefits under the 1993 policy was never in question and under the provisions of that policy it was granted exemption from payment of sales tax on purchase of raw materials and on sales of finished products vide certificate of exemption, dated 5-2-1997 issued under notifications S.O. Nos. 95 and 96, dated 4-4-1994.

4. Apart from exemption from payment of sales tax the petitioner also applied for industrial Capital Subsidy which was provided for in the 1993 Industrial Policy. Initially the State Level Committee rejected the petitioner''s claim for Industrial Capital Subsidy on the erroneous assumption that since the petitioner''s unit had started commercial production from 18-3-1996 its case fell under the 1995 Policy and not under the 1993 Policy. But on a representation being made by the petitioner the State Level Committee reconsidered the petitioner''s case for grant of State Industrial Capital Subsidy and upheld the petitioner''s claim in its meeting held on 14-6-2001. Following the decision of the State Level Committee the disbursement of the amount of Industrial Capital Subsidy was duly made in favour of the petitioner.

5. The petitioner similarly made the claim of power subsidy under the 1993 Policy and the General Manager, District Industries Centre, Patna sanctioned payment of Rs. 8,00,500/- by his order dated 28-2-2002.

6. The matter then went before the Director of Industries and lay there for an inordinate length of time. As no payment was being made, even after the subsidy was sanctioned by the General Manager, District Industries Centre the petitioner came to this Court in C.W. J.C. No. 11426 of 2002 seeking appropriate direction(s) to the Director of Industries. The writ petition was disposed of by me by order, dated 21-11-2002 by which the Director of Industries was asked to consider the petitioner''s claim for energy subsidy in terms of the 1993 Industrial Policy and to take a final decision in that regard within the time specified in that order. Following the direction of this Court the Director of Industries considered the matter and rejected the petitioner''s claim for grant of power subsidy by his

order, dated 21-2-2003.

7. The Director has assigned two reasons for rejecting the claim. These are contained in the last two paragraphs of the order which are reproduced below:

"6. During hearing the representative of the unit was asked as to whether they had submitted their option within the prescribed period as to whether they wanted to avail the benefits of 1993 Industrial Policy or 1995 Industrial Policy. The unit stated that there was no need for them to file a representation as they are being governed under the 1993 Industrial Policy. It would thus be seen that the Unit had not exercised the option to take benefit under the 1993 Industrial Policy within the required period.

7. Moreover the benefits of the 1993 Policy expired on 31-3-1998 while the unit has claimed benefit till December 2000. The Department of Industries, Government of Bihar has also vide letter No. 2616 dated 11-7-2000 prohibited sanction of any further case under the 1993 Industrial Policy. In view of the above, the claim of the unit for grant of power subsidy from March 1996 to December, 2000 is rejected."

8. The second ground (as contained in paragraph 7 of the order) is based on letter No. 2616, dated 11-7-2000 issued by the Department of Industries which according to the Director prohibits sanction of any further case under the 1993 Policy. The letter dated 11-7-2000 came up for consideration before this Court in C.W.J.C. No. 15698 of 2001 (Kamper Concast Limited v. State of Bihar). In that case the claim of power subsidy raised by Kamper Concast Limited was also rejected on the basis of the letter dated 11-7-2000. That writ petition was allowed by judgment and order dated 21-4-2003 in which it was held as follows:--

"The letter did not say that claims that has already accrued and were duly sanctioned by the competent authorities would be disconnected because the period of validity of the Industrial Policy was over notwithstanding the clause that the unit would enjoy the incentive for five years from the date of production. In fact any such direction would have been contrary to the Industrial Policy and hence, illegal and unenforceable."

9. The second ground assigned for rejecting the petitioner''s claim must, therefore, be held to be invalid and bad.

10. Coming now to the first ground, that on coming into effect of the 1995 Policy the petitioner failed to exercise option and did not state in writing that it would avail of the benefits under the 1993 Policy, it may be noted that the 1995 Policy came into force from 1-9-1995. Paragraph 3 of the Clause 11 under the heading definitions in the Industrial Policy, 1995 provided as follows:--

"The industrial units which have came into commercial production on or after 1-9-1995 but had made substantial fixed capital investment prior to 1-9-1995 will have the option to avail of the package of incentives/assistance as provided in the Industrial Incentive Policy, 1993 (provided the unit is eligible under that policy) or under this Industrial Policy. They will not be entitled to partial benefits from both these policies. The option must be given in writing to the Director of Industries or Director, Technical Development within three months of the date of notification of this policy in the Bihar Gazettee."

11. The failure of the petitioner to give option in writing to the Director of Industries within three months of the date of notification of this policy in the Bihar Gazette is made the basis for rejection of the petitioner''s claim under the 1993 Policy.

12. The question is, would the omission to give the option in writing to avail of the benefits under the 1993 Policy be fatal to the claim of the petitioner. In the facts and circumstances of this case, I am of the opinion that the answer to this question can only be in the negative.

13. It is to be borne in mind that no Industrial unit is allowed to avail of partial benefits from both the policies. In other words, a unit can avail of benefits either under the 1993 Policy or in terms of the later 1995 Policy. It is noted above, that the petitioner started setting up its unit in May, 1994 and the unit started commercial production from 18-3-1996. Both the dates fall firmly within the period stipulated in the Industrial Policy, 1993. The petitioner unit was granted exemption from payment of sales tax on 4-4-1994, that is, before coming into force of the 1995 Policy. Its claim for Capital Subsidy was approved by the State Level Committee on 14-6-2001 and was sanctioned by the Director of Industries by letter dated 21-9-2001 i.e. after the coming into force of the 1995 Policy. It is thus clear that the case of the petitioner unit was completely tied up and committed to the 1993 Policy and it could not claim any benefit under the 1995 Industrial Policy as it was admittedly not set up under that policy. In these facts and circumstances the mere omission to give in writing that it would continue to avail of the benefits under the 1993 Policy would not make the petitioner''s claim liable to rejection and any rejection of the petitioner''s claim on that basis would be quite contrary to the spirit of the Industrial Policy. In my view, therefore, the first ground assigned for rejecting the petitioner''s claim for power subsidy is equally bad and invalid.

14. Therefore, the impugned order dated 21-2-2003 passed by the Director of Industries is set aside and the matter is remitted to him to reconsider the petitioner''s claim for power subsidy in accordance with law and in the light of this judgment. The Director should pass a fresh order within two months from the date of receipt/ production of a copy of this order in his office.

15. In the result, this writ petition is allowed but with no order as to costs.