STATE OF JHARKHAND AND ORS. A

v.

TATA CUMMINS LTD. AND ANR.

MARCH 24, 2006

[S.H. KAPADIA AND ASHOK BHAN, JJ.] B

Industrial Policy—Sales tax exemption to attract investment and to sustain industrial development in State—Pre-condition for its grant being claimant having either exclusive ownership over building in which factory was situated, or in case it was on a leased land or building was taken on lease, land or building or both being acquired by registered lease for a minimum period of 15 years—Rejection of claim of benefit by joint venture company with factory being on land sub-leased by their partner from another company—High Court allowing benefit on finding that claimant was exclusive owner of building in which factory was located, and had substantial amounts not only invested in the unit but also paid as taxes—On appeal, held: The object ownership of building or a lease for 15 years, was to ensure that industry did not run away after taking the advantage of benefit—In view of substantial amounts invested and paid as taxes, claimant could not be said to be a flyby night operator, and would contribute to industrial growth and development—Benefit of exemptions allowed especially as even by strict interpretation of exemption notification it was to be given if claimant was exclusive owner of building in which factory was located. C D E

Interpretation of statutes—Exemption from payment of tax under an enactment—It is an exemption from the tax liability—Such exemption notification has to be read strictly—However, when an assessee is promised a tax exemption for setting up industry in backward areas as a term of industrial policy, implementing notifications have to be read in the context of industrial policy—In such a case, exemption notifications have to be read liberally keeping in mind objects envisaged by the Industrial Policy and not in a strict sense as in the case of exemption from liability under taxing statute. F G

Words and phrases—Tax—Nature of—Explained.

Appellant announced an Industrial Policy envisaging sales tax H

A exemptions to attract investments and sustain industrial development in the State. This policy was sought to be implemented by two notifications, SO nos 478 and 479 both dated 22-12-1995. One of the pre-conditions for the grant of the benefit of the Industrial Policy under theses notifications was that the proprietor/partner/holding company must have its exclusive ownership over the building in which the factory of the unit is situated. However, if the factory B of the unit was installed on a leased land or in a building taken on lease, exemption would be admissible when such land or building or both have been acquired by way of registered lease for a minimum period of 15 years. 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.

C

Respondent claimed the benefit of these exemptions. However, it was found that the land on which factory was constructed by them was sub-leased land of their joint venture partner from another company, and as per the agreement between the latter two, the joint venture partner had D no right to allot part of that land to any other company. Therefore their claim for exemptions was rejected as they had neither legal title nor ownership over the land on which the factory was established; nor were they in a position to produce a registered lease deed for a term of 15 years or more.

E Respondent contested rejection of their claim in High Court which found that it was the exclusive owner of the building in which the factory was located. The conditions of the exemption notifications were found to be complied with entitling respondent to grant of their benefit. It was also found that respondent had invested Rs 302 crores in the project and paid F taxes to the tune of about Rs 600 crores. Against this, appellants have filed the present appeal.

Dismissing the appeals, the Court

HELD: 1. A tax is a payment for raising general revenue. It is a G 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 areas as a term of the industrial policy, H the implementing notifications have to be read 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 exemption from liability under the taxing statute. [451-D-E]

2.1. The object of insisting on the ownership of the building or a lease for 15 years, was only to ensure that they industry did not run away after taking the advantage of the benefit granted under the Policy and that 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. [449-B]

2.2. It is in this background that one has to see the investments made by respondent. They had invested Rs 302 crores, employed more than 800 workmen and paid taxes of about Rs. 600 crores. In the context of these facts, it is concluded that respondent is not a flyby night operator. The above figures are not disputed. The industry set up by respondent will contribute to the industrial growth and development of the State. [449-B-C]

3. Even if one goes by the strict interpretation of the notification(s), the High Court was right in its opinion that the first part of the notification(s), as distinct from the second part, does not refer to the 'land'. If the argument of the department is accepted that the first part of the notification would apply only if respondent is the owner of the land and building in which its factory is located then it is not only giving a narrow interpretation to the notification which would defeat the object underlying the incentive policy but also it would be against the very text of the said notification(s) which omits the word 'land' from the first part of the notification. [452-G-H; 453-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10272/2003.

From the Judgment and Final Order dated 31.7.2003 of the High Court of Jharkhand at Ranchi in W.P.(T) No. 2587 of 2003.

With C.A. No. 1006 of 2004 and T.C. (C) No. 40 of 2005.

Ajit Kumar Sinha and Gopal Prasad for the Appellant.

T.R. Andhyarujina, Pallav Sishodia, S. Sukumaran, Ms. Sushma Sharma, Akhil Chhabra, Ms. Kanika Gomber and Rajan Narain for the Respondents.

The Judgment of the Court was delivered by

A **KAPADIA, J.** CIVIL APPEAL NO.10272 OF 2003

This civil appeal by grant of special leave is directed against the judgment and order dated 31.07.2003 passed by a Division Bench of the High Court of Jharkhand by which it has been declared that Tata Cummins Ltd., an assessee under Bihar Finance Act, 1981, is entitled to the benefit of the B Industrial Policy, 1995 read with the notification no.478 and 479 both dated 22.12.1995. By the impugned judgment the appellant-State and Commercial Taxes Department under the Bihar Finance Act are directed to adjust the refundable amount of Rs. 54.5 crore towards sales tax dues from the assessee for the accounting year commencing on and from 1.4.2004.

C The facts giving rise to this civil appeal, briefly, are as follows:

In the year 1993, the Government of Bihar had announced an Industrial Policy with a view to attract investments and setting up of industries in the State. In the year 1995, the policy was modified partially. In its introduction, D 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 rapid industrialization, to attract investments to generate economics activities, reviving potentially viable and closed industries, to boost exports of goods manufactured in the State and to simplify procedures of decision making. As part of the incentives, the policy envisaged allotment E of land in Growth Centers to corporates for setting up industrial units on lease for 99 years with option for renewal. It also envisaged sales tax exemptions to attract investment and to sustain industrial development in the State. Accordingly, new units were allowed the facility of either "set off" or "exemption" at their choice, of sales tax on purchase of raw materials during F the period envisaged in clause 16(1) of the policy. Similarly, 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 mentioned therein. This policy regarding sales tax incentive was sought to be implemented by two notification, SO nos. 478 and 479 both dated 22.12.1995. One of the pre-G conditions for the grant of the benefit of the Industrial Policy, 1995 under the above notifications was that the proprietor/partner/holding company must have its exclusive ownership over the building in which the factory of the unit is situated. However, if the factory of the unit was installed on a leased land or in a building taken on lease, exemption would be admissible when such land or building or both have been acquired by way of a registered lease for H

a minimum period of 15 years. 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.

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. TELCO had a registered lease for a term of 99 years from TISCO which had a valid lease from the government at the time when lease was granted by TISCO to TELCO. Since the land was held by TELCO, which had 50% interest in Tata Cummins Ltd., the unit was eligible for the benefit. Its more important claim was that it was the owner of the building in which its factory was set up and under the first part of the notification, the exclusive ownership of the building being with Tata Cummins Ltd., it was entitled to the benefit of exemption regarding sales tax as envisaged in clauses 16.1 and 16.2 of the policy.

Tata Cummins Ltd. applied to the Deputy Commissioner of Commercial Taxes claiming the benefit of exemption under the above two notifications.

On 2.12.1998, the Deputy Commissioner rejected the claim of Tata Cummins Ltd. on the ground that the Head lease from the government in favour of TISCO had expired and until and unless the Head lease in favour of TISCO stood renewed, Tata Cummins Ltd., was not entitled to claim the benefit of exemption from payment of sales tax. Consequently, the claim made by Tata Cummins Ltd. was rejected. Since then, the Head lease has been renewed.

Thereafter, Tata Cummins Ltd. challenged the decision of the Deputy Commissioner in writ petition no. 2689 of 2000. The Division Bench held that Tata Cummins Ltd. not having a valid lease from the State Government or from TELCO, it could not claim the benefit of the exemption under the above two notifications. Thus, the order of Deputy Commissioner was upheld.

Tata Cummins Ltd. thereafter challenged the decision of the Division Bench in this Court by way of petition for special leave to appeal nos. 20375 and 20376 of 2000.

During the pendency of the petitions for special leave to appeal, it was found that the Deputy Commissioner had passed the above order without the approval of the Joint Commissioner as required under the above two notifications. Therefore, the Joint Commissioner called for the records of the case to examine the question of exemption afresh after issuing notices of the

A Deputy Commissioner and Tata Cummins Ltd.

When the Supreme Court, thus, took up the petitions for special leave to appeal for final decision, the proceedings initiated by the Joint Commissioner (Administration) were brought to its notice. In the above circumstances, the Supreme Court directed the Joint Commissioner to decide the matter after B giving an opportunity to Tata Cummins Ltd. to make a representation and file necessary documents and to decide the matter without being influenced by the impugned decision of the High Court which was challenged in appeal before this court.

C Vide order dated 24.5.2003, the Joint Commissioner after noticing the above arguments of Tata Cummins Ltd. held that the land on which the factory was constructed by Tata Cummins Ltd. was sub-leased land of TELCO from TISCO; that, TELCO had allotted a portion of its leased land to Tata Cummins Ltd., that, as per the agreement between TISCO and TELCO, the latter had no right to allot part of the land to any other company; and that, D Tata Cummins Ltd. had requested TISCO to execute a lease but the lease agreement had not been executed. In the circumstances, the Joint Commissioner came to the conclusion that the assessee had neither legal title nor ownership over the land on which the factory was established and nor was it in a position to produce a registered lease deed for a term of 15 years or more for getting the benefit of exemption under the above two notifications. E

This order of the Joint Commissioner dated 24.05.2003 was challenged by Tata Cummins Ltd. and TELCO vide writ petition no. 2587 of 2003. By the impugned judgment, the Division Bench of the High Court held that Tata Cummins Ltd. was the exclusive owner of the building in which the factory F was located and consequently the assessee had fulfilled/complied with clause 6 of the said notification no., 478 read with clause 8 of the said notification no. 479. The Division Bench also noticed the contention of the assessee having invested Rs. 302 crores in the project and having paid taxes to the tune of about Rs. 600 crores.

G B the impugned judgment, Tata Cummins Ltd. was declared to be entitled to the benefit of the Industrial Policy, 1995 read with the above two notifications no. 478 and 479 both dated 22.12.1995. Accordingly, the State government and the Commercial Tax Department have been directed to adjust the refundable amount of Rs. 54.5 crores towards sales tax liability of Tata Cummins Ltd. for the accounting year commencing from 1.4.2004. H

The facts found by the High Court are, that, after obtaining 37.19 acres of land from TELCO, out of the lands held by TELCO from TISCO under a sub-leas, Tata Cummins Ltd. established its factory in its building. The building was constructed by Tata Cummins Ltd. The industry started its production on and from 1.1.1996. TELCO was the 50% owner in the Joint Venture known as Tata Cummins Ltd. The object of insisting on the ownership of the building or a lease for 15 years, was only to ensure that the industry did not run away after taking the advantage of the benefit granted under the Policy and that 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. It is in this background that one has to see the investments made by Tata Cummins Ltd. As stated above, Rs. 302 crores were invested by Tata Cummins Ltd. which employs more than 800 workmen and which has paid taxex of about Rs. 600 crores. In the context of these facts, we are of the view that the assessee herein is not a fly-by-night operator. We are confining this judgment to the facts of the present case. The above figures are not disputed. We are satisfied on the basis of the above figures that the industry set up by the Tata Cummins Ltd. will contribute to the industrial growth and development of the State.

A B C D

However, in order to understand the scheme of the Industrial Policy, 1995 read with the above two notifications, we quote herein below clause 16 of the Policy as also clause 6 and clause 8 of the above two notifications: E

"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 or "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. F

16.2. Sales Tax on Sale of Finished Goods for New Units: G

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' H

A 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, Computes, software/ hardware & Electronics Industries) as also industries located in
B 'A' category Backward Districts the ceiling or deferement 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 300% of the fixed investment made by the unit.

C The amount of sales tax collected under Sales Tax deferment option would require to be returned in equal six monthly instalments in such a manner so that the entire amount is returned by the 13th year from the commencement of deferment option."

"Notifications:

D

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 its
E 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.

F

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
G 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
H any partner of the firm or holding Company of the unit/firm."

On behalf of the appellants it was argued by the learned Additional Solicitor General that the first limb of the notification applied only to asssessees who were the absolute owners of the lands 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 Tata Cummins Ltd had no ownership over the land wherein the buildings were constructed, it could not claim to be eligible for concession in terms of the said notifications. That, the so-called further lease by TELCO to Tata Cummins Ltd. was invalid in law. In the context of this last submission, it is important to note that the Head lease in favour of TISCO has since been renewed and the lease from TISCO to TELCO is not in dispute. That TELCO is 50% partner in the Joint Venture is not denied.

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.

Applying the above tests to the facts of the present case, the object behind enactment of the Industrial Policy, 1995 was to confer incentive on industries set up in the State. As part of the incentives, the Industrial Policy envisaged allotment of land/building in growth centres to companies for setting up industrial units on lease for 99 years with an option for renewal. As a part of the incentives, it was also envisaged under clause 16 that sales tax benefit/ exemption shall be granted to attract investments in order to sustain industrial development in the State. It is in this background, that we have to consider clause 16.1 and clause 16.2 of the Industrial Policy, 1995. The two notifications are merely instruments giving effect to the policy envisaged under the Industrial Policy, 1995.

Under clause 16.1 of the Policy, all new units were given the facility

A of "set off" "exemption" on purchase of raw-material within the State. The period of exemption was 10 years for industries situated in category "A" districts and 8 years for industries situated in category "B" districts. Under clause 16.2, new units were given an option to choose deferment or exemption of sales tax on sale of finished goods for a period of 10 years for category "A" districts and 8 years for category "B" districts from the date of production
B of the unit with a ceiling of 100% of the fixed investment made by the unit. However, those industries which were considered as "Thrust Industries" located in "A" category backward districts, the ceiling of exemption or the deferment envisaged was 150% of the fixed investment.

C Thus, "investment" constituted the basis of clause 16 of the Industrial Policy. That the eligibility criterion for conferment to tax incentive was the Fixed Investment by the assessee which is clear if one reads the two notifications dated 22.12.1995 in the context of clause 16 of the Industrial Policy 1995 and which criterion is satisfied by Tata Cummins Ltd. in this case, namely, that, it is the owner of the building in which its factory is
D situated. The underlying rational behind the notification(s) is that the assessee must deploy funds in the ownership of the building in which the factory is located or by depolyment of funds in the building(s) taken on lease for the minimum period of 15 years so that bogus companies without fixed investments are not set up only with the intention of getting tax exemptions.

E *Scope of the Notification Nos. 478 & 479:*

At the outset we reiterate that if one reads the notification(s) in the light of the incentive policy it is clear that incentive is admissible to the unit which is the owner of the building in which it is located from which the industrial
F production commences or it (unit) is located in a leasehold premises (building or land or both), provided that the lease shall be of the minimum period of 15 years. As stated above, the eligibility criterion is that of a fixed investment by a genuine investor. In the present case, as stated above, we have to go by the interpretation of the notification(s) in the light of the policy. However, even if one goes by the strict interpretation of the notification(s) we are in
G agreement with the view expressed by the High Court that the first part of the notification(s), as distinct from the second part, does not refer to the "land". If the argument of the department is accepted that the first part of the notification would apply only if Tata Cummins Ltd. is the owner of the land and building in which its factory is located then we are not only giving a
H narrow interpretation to the notification which would defeat the object

underlying the incentive policy but also it would be against the very text of the said notification(s) which omits the word "land" from the first part of the notification.

Before concluding, we may reiterate that at one stage of the matter the department had taken the position that Tata Cummins Ltd. was not entitled to the benefit as the Head lease in favour of TISCO was pending renewal by the State Government and till such time as the State renews the lease in favour of TISCO, Tata Cummins Ltd. was not entitled to the benefit of concession. We are not informed that the State Government has renewed the Head lease in favour of TISCO who in turn has sub-leased a portion thereof to TELCO, which has 50% interest in the joint venture, namely, Tata Cummins Ltd.

In the circumstances, we are not required to consider whether the above two notifications are repugnant to the incentive policy. We have, however, noted the ratio of the decision of this court in the case of *State of Bihar and Ors. etc.* v. *Suprabhat Steel Ltd and Ors. etc.*, reported in [1999] 1 SCC 31, in which it has been held that the notifications meant for implementing the Industrial Policy of the State government, cannot override the incentive policy.

On the facts of the present case, we need not examine the questions as to whether the said two notifcations no. 478 and 479, quoted hereinabove are repugnant to the incentive policy.

Before concluding, we may point out that vide order dated 26.3.2004, this Court, by way of interim measure, directed the appellant herein to adjust the refundable amount of Rs. 40. crores, for the accounting year commencing from 1.4.2004, the balance amount was ordered to be refunded to Tata Cummins Ltd. who undertook to pay back to the appellant the balance payment with interest at the rate of 9% in the even of the State succeeding in this civil appeal. However, since we are dismissing the appeal filed by the State, the question of refund by Tata Cummins Ltd. to the State, of the balance amount i.e. Rs. 14.5 crores with interest, does not arise.

Accordingly, we find no merit in this civil appeal and the same is dismissed, with no order as to costs.

Civil Appeal No. 1006 of 2004.

Tata Cummins Ltd. and Anr. v. *State of Jharkhand and Ors.*,

A In view of the above judgment, we are not required to examine the validity of clauses 6 and 8 of notification nos. 478 and 479 respectively and accordingly, civil appeal no. 1006 of 2004 is also disposed of, with no order as to costs.

V.S. Appeals dismissed.

B