

(2003) 07 JH CK 0069

In the Jharkhand High Court

Case No : Writ Petition (T) No. 2587 of 2003

Tata Cummins Ltd. and Another

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 31-07-2003

Acts Referred:

Bihar Finance Act, 1981 — Section 46
Constitution of India, 1950 — Article 226

Citation : (2003) 4 JCR 52 : (2006) 145 STC 323

Hon'ble Judges : P.K. Balasubramanyan, C.J; R.K. Merathia, J

Bench : Division Bench

Advocate : T.R. Andhyarujina, V.P. Singh, S. Sukumaran, B. Shishodia, Sat Prakash and Shalini Jha, for the Appellant; Anil Kumar Sinha and K.K. Jhunjhunwala, GP III, for the Respondent

Final Decision : Allowed

Judgement

P.K. Balasubramanyan, C.J

1. The question arising for a decision in this writ petition is whether the Tata Cummins Ltd., petitioner No. 1 herein, is entitled to the benefit of the notifications issued by the Government of Bihar on 22.12.1995 as SO Nos. 478 and 479. While petitioner No. 1 claims that it is entitled to the benefit of those notifications, the State of Jharkhand contends that it is not entitled to that benefit.

BRIEF HISTORY:

2. A substantial extent of land was held by the Tata Iron & Steel Company Limited (herein after referred to as TISCO) under the State of Bihar on lease. As of now, the lease has expired and negotiations are on between TISCO and the State of Jharkhand. A portion of that extent was sub-leased by TISCO to the Tata Engineering & Locomotive Company Limited (TELCO) for a period of 99 years. Subject to various disputes that had cropped up consequent upon the expiry of

the lease in favour of TISCO, the position is that the said extent of land is held by TELCO on the basis of that sub-lease and in terms of Section 7-E of the Bihar Land Reforms Act.

3. On 8.7.1993, a joint enterprise agreement was entered into by TELCO and the Cummins Engine Company INC (USA). They agreed to form a jointly owned venture in India for the purposes described in that agreement. The share capital to be invested by TELCO and the Cummins Company was to be in the ratio of 50:50 and the parties were to hold 50 per cent of the shares each in the joint venture. The profits were to be distributed as dividends on shares of stocks held by the respective parties. The Board of Directors of the joint Company to be formed was to consist of 8 members initially, each party having a right to appoint an equal number of persons as its representatives in the Board. The enterprise was not to be liable for any of the obligations of TELCO or of Cummins Engine Company INC. TELCO was to make available to the joint enterprise, office premises, the site (if a location owned by TELCO is selected), buildings, workers' residences and all facilities necessary to carry on the business prior to the time when the enterprise acquires other suitable office premises, site etc. TELCO was to make available the properties described above to the joint enterprise in accordance with the terms of the leases to be executed by the dates specified in those documents.

4. This joint venture agreement led to the incorporation of the Tata Cummins Limited under the Indian Companies Act, 1956. On 25.3.1995, an agreement was entered into between Tata Cummins Limited and Tata Engineering & Locomotive Company Limited (TELCO). As per that agreement, it was acknowledged by TELCO that as one of the promoters of Tata Cummins Ltd., it has allotted, subject to the terms and conditions of the lease to be executed by mutual consent, an extent of 37.19 acres of land in TELCO Township, Jamshedpur and Tata Cummins was constructing a factory and other buildings therein. By that agreement, TELCO recognized the title and the ownership of Tata Cummins Limited over the factory and the buildings that were being constructed at the site. The agreement also provided that the agreement was to be deemed to be effective from 1.4.1994. It is the case of TELCO and the Tata Cummins Limited that a formal lease deed had not been executed or could not be executed, in view of the cropping of disputes between the State and TISCO regarding the renewal of the original lease in favour of TISCO. It is the case of TELCO and the Tata Cummins Limited that buildings have been constructed by Tata Cummins Ltd. In the extent of 37.19 acres made available to it by TELCO and that an industry has been started therein at an investment of above rupees 300 crores.

BACK GROUND OF THE DISPUTE :

5. In the year 1993, the Government of Bihar had announced as Industrial Policy with a view to attract investments and setting up of industries in the State. According to Tata Cummins Limited and TELCO, it was in the background of that

Industrial Policy that a joint venture was envisaged and established in the name of Tata Cummins Limited. In the year 1995, that Industrial Policy was modified to some extent. That Industrial Policy, 1995, was to be enforced with effect from 1.9.1995. In its introduction, the policy set out the aims, and objectives of the policy as to create an environment for optimum utilization of the State resources, to provide quality infrastructure for accelerated industrialization, to attract investments to generate economic activities, reviving potentially viable and closed industries to boost exports of goods in production of which the State enjoys comparative advantages and to simplify procedures to expedite and impart transparency in decision making. As part of the incentives, the policy envisaged transparency in decision making. As part of the incentives, the policy envisaged allotment of land/shed in growth centres to entrepreneurs for setting up industrial units on lease for 99 years with option for renewal. It also envisaged (which is more relevant in our present context) certain Sales Tax incentives. Clause 16 stated that Sales Tax benefit plays an important role in attracting and directing investment and in sustaining industrial development in a State. In that background, new units were allowed the facility of either "set off" or "exemption" at their choice, of Sales tax on purchase of raw materials and the period was to be limited as envisaged in Clause 16(1) of the policy. By Clause 16.2 the benefit of exemption/set off on Sales tax on sale of finished goods was allowed with option to the new units either to choose deferment of payment of sales tax or exemption of Sales tax for the period referred to therein. This policy regarding the Sales Tax incentive was sought to be carried forward by two notifications, S.O. Nos. 478 and 479 both dated 22.12.1995. For claiming the benefit of exemption according to the notification No. 478, it was necessary as per Clause 6 that the industrial unit should be installed in such a building which is in the exclusive ownership of the proprietor of the enterprise, or in the ownership of any of its partners or the holding company. If the factory of the unit was installed on the land or building taken on lease, the exemption was to be available only when such land/building, or both, had been acquired by way of a registered lease for a period of minimum fifteen years or more. The lease was to be in favour of the proprietor of the unit, or any partner of the firm or in favour of the holding company. Clause 8 of SO No. 479 was also more or less, on the same terms, except that the ownership of the building could be of any partner or promoter or the holding company (promoter was an addition). According to Tata Cummins Ltd. it had taken a lease of the land from TELCO, its partner in the joint venture, though a formal lease had not been executed. But TELCO had a registered lease for a term of 99 years from TISCO which itself had a valid lease under the Government at the time the lease was granted by it in favour of TELCO. Since the land was held by TELCO, which held 50% interest in Tata Cummins Ltd. under a registered lease deed, the unit was eligible for the benefit. Its more important claim was that in any event, Tata Cummins Limited was the exclusive owner of the building and the factory set up by it and under the first part of the notification, the exclusive ownership of the building being with Tata Cummins Limited, it was entitled to the benefit of exemption regarding Sales Tax

envisaged by Clauses 16.1 and 16.2 of the Policy.

EVENTS LEADING UP TO THIS WRIT PETITION :

6. Accordingly, Tata Cummins Limited applied to the Deputy Commissioner of Commercial Taxes claiming the benefit of Sales tax exemption under SO Nos. 478 and 479 dated 12.12.1995. On 2.12.1998, the Deputy Commissioner of Commercial Taxes rejected the claim of Tata Cummins on the ground that no title to the lease could vest with Tata Cummins Limited until and unless the original lease in favour of TISCO was renewed and, therefore, it was clear that there was no valid lease in favour of Tata Cummins Limited and consequently, Tata Cummins Limited could not claim the benefit under the notifications No. 478 and 479 dated 22.12.1995. Tata Cummins Limited challenged the decision of the Deputy Commissioner in CWJC No. 2689 of 2000. The Division Bench noticed that the claim of Tata Cummins Limited was rejected on the ground-that it had no right, title or interest over the land where the industry was set up inasmuch as it was not transferred to it by way of a valid lease. After considering the argument of Tata Cummins Limited and after adverting to Clause 7.1 and 7.2 of the Industrial Policy, 1995, the Division Bench held that Tata Cummins Limited not having a valid lease obtained either from the State Government or from the sub-lessee, TELCO, it could not claim the benefit of the exemption under the relevant notifications. Thus, the order of the Deputy Commissioner of Commercial Taxes was upheld. Tata Cummins Limited challenged the decision of the Division Bench in the Supreme Court of India by way of petitions for Special Leave to Appeal (Civil) Nos. 20375 and 20376 of 2000.

7. It appears that meanwhile, the Joint Commissioner of Commercial Taxes (Administration) had passed an order on 11.7.2000 to the effect that since the order passed by the Deputy Commissioner of Commercial Taxes was without the approval of the Joint Commissioner which is a condition precedent under SO Nos. 478 and 479, he was passing an order to call for the records of the case to examine the question of exemption afresh after issuing notices to the Deputy Commissioner and the Tata Cummins Limited. Thus, when the Supreme Court took up the petitions for Special Leave to Appeal for a final decision, this proceeding initiated by the Joint Commissioner of Commercial Taxes (Administration) was brought to its notice. By order dated 26.3.2003 in Civil Appeal Nos. 2394-2395 of 2001, the Supreme Court noticed that Tata Cummins Limited had two contentions. It may be better to extract what has been noticed by the Supreme Court in its order :

"It is the contention of the appellants that in the Scheme the first condition in Clause 6 of S.O. No.478 is to be read separately from the second condition in the second sentence of Clause 6. The first condition of Clause 6 of SO No. 478 is an independent and distinct condition from the rest of the said Clause 6 and if it is fulfilled the proprietor/ entrepreneur is entitled to an exemption without being required to fulfil any other condition in Clause 6, that is to say, if the building of an industrial unit is in exclusive ownership of the proprietor/entrepreneur, such

proprietor/entrepreneur shall be entitled to avail of the exemption. Similar is the interpretation with regard to Clause 8 of SO 479 dated 22.12.1995. It is the contention of the appellants that they fulfil first condition and are, therefore, entitled to the exemption. It is also the contention of the appellants that they fulfil the second condition also if it is required to be fulfilled viz., the factory building is constructed on land which is held by its joint venture partner (viz TELCO) under a registered lease of more than 15 years.

This contention is not accepted by the learned Additional Solicitor General. He submits that the above contentions based on interpretation of Clause (6) of the Scheme were not raised before the High Court, the High Court has, therefore, rightly not dealt with the same. It appears that when the denial of exemption was challenged before the High Court, the aforesaid contentions in terms were not raised."

8. The Supreme Court in the context of the order of the Joint Commissioner dated 11.7.2000, directed that the Joint Commissioner of Commercial Taxes (Administration) should decide the matter after giving an opportunity to Tata Cummins Limited to make a representation and file documents and after a hearing. The Joint Commissioner was directed to decide the matter without being influenced by the prior decision of the High Court that was challenged in appeal. The Joint Commissioner of Commercial Taxes, pursuant to the above direction, passed an order dated 24.5.2003 afresh. In that order, after noticing the arguments, the Joint Commissione recorded that the following facts emerged :

- (i) The land on which the factory premises has been constructed, by Tata Cummins Limited is the sub-leased land of TELCO taken on lease from TISCO;
- (ii) TELCO has allotted part of its leased land to Tata Cummins Limited;
- (iii) As per the sub-lease agreement between TISCO and TELCO, TELCO had no right to allot part of the land to any other company;
- (iv) Tata Cummins Limited had requested TISCO to execute a lease agreement but the lease agreement had not been executed.

9. He then recorded the conclusion that the Tata Cummins Limited had neither legal title nor ownership over the land on which the industry was established. Nor was it in a position to produce a registered lease deed for a term of fifteen years or more for getting the benefit of exemption under the notifications SO Nos. 478 and 479. The conditions laid down in those notifications had not been complied with.

10. We may notice that though he referred to the arguments of Tata Cummins Limited that It was the exclusive owner of the building and the factory put up for the industry and the argument of counsel for the Department that that portion of the notification regarding the ownership of the building applied only to buildings already in existence on the date of the notification, and not to buildings subsequently constructed, did not give any specific answer to the argument or

claim based on the ownership of the building, one of the arguments specifically noticed by the Supreme Court in its order of remand. The rejection of the claim of the Tata Cummins Limited by the Joint Commissioner of Commercial Taxes has led to the filing of the present writ petition.

THE PRELIMINARY OBJECTION:

11. The learned Advocate General appearing on behalf of the respondents submitted that the petitioners have an alternative remedy by way of revision u/s 46 of the Bihar Finance Act and in view of the existence of such an alternative remedy, it was not necessary or proper for this Court to exercise its jurisdiction under Article 226 of the Constitution of India. He also submitted that questions of fact were involved in deciding whether Tata Cummins Limited was entitled to the benefit of the aforesaid two notifications and in such a situation, it would be inappropriate for this Court to exercise its jurisdiction. On examining Section 46 of the Act with particular reference to Sub-section (4) thereof relied on by the learned Advocate General, we find that it is really a suo motu power on the Commissioner on his own motion to call for and examine the records in a proceeding in which an order has been passed by any other authority under the Act for the purpose of satisfying himself as to the legality or propriety of that order. No doubt, it has been held that even though the power of revision purports to be a suo motu. power, in an appropriate case, an as-sessee can make a motion invoking that power and the Commissioner would be entitled to exercise his revisional jurisdiction at the request of such an assessee. It is not as if Tata Cummins Limited has a right of revision by way of a statutory remedy under the Act, though, as we have noticed above. It may be able to request the Commissioner to exercise the revisional jurisdiction. In the absence of a right of revision conferred on Tata Cummins Limited, we are of the view that we cannot decline jurisdiction solely on the ground that the writ petitioners have an efficacious alternative remedy. The decision in *Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others*, relied on by the learned Advocate General is distinguishable. That was a case where the writ petitioner had an efficacious alternate remedy by way of an appeal and a Second Appeal under the Sales Tax Act and it was in that context that the Supreme Court held that the jurisdiction under Article 226 of the Constitution of India was not liable to be invoked. The decision in *Bombay Ammonia Pvt. Ltd. v. State of Tamil Nadu* 37 STC 517, is only authority for the proposition that even if the power is couched in a language indicating the conferment of power to be exercised suo motu, the same could be exercised by that Authority even at the instance of an assessee. The period of exemption provided by the notification as claimed by Tata Cummins Limited commenced from 1.1.1996 and it would come to an end on 31.12.2003, about six months away. It appears to us that it will be necessary to bring a finality to this claim of Tata Cummins Limited one way or the other at the earliest. Investigation into the claim has already completed the first round by going up to the Supreme Court and it is really in the second round that the Joint Commissioner has taken a fresh decision in the light of the direction of the

Supreme Court. Now he has rendered a decision, though of course, as highlighted by the learned Senior Counsel for Tata Cummins Limited, he has not dealt with one of the aspects especially referred to in the order of the Supreme Court and highlighted before him as can be seen from his summary of the arguments raised before him. Now to ask Tata Cummins Limited to invoke the power of the Commissioner u/s 46(4) of the Bihar Finance Act appears to us to be inexpedient and even unnecessary. No doubt, as pointed by the learned Advocate General, questions of facts may be involved in deciding the claim of Tata Cummins Limited, but those questions of fact are not such complicated questions as to justify a detailed investigation of various items of evidence or of individual branchlets constituting a bundle of facts. It appears to us to be really a case of interpretation of the relevant provisions to see whether on the facts not seriously disputed, Tata Cummins Limited would be entitled to the benefit claimed. On the whole, it appears to us that it will be just and proper to render a decision, one way or the other, on the claim for exemption raised by Tata Cummins Limited at this belated stage.

12. Moreover, as is well known, the existence of an alternative remedy is not an absolute bar to the Court exercising jurisdiction under Article 226 of the Constitution of India. It would depend on the facts and the circumstances of a particular case. Considering the nature of the claim involved and the questions which are to be decided, we are satisfied that this is a fit case where we should not decline jurisdiction under Article 226 of the Constitution of India merely on the ground that the petitioners can invoke the *sao motu* power of revision of the Commissioner. We, therefore, over-rule the preliminary objection raised by the learned Advocate General and proceed to decide the issue argued at length before us.

INDUSTRIAL POLICY, 1995 AND THE NOTIFICATIONS :

13. As noticed already, Clause 16 of the Policy provides for sales tax incentives. We will now read 16.1 and 16.2 with which we are concerned.

16.1. Sales tax on purchase of raw materials.--New units will be allowed the facility of either "set off" or "exemption" at their choice, on purchase of raw materials within the State. New Units opting for deferment of sales tax on sale of finished goods (vide para 16.2) will, however, be eligible for "set off only on purchase of raw materials. The period of exemption for new units will be limited to 10 years for category "A" and 8 years for category "B" Districts from the date of commencement of production of the unit."

16.2. Sales Tax on Sale of Finished Goods for New Units.--New Units, in addition to the benefit of "Exemption"/set off of sales tax on purchases, will also have the option to choose deferment or exemption of Sales Tax (both Bihar Sales Tax (BST) and Central Sales Tax (CST) on sale of finished goods for a period of 10 years for category "A" and 8 years for category "B" Districts from the date of production of the unit with a ceiling of 100% of the fixed investment made by the

unit. However, those industries which are considered Thrust Industries" as listed earlier in Para 15 (excluding Telecommunication, Computers, software hardware & Electronics Industries) as also industries located in "A" category Backward Districts the ceiling or deferment would be 150% of the fixed investment. The ceiling for deferment linked to the fixed investment in regard to Telecommunication, Computers, Software/Hardware & Electronics Industries would be 30% of the fixed investment made by the unit."

A running translation of the notifications, SO Nos. 478 and 479, both dated 22.12.1995 are as under :

SO 478, dated 22.12.1995 :

"6. For getting this facility it shall be necessary that a unit should be installed in such a building which is in exclusive ownership of the proprietor/ entrepreneur of the unit or in the ownership of any of it's partner or holding company. If the factory or workshop of a unit is installed on the land or building taken on lease, exemption will be granted only when such land or building or both have been acquired by way of a registered lease for a period of minimum 15 years or more. That lease should be in favour of the proprietor of the unit or any partner of the firm or holding Company."

SO 479, dated 22.12.1995 :

"8. For getting this facility it shall be necessary that a unit should be installed in such a building which is in exclusive ownership of the proprietor/entrepreneur of the unit or in the ownership of any of its partner or promoter or holding company. If the factory or workshop of a unit is installed on a land or building taken on lease, exemption will be granted only when such land or building or both have been acquired by way of a registered lease for a period of 15 years or more. That lease should be in favour of the proprietor of the unit or any partner of the firm or holding Company of the unit firm."

THE ARGUMENTS & CONCLUSION :

14. The learned Senior Counsel for Tata Cummins Limited argued that the notification was really beyond the scope of the Industrial Policy, 1995 and it will be sufficient if Tata Cummins Limited satisfies the requirements of the Policy even if it did not strictly satisfy the requirements of the aforesaid two notifications. According to him, all that was required was that the unit should be a new one. In fact, certain conditions were imposed in the earlier Industrial Policy, 1993 and they were dropped in the new Industrial Policy, 1995 and in that context, the claim of Tata Cummins Limited should be considered, based solely on the policy. Learned advocate General sought to argue that u/s 7(3) of the Bihar Finance Act, the State Government had the power to impose a restriction and consequently, unless Tata Cummins Limited satisfied the conditions laid down in the notification, it could not claim any relief based on the policy. He pointed out that this was not a contention that was raised at the earlier stages

and was being highlighted only for the first time in this writ petition by raising a ground in that behalf.

15. On going through the order of the Supreme Court directing the Joint Commissioner to consider whether Tata Cummins Limited was entitled to the benefit of the notifications, it appears to us that what he was concerned with and what we are really concerned with, is the question whether Tata Cummins Limited, in fact, satisfied the conditions laid down by the two notifications. We are therefore satisfied that the arguments raised, based on the notifications being beyond the Industrial Policy, cannot be accepted. It is over-ruled.

16. Learned Senior Counsel for Tata Cummins Limited argued that the notifications like the ones in question should be construed liberally in favour of grant of benefits envisaged by the Industrial Policy and not in a restrictive manner. The decision in *Ambe Cement, Dhanbad v. State of Jharkhand* 2003 (2) JCR 309, was referred to. The decision of the Patna High Court in *SCI India Limited v. State of Bihar*, CWJC No. 3768 of 2002, was also relied on. In that decision, a Division Bench of the Patna High Court after referring to the decision of the Supreme Court in *State of Bihar and Others Vs. M/s. Suprabhat Steel Limited and Others*, . held that the Bihar Industrial Policy, 1995 was designed to give benefit to industrial units and therefore a positive approach was required to be adopted in considering the notifications of the relevant clauses of the policy. An attempt to find loopholes and reject the claim on technical grounds may be a counter productive and subversive of the objects sought to be achieved by the policy. Learned Advocate General pointed out that however liberally one may construe the Industrial Policy or the notifications, unless the assessee satisfied the conditions laid down therein, no benefit thereof will ensure to the assessee. He, therefore, submitted that unless Tata Cummins Limited establishes either of the two aspects specifically referred to in the notifications, it would not be entitled to the relief claimed. We think on the facts of this case that, what is really involved is the question whether Tata Cummins Limited could be said to have installed its industry in a building which is in its exclusive ownership or whether it had established its industry on a piece of land or in a building taken on lease under a registered lease for a minimum period of fifteen years.

17. The admitted facts show that after obtaining 37.19 acres of land from TELCO from out of the lands held by TELCO under TISCO under a sub-lease, Tata Cummins Limited established a factory building and other adjuncts for the purpose of its industry which started production on and from 1.1.1996. According to learned Senior Counsel for Tata Cummins Limited, the object of insisting on the ownership of the building or a lease for fifteen years under a registered lease deed, was only to ensure that the industry did not run away after taking the advantage of the benefit granted under the policy and the company was really a bona fide investor of capital in the industry intended to be run in the State for a reasonable length of time: Counsel pointed out that about Rs. 302 crores have already been invested by Tata Cummins Limited. The industry had envisaged

production of 60,000 engines per year with its employees, 846 in number, and it has paid taxes to the tune of about Rs. 600 crores. He submitted that in the context of these facts and the benefits envisaged by the Industrial Policy. Tata Cummins Limited would be entitled to the benefit of the notifications on the ground that it was the exclusive owner of the building in which the unit is installed. Learned Advocate General, on the other hand, submitted that the first limb of the notification applied only to assesseees who were the absolute owners of the land and the buildings, in contra distinction to an assessee who was a lessee of the land and the building covered by the second part of the notification and since even according to Tata Cummins Limited, it had no ownership over the land wherein the buildings were constructed, it could not claim to be eligible for concession in terms of the first limb of the notification. The Advocate General also emphasized that as a matter of fact, the so-called further lease by the sub-lessee. TELCO, to Tata Cummins Limited itself was invalid in law.

18. Thus, the question boils down to this whether Tata Cummins Limited should establish that it is not only the owner of the building in which the unit was installed, but it is also the owner of the land on which the building was put up?

19. The first part of the notification, as distinguished from the second part, does not refer to the land. Even if the maxim *quicquid plantatur solo, solo cedit* is taken to be the law in India and the presumption applies, -- it has been held that it is not the law in India, -- the presumption stands rebutted in this case, since on the materials it is clear, and the case has also proceeded on the basis, that Tata Cummins Limited had, in fact, constructed buildings in which the industrial production was started, considering the object sought to be achieved by the Industrial Policy and the wording of the notification, even if it goes slightly beyond Clauses 16.1 and 16.2 of the policy themselves, we think that an interpretation that the first clause applied only if an industrial undertaking is the absolute owner not only of the building in which the unit is installed, but also of the land on which the building is constructed, is not warranted. Nor does it appear to be necessary to restrict the scope of the notifications and confine the benefit of the first part only to those assesseees who are the absolute owners of the land and buildings in which the unit is installed.

20. We may notice here that it is not as if Tata Cummins Limited is a rank trespasser into the land. It may be a different question, whether as long as the original lease to TISCO by the State Government stands unrenewed, the sub-lessee TELCO can lease out a piece of land from out of its sub-lease-hold to Tata Cummins Limited. We cannot also ignore the fact that TELCO has also 50% interest in Tata Cummins Limited as can be seen from the joint venture agreement entered into by TELCO with the Tata Cummins Limited INC (USA). In any event, in the context of the benefit extended by the Industrial Policy formulated by the State, the occupation of Tata Cummins Limited of the land is certainly permissive until and unless steps are taken by the State to evict the original lessee, if it is possible in law. This permissive occupation under TELCO, a

joint venturer of the industry, in our view, is sufficient to enable the Tata Cummins Limited to claim benefit on the ground that it had constructed the building. The argument of learned Advocate General that unless Tata Cummins Limited established its title not only over the building, but also over the land for claiming benefit under the first part of the notification appears to us to be an unreasonably restrictive understanding of the notifications in the context of the objects sought to be achieved by them.

21. Though the argument in this behalf was specifically noticed by the Supreme Court in its order of remand and was taken note of by the Joint Commissioner in his order, we have to notice that the Joint Commissioner had not answered this claim put forward by Tata Cummins Limited. He has founded his decision on the fact that Tata Cummins Limited did not have a lease hold under a registered-lease exceeding fifteen years and that the sub-lessee under TISCO might not have a right to further sub-lease a part or portion of the land held by it as a sub-lessee. The argument of the learned Advocate General that the construction was made even before the lease was actually granted and when the parties actually contemplated the execution of a lease deed, does not appear to be fatal to the claim of Tata Cummins Limited. The fact remains that TELCO which had 50% interest in Tata Cummins Limited, made available a piece of land held by it validly at the relevant time and made it available to Tata Cummins Limited for putting up constructions thereon, though, no doubt, contemplating to reduce the transaction into writing by executing a lease deed. We remind ourselves that we are not really deciding the issue of the title, between the parties, namely, the State on the one hand and Tata Cummins Limited on the other. We are only considering a claim for the benefit of an Industrial Policy aimed at industrial progress of the State, claimed by the assessee which had started a new unit in the erstwhile State of Bihar, now Jharkhand. Thus, our conclusion on this aspect is that on the basis of its exclusive ownership over the building in which the Unit is installed, Tata Cummins Limited is entitled to the benefit of the industrial Policy, 1995 and the notifications, SO Nos. 478 and 479.

22. The alternative contention raised on behalf of Tata Cummins Limited was that even though there was no execution of a registered lease deed for a term exceeding 15 years by Tata Cummins Limited and the TELCO, since TELCO was 50% shareholder in Tata Cummins Limited and TELCO had a valid sub-lease under TISCO protected by Section 7-E of the Bihar Land Reforms Act, that will be sufficient to enable Tata Cummins Limited to claim the benefit under the notifications. The relevant provision in the joint venture agreement and the agreement between TELCO and Tata Cummins Limited referred to earlier by us were highlighted in that context. The learned Advocate General, on the other hand, contended that Tata Cummins Limited could not claim to be an exclusive lessee of this land held under a registered lease deed for a period exceeding 15 years, since there was no registered lease deed at all. Secondly, unless it is contended that TELCO was a partner in the firm of which Tata Cummins Limited is the other partner, there was no question of accepting the argument that TELCO

held a valid sub-lease and it must be treated as a partner in whose favour there is a registered lease and the benefit extended. On reading the latter part of the notification, it appears to us that it must be a case where the assessee himself, here, Tata Cummins Limited, must hold the lease. But in the case of a partnership, it will be sufficient if the lease is held by one of the partners of the firm. If the same is held by a holding company, that also would suffice. Tata Cummins Limited is not a partnership. There is also no case that TELCO is a holding company. What is argued is that the expression partner in the notification should not be understood in the sense in which it is understood in partnership law. But, it should be understood as a generic term in which two persons come together in a joint venture and one of them owns the land or holds it on lease and on which the other makes a construction. It appears to us that the acceptance of this submission will be straining the language of the notification and acting against the normal understanding of the expression "partner" in law. Obviously, a company incorporated under the Indian Companies Act has a distinct entity, different from a firm as defined in the Indian Partnership Act. The notification contemplates three types of ownership of the leasehold; (i) exclusive ownership or proprietorship; (ii) ownership of a firm; and (iii) ownership of a company. The first poses no problem. That is not the case here. The second provides that the firm must be the lessee, but it is enough if the lease is held by one of the partners. As regards a company like here, it must be held by the company or it is enough, if it is held by a holding company. There is no case that TELCO is a holding company. We are, therefore, inclined to accept the argument of the learned Advocate General and hold that Tata Cummins Limited cannot claim the benefit of the notifications on the ground that it is a lessee of the land in which the unit is installed, within the meaning of the second part of the notification.

23. But in view of our finding based on the ownership of the building, Tata Cummins Limited is entitled to the benefit claimed.

ADJUSTMENT OF TAX PAID PENDING ADJUDICATION :

24. It is a common ground that Tata Cummins Limited had paid a sum of Rs. 54.5 crores towards the tax demanded but it has not paid the sum of Rs. 42 crores out of the demand. The Supreme Court while staying the recovery of the balance amount of Rs. 42 crores, had ordered that in case the appeals are dismissed by the Supreme Court, Tata Cummins Limited will pay such interest on the tax as the Court may award. By the final order of remand, the Supreme Court directed that if the claim for exemption is rejected, Tata Cummins Limited would pay the withheld amount of the tax with interests at 9% per annum from the date it became due till the date of payment.

25. Now that we have upheld the claim of Tata Cummins Limited for the benefit, the question of Tata Cummins Limited paying the further sum of Rs. 42 crores with Interest thereon does not arise. It is now a case of refund of the sum of Rs. 54.5 crores by the State to Tata Cummins Limited.

26. Senior counsel appearing for Tata Cummins Limited submitted that Tata Cummins Limited is willing to have adjusted the amount to be refunded towards the tax to be paid by the Tata Cummins Limited after the period of exemption expires on 31.12.2003. The respondents cannot have any objection to our directing that the amount of Rs. 54.5 crores can be adjusted towards the tax due in future from Tata Cummins Limited. Therefore, instead of ordering the refund of this amount to Tata Cummins Limited, we direct that this amount will be adjusted by the respondents towards the Sales Tax liabilities of Tata Cummins Limited for the accounting year commencing on 1.4.2004.

THE RESULT :

27. We, therefore, allow this writ petition and quash the order of the Joint Commissioner of Commercial Taxes. We hold that Tata Cummins Limited is entitled to the benefit of the Industrial Policy, 1995 and the notifications, S.O. Nos. 478 and 479 dated 22.12.1995. Instead of directing the refund of the amount of Rs. 54.5 crores to Tata Cummins Limited, we direct the respondent-State and the authorities of the Commercial Taxes Department under the Bihar Finance Act, to adjust the refundable amount towards Sales Tax due from Tata Cummins Limited for the accounting year commencing on 1.4.2004. We direct the parties to suffer their respective costs.

R.K. Merathia, J.

28. I agree.