(2011) 01 JH CK 0066

In the Jharkhand High Court

Case No : Writ Petition (C) No. 2129 of 2010

Satyam Terro-Tech (P) Ltd. APPELLANT

Vs

State of Jharkhand and Others RESPONDENT

Date of Decision : 19-01-2011

Acts Referred:

Citation : (2011) 2 JCR 164 : (2011) 6 RCR(Civil) 2213

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Judgement

R.K. Merathia, J.—Heard the parties finally.

WPC No. 2129 of 2010

2. This writ petition has been filed against the order dated 23.10.2010, passed by the Director, Industries, rejecting the claim of the Petitioner for grant of interest subsidy for the years 2006-07, 2007-08, on the ground that the Petitioner has not explained the delay in filing the claims for those years. However, so far as the claims for the years 2008-2009 and 2009-10 is concerned, it was said that the same is under process.

WPC No. 2141 of 2010

3. This, writ petition has been filed against the order dated 23.10.2010, passed by the Director, Industries, rejecting the claim of the Petitioner for grant of interest subsidy for the years 2003-04, 2006-07 and 2007-08, on the same ground that the Petitioner has not explained the delay in filing the applications for those years. However, so far as the claims for the year 2004-05 and 2005-06 are concerned, it is accepted in the counter-affidavit that the same were filed within time and were under process.

4. Mr. Gadodia, learned Counsel appearing for the Petitioners submitted that even according to the Respondents the delay was 70 days and 30 days in filing the claims for some years. He further submitted that after a long delay the

Petitioners were informed by the Directorate of Industries that there were certain discrepancies in the claims including that the application for condonation of delay was not filed. The Petitioner replied to the said letters and complied with all the requirements. He further submitted that the delay was not intentional and in all fairness it should have been condoned, as sufficient cause was shown by the Petitioners. Relying on para-16 of the judgment of the Supreme Court in the case of State of Jharkhand and Others Vs. Tata Cummins Ltd. and Another, ," he further submitted that the exemption policy/notification should be liberally construed. Para-16 of the aforesaid judgment reads as follows:

Before analyzing the above policy read with the notifications, it is important to bear in mind the connotation of the word "tax". A tax is a payment for raising general revenue. It is a burden. It is based on the principle of ability or capacity to pay. It is a manifestation of the taxing power of the State. An exemption from payment of tax under an enactment is an exemption from the tax liability. Therefore, every such exemption notification has to be read strictly. However, when an Assessee is promised with a tax exemption for setting up an industry in the backward area as a term of the industrial policy, we have to read the implementing notifications in the context of the industrial policy. In such a case, the exemption notifications have to be read liberally keeping in mind the objects envisaged by the industrial policy and not in a strict sense as in the case of exemptions from tax liability under the taxing statute.

Relying on Para-7 of the another decision of the Supreme Court in the case of State of Bihar and Others Vs. M/s. Suprabhat Steel Limited and Others, he submitted that limiting the period of six months for making claim for interest subsidy amounts to curtailment of the right of the Petitioners under Jharkhand Industrial Policy, 2001 (hereinafter referred as Policy).

5. On the other hand, Miss Neha Prashant, learned JC to AG appearing for the State, supporting the impugned order submitted that under Clause 36.2 of the Policy, the period of six months for making claim could be fixed, and that such provision was made in the year 2003, i.e. much before the claims in question were filed. She further submitted that though there is provision for condoning the delay but the Petitioners could not show sufficient grounds. She further submitted that such provisions are to be strictly construed. She further submitted that the application for condonation of delay was not made to the proper authority, who had the power to condone the delay. She relied on the decisions of the Supreme Court in the case of State of Jharkhand and Others Vs. Ambay Cements and Another, . She also relied on Tata Cummins Ltd. Vs. State of Jharkhand and Others, ."

6. It appears that the provision, fixing six months from the end of financial year, for making claims, was made in the year 2003, i.e. much prior to lodging the claims by the Petitioners. Therefore, I am not inclined to accept the submissions of Mr. Gadodia that such provision curtailed the right of the Petitioners. The judgment of Suprabhat Steel (supra) is of no help, on this point.

7. However, there is no dispute that there is provision to condone the delay. But, by the impugned orders they delay was not condoned saying that no cause was shown, whereas, it appears from the materials on record that there were good grounds for condoning the delay, but the same were not considered by the Director of Industries. In my opinion, if the incentives, promised are denied in such manner, it will send wrong signals. The judgment relied by the State counsel are not applicable in the facts and circumstances of this case, rather the aforesaid paragraph 16 of the judgment of "Tata Cummins Ltd." (supra) reported in State of Jharkhand and Others Vs. Tata Cummins Ltd. and Another, , relied on behalf of the Petitioner, is relevant. As this Court is satisfied that there are good grounds for condoning the delay of 70 days and 30 days in making some claims, instead of remanding the matters, such delay are condoned.

8. However, I am not inclined to condone the delay for the year 2003-04 in WPC No. 2141/2010 as the explanation of the delay of 16 months is not satisfactory.

9. In the result, the impugned orders are set aside and the Respondents are directed to process the claims for interest subsidy of the Petitioners (except for the year 2003-04 in WPC No. 2141 of 2010) and disburse the legally payable claims as early as possible and preferably with in two months from the date of receipt/production of a copy of this order.

With these observations and directions, both the writ petitions stands disposed of.

