



GAHC010029052020

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/928/2020

M/S. MAYUR ENGINEERING WORKS
A PARTNERSHIP FIRM HAVING ITS PRINCIPAL PLACE OF BUSINESS AT
INDUSTRIAL ESTATE, SENCOWA, DIST.- NAGAON, PIN- 782002, ASSAM,
REP. BY ONE OF ITS PARTNERS MD. JAMIL MANIYAR, AGED ABOUT 42
YEARS.

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE COMM. AND SECY. TO THE DEPTT. OF FINANCE, GOVT. OF
ASSAM, DISPUR, GHY.- 781006, DIST.- KAMRUP(M), ASSAM.

2:THE COMMISSIONER OF TAXES
ASSAM
GOVT. OF ASSAM
KAR BHAWAN
DISPUR
GHY.- 06
DIST.- KAMRUP(M)
ASSAM.

3:THE ASSTT. COMMISSIONER OF TAXES
NAGAON
P.O. NAGAON
DIST.- NAGAON
ASSAM PIN- 782001

For the petitioner (s) : Mr. O. P. Bhati, Sr. Advocate

Mr. T. C. Das, Advocate

For the respondent (s) : Mr. B. Choudhury, Advocate



BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 05.10.2023

Date of Judgment : 05.10.2023

JUDGMENT AND ORDER (ORAL)

The instant writ petition has been filed by the petitioner seeking a direction upon the respondent authorities to make payment of an amount of Rs.3,97,159/- with further interest from the date of filing of the writ petition.

2. The case of the petitioner herein is that the petitioner being eligible under the Industrial Policy of Assam, 2008 had applied for an Eligibility Certificate by filing an application on 31.12.2010. The incentive for which the petitioner filed the application for grant of Eligibility Certificate was for claiming exemption to tax under the Assam Industrial (Tax Exemption) Scheme, 2009. The petitioner was granted the Eligibility Certificate by the General Manager, District Industries and Commerce Center, Nagaon, Assam bearing No. DICCN(US)ST/EC/287/2011-12/2258-2260 dated 27.05.2014 which was signed on 02.06.2014 in respect of its finished products, i.e. M.S. Nuts and Bolts. The said Eligibility Certificate has been enclosed as Annexure-A to the writ petition and it appears therefrom that the incentives which had been approved were VAT exemption for a period of 7 years from 14.12.2010 to 13.12.2017 with a ceiling of maximum 200% of the fixed capital investment of Rs. 22,76,900/-, i.e. Rs.45,53,800/-; power subsidy subject to a ceiling of Rs.10,00,000/- per year w.e.f. 14.12.2010 to 13.12.2017 and drawal of power line, i.e. Rs.2,26,154/- subject to a maximum ceiling of Rs.10,00,000/-. On the basis of the Eligibility Certificate issued by the General Manager, District Industries and Commerce Center, Nagaon, Assam, the



respondent No.3 had granted the certificate of entitlement No.C01NWG/IS/02269 dated 24.06.2014 and it has been categorically mentioned in the writ petition that only in the first week of the month of October, 2010, the same was made available to the petitioner. The said Eligibility Certificate of entitlement has been enclosed as Annexure-B to the writ petition and it reveals that the Certificate was valid from 14.12.2010 to 13.12.2017 subject to renewal from year to year and the incentive which was granted was exemption of tax to the extent of Rs.45,53,800/- within the period from 14.12.2010 to 13.12.2017 in respect to the sale of the finished product, namely, M.S. Nuts and Bolts.

3. It is the specific case of the petitioner that from 14.12.2010 till the grant of Certificate of Entitlement by the respondent No.3, the petitioner paid a total tax of Rs.3,11,859/-. After the grant of the certificate of entitlement, the petitioner claimed the refund of Rs.7,973/- for the period from 2010-11; Rs. 1,16,805/- for the period of 2012-2013 and Rs.59,798/- for the period of 2013-2014, totaling to Rs.3,11,859/- by filling the applications for refund as prescribed under the Assam Industries (Tax Exemption) Scheme, 2009. It is also mentioned in the writ petition that as the application was filed on 07.01.2015, i.e. within the prescribed period of 180 days from the receipt of the Certificate of Entitlement, the said application was on time. The petitioner after submitting his claim of the amount of Rs.3,11,859/-, has been pursuing with the respondent authorities for refund of the said amount and in that regard has issued various communications to the respondent No.3. As the said amount was not paid, the petitioner has approached this Court by filing the instant writ petition.

4. It reveals from the record that this Court vide an order dated 04.03.2020 issued notice. The record further shows that an affidavit-in-opposition was filed



by the Commissioner of Taxes on 21.08.2023. In the said affidavit-in-opposition, it was mentioned that the Certificate of Entitlement was issued after observing the due procedure on 24.06.2014 and was delivered to the authorized representative of the dealer on 24.06.2014 under acquaintance. It was further mentioned that as the authorized representative of the petitioner received the Certificate of Entitlement on 24.06.2014 and the application for refund was filed on 07.01.2015, the said application was beyond the prescribed period of 180 days as per the provisions of para 9 (2) of the Assam Industrial (Tax Exemption) Scheme, 2009. Under such circumstances, the petitioner was not entitled to the said amount so claimed on 07.01.2015.

5. To the said affidavit-in-opposition, a reply was filed on 14.09.2023 by the petitioner denying that the certificate of entitlement was delivered to the authorized representative of the petitioner on 24.06.2014. It was further mentioned that there was no document shown to the effect that the Certificate of Entitlement was handed over on 24.06.2014 itself.

6. The instant writ petition came up before this Court on 15.09.2023. Taking into consideration the stand which has been taken by the Commissioner of Taxes in its affidavit that the Certificate of Entitlement was handed over to an authorized representative of the petitioner on 24.06.2014 and the specific denial of the petitioner to the said statement of the Commissioner of Taxes, this Court vide the order dated 15.09.2023 directed the Standing Counsel, Finance and Taxation Department of the Government of Assam to produce the record which would show that the Certificate of Entitlement dated 24.06.20214 was handed over to the authorized representative of the petitioner on the same date.

7. Mr. B. Choudhury, the learned Standing Counsel for the Finance and Taxation Department of the Government of Assam had produced the record as



well as the process file. Upon perusal of the process file pertaining to the petitioner, there was no mention as to when the said certificate of entitlement was served upon the authorized representative of the petitioner save and except an acknowledgment No.NWG 3984144 dated 24.06.2014 has been mentioned. From the records, nothing could be seen as well as was shown that there was any signature of an authorized representative of the petitioner. Further from the records, it also do not transpire that the said Certificate of Entitlement was received by any of the partners of the petitioner or by any person authorized by the petitioner firm to receive the certificate of entitlement. Mr. B. Choudhury, the learned Standing Counsel for the Finance and Taxation Department though during the course of hearing referred to an initial to be that of the authorized representative of the petitioner, but from the said initial, it cannot be discerned as to whether the person concerned was the authorized representative of the petitioner. Apart from that the said initial assuming arguendo to be of the authorized representative of the petitioner, but then also it does not bear the date.

8. Under such circumstances, the reason for denial the entitlement of the petitioner on the ground that the certificate of entitlement of the petitioner was served to the authorized representative on 24.06.2014 cannot be accepted.

9. Apart from what have been observed above, it is also pertinent to mention that from a perusal of Clause 9 (2) of the Assam Industrial (Tax Exemption) Scheme, 2009 that the claim application for refund is required to be made in format as prescribed in Annexure-XII within 180 days from the date of receipt of the certificate of entitlement. As the certificate of entitlement has been issued by the Respondent No.3 and the Respondent Authorities have alleged that the Certificate of Entitlement was served upon the authorized representative on



24.06.2014, the onus of proof therefore lied upon the respondent No.3 to show that the certificate of entitlement was served upon the petitioner or its authorized representative on 24.06.2014. As above mentioned, the respondent authorities completely failed to discharge their onus.

10. Under such circumstances, it is the opinion of this Court that the petitioner having filed the application on 07.01.2015 would be entitled to the amount so claimed subject to the necessary verification as per the Scheme of 2009.

11. Accordingly, this Court therefore disposes of the instant writ petition directing the respondent No.3 to verify the claim of the petitioner as submitted on 07.01.2015 for the period from 2010-11; 2011-12; 2012-13 & 2013-14 within a period of 30 days from the date of receipt of the certified copy of the instant order, and thereupon, disburse the said amount within 15 (fifteen) days thereafter.

12. The respondent No.3 shall also duly take note of Section 52 of the Assam Value Added Tax Act, 2003 on the question of the entitlement interest to the petitioner while carrying out the said verification.

13. The record so produced by Mr. B. Choudhury, the learned Standing Counsel for the Finance and Taxation Department of the Government of Assam is returned.

JUDGE

Comparing Assistant