

(2015) 03 TP CK 0002

Tripura High Court

Case No: Writ Petition (C) 501 of 2014

Vishal Pipes Ltd.

APPELLANT

Vs

State of Tripura and
Others

RESPONDENT

Date of Decision: March 11, 2015

Hon'ble Judges: Deepak Gupta, C.J.; S.C. Das, J.

Bench: Division Bench

Advocate: S.M. Chakraborty, Senior Advocate and B. Chakraborty, for the Appellant; S. Chakraborty, Addl. G.A., Advocates for the Respondent

Judgement

Deepak Gupta, C.J.

The petitioner, respondent No. 6 and others submitted tenders in response to the notice inviting tenders.

2. Admittedly, the tender of the petitioner-Company was the lowest, but tender was awarded in favour of respondent No. 6 at the price quoted by the petitioner by giving benefit of the Tripura Industrial Investment Incentives Promotion Scheme, 2012. One of the conditions of this Incentive Scheme is that the person, who has set up an industry in Tripura and wants to get benefit of the Scheme should make value addition of not less than 30% before the benefit can be granted.

3. On 04.02.2015, we had passed the following order:-

"One of the important questions raised in this petition is whether the VAT, Excise and other taxes paid in the State of Tripura are to be taken into consideration while assessing the value addition to the goods done in the State for determining whether the Unit is entitled to benefit of the incentive schemes.

The Director of Industries and Commerce, Government of Tripura shall file an affidavit by next date stating what is the policy of the Government in this regard. We are making it clear that whatever is the declared policy of the Government in this affidavit shall be accepted to be correct not only for this case but for all cases

because the policy of the State must be uniform for all.

The respondent No. 8, Tripur Polymer Pvt. Ltd. is also directed to file an affidavit stating how the amount given with the value addition reflected in one calculation issued by Tapan Kumar Saha, Chartered Accountant is 42.93% and the total value of goods produced is shown to be Rs. 82524049.00 whereas in the certificate issued by S. Basu Thakur and Co., Chartered Accountant, the total value of goods produced is shown to be Rs. 84960393.30 and the total value addition is shown to be 32.43% for the same year 2013-2014. We fail to understand how a company can have two separate calculations with regard to two value addition just because there are two separate Chartered Accountants.

The respondent No. 8 is also directed to produce the balance sheet as filed with the Registrar of Companies by the next date.

List on 11th February, 2015.

Till then no further supplies shall be received from the respondent No. 8.

Copy of the order be furnished to the learned counsel for the parties during the course of the day."

4. At this stage, it is not disputed before us that VAT excise and others taxes paid in the State of Tripura are not to be taken into consideration while assessing the value addition.

5. Mr. S.M. Chakraborty, learned senior counsel, appearing for the petitioner has drawn our attention to the letter dated 31st October, 2014 sent by the Director, Industries and Commerce, relevant portion of which reads as follows:-

"i) While calculating the Value Addition, your auditor (S. Basu Thakur and Co., Chartered Accountant) has not deducted the amount of Excise Duty and VAT from the total Ex-factory Sales Value of goods in the detailed analysis of cost/pricing structure based on the audited final accounts for the financial year 2013-14. (Copy enclosed)

ii) The balance sheet for the year 2012-13 as submitted in DIC, West is different from the one downloaded from the website of Ministry of Corporate Affairs (MCA) with different financial results."

6. He has further drawn our attention to the reply sent by respondent No. 8, which has been attached as Annexure R-1 and points out that no reply has been given with regard to Para 2 of the objection raised by the Director of Industries and Commerce. He has also brought to our notice the fact that according to the respondent No. 8, the certificate issued for the year 2013-14 has become valueless and infructuous.

7. It is contended by Mr. Chakraborty, learned senior counsel that the questions raised by the Director of Industries and Commerce have not been answered by the

respondent No. 8 and despite such questions having been raised the department has placed supply orders on the respondent No. 8. He also points out that the accounts submitted by the respondent No. 8 do not appear to be correct because in the accounts for the financial year 2013-14 and in the accounts of the assessment year 2013-14 i.e. the financial year 2012-13 the closing stock of Finished Goods/ Work-in-progress is shown as Rs. 973487.00 and the Opening Stock of Finished Goods/Work-in-progress is shown as Rs. 854557.00. Opening stock of Raw Materials for both the years is shown to be Rs. 96415.00 and the closing Stock of Raw Materials as Rs. 78003.00. He submits that in both the years the value of the opening and closing stock could not have been identical.

8. We may here mention that Mr. Bhowmik, learned senior counsel had urged before us that in the document, which is purportedly issued by Tapan Kumar Saha, Chartered Accountant wherein the value addition is shown as 42.93%. The word financial year 2013-14 had wrongly been mentioned in the heading and actually this certificate was in respect of the financial year 2012-13 and for the assessment year 2013-14. We fail to understand how these two documents can have different figures. The respondent No. 8 has failed to satisfy us as to why there was a different balance sheet filed before the Registrar of Companies and why there is a different balance sheet for calculating the value addition. It is urged by Mr. Bhowmik, learned senior counsel that these are matters of accounts and different balance sheets may have been provided because the requirements are different.

9. We are not going into the other aspects of the matter, but we do find it surprising that when the Director of Industries has raised a very serious objection as to whether the respondent No. 8 is entitled to claim the benefit of the Incentive Scheme or not, the respondent No. 6 has issued supply orders on the respondent No. 8 preempting any action by the Director, Industries and Commerce.

10. We are not accountants and we cannot decide what is the value addition. We also are not qualified to decide what are the correct accounts. We, therefore, dispose of the writ petition with the following directions:-

"i) The respondent No. 8 shall produce before the Director, Industries and Commerce all his accounts for the relevant years and shall satisfy the Director, Industries and Commerce that the accounts books are properly maintained.

ii) That the Director, Industries and Commerce shall give hearing both to the petitioner and respondent No. 8 in this regard.

iii) The Director, Industries and Commerce may take help of an independent Chartered Accountant or some well qualified person in accounts from the State of Tripura to decide whether the respondent No. 8 is entitled to the benefit of the Incentive Scheme or not.

iv) The Director, Industries and Commerce shall decide the entire matter on or before 31st May, 2015.

v) Till that time, no further orders shall be placed on respondent No. 8.

vi) In case, it is found that respondent No. 8 was eligible and entitled to the benefits of Incentive Scheme then the petitioner shall pay costs of Rs. 50,000/- (Rupees Fifty thousand) i.e. Rs. 25,000/- (Rupees Twenty five thousand) to the State and Rs. 25,000/- (Rupees Twenty five thousand) to respondent No. 8. In case, the Director, Industries and Commerce finds that the accounts given by the respondent No. 8 are not proper, respondent No. 8 shall be burdened with costs of Rs. 1,00,000/- (Rupees One lakh) to be paid to the State of Tripura. Furthermore, no order shall be placed on him for a period of 3(three) years, if the accounts submitted by him are found to be false."

11. Any party aggrieved by the decision of the Director, Industries and Commerce can approach this Court.

12. With these observations and directions, the writ petition is disposed of.