HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.883 OF 2005

ORDER:

The petitioner prays for Mandamus declaring that the petitioner is eligible for 25% rebate in power bills for a period of 3 years from 04.12.2000 subject to ceiling of Rs.30,00,000/-, setting aside the letter No.SE/OP/MDK/SAO/HT/D.No.1166 dated 24.11.2004, as illegal and contrary to G.O.Ms.No.108, Industries and Commerce (IP) Department dated 20.05.1996.

The averments in brief are as follows:

The petitioner is a company registered under the Companies Act, 1956 and is small scale industry registered with the Directorate of Industries Center vide registration No.011404534 dated 30.03.2000.

The petitioner was manufacturing Super Alloy Steels. In June,1998, the petitioner applied for providing power supply of 750 KVA at 11 KVA line for its industrial purpose. On 04.12.2000, the power sanctioned was released to petitioner. The petitioner claims the benefit of incentives granted by the 1st respondent through industrial policy called "TARGET-2000". The policy of 1st respondent is spelt out in G.O.Ms.No.108 dated 20.05.1996. The operative portion of the Government order reads as follows:

> "Government have introduced a Liberalised State Incentive Scheme for setting up new Industries in the State of Andhra Pradesh, vide G.O. 1st read above, for a period of three years with effect from 3-10-1989. Government have also announced a Scheme of Special Incentives for new Small Scale Industries to be set up by entrepreneurs, belonging to SC & ST categories. In the G.O 3rd read above, for a period of 3 years with effect from 3-10-1989. In the G.O. 5th read above an incentive by way of 25% rebate in power charges (demand and energy) for the first 3 years from the date of commencement of commercial production was allowed to new industries through Andhra Pradesh State Electricity Board. This rebate was, however, not available for the

product lines included in the ineligible list.

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> "All new industries, other than those listed in the Annexure and other than those set up in the Municipal Corporation areas of Hyderabad, Vijayawada and Visakhapatnam, will be eligible for 25% rebate in power bills (both demand and energy) for a period of 3 years from the date of commencement of commercial production. The rebate shall be allowed by the A.P. State Electricity Board in their monthly bills. The maximum total admissible rebate for the 3 years will be Rs.50.00 lakhs in respect of Large and Medium Industries and Rs.30.00 lakhs in respect of Small Scale Industries.
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> xxx
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> These orders shall take effect from 15.11.1995 and will be in force up to 31.03.2000."

<u>List of ineligible industries</u>:

57. xxxx
58. Alloy Steel Castings Manufacturing units with induction furnace more than 500 KVA capacity.
59. Ferro Alloys Manufacturing.
60. xxxx

According to the petitioner, it has commenced its manufacturing activity before 31.03.2000 and is entitled to receive incentive from respondents. The petitioner claims that it has undertaken manufacturing activity with the help of generator sets between March, 2000 till December, 2000. Therefore, it is entitled for grant of benefit of rebate in terms of "TARGET-2000".

The 6th respondent on 28.02.2001, recommended to Government for sanction of rebate and also financial assistance which the petitioner claimed under "TARGET-2000". The 2nd respondent through letter No.SE/OP/MDK/SAO/HT/D.No.1166 dated 24.11.2004 replying the legal notice issued on behalf of the petitioner, rejected the claim for grant of rebate. For comprehensive understanding of the reasons for refusing to grant rebate, the letter is excerpted:

From
Superintending Engineer,
Operation Circle, Medak
At Sangareddy.

To
Sri B.Chandrsen Reddy(Advocate)
M.S. (U.S.A.) L.L.B.
3-6-69/B/27, Avanthinagar,
Basheerbagh, Hyderabad-500029

Lr.No.SE/OP/MDK/SAO/HT/D.No.1166/2004, Dt.24/11/2004.

Sub: CPDCL-HT-MDK-748 M/S.A.V.Alloys Ltd. Nandigama (V), Patancheru-Request for 25% Rebate-Reg.

Ref:1) Your notice Dated 11-10-2004
2)Lr.No.CE/Commi/DE/(C)/F-AVAlloys/D.No.933 Dtd.16/04/2002.

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With reference to your notice under reference 1st cited it is to inform that the Target-2000 scheme ceased by 31-3-2000 and the 25% rebate is not applicable for the production turned out with DG set, which had no permission prior to 31/3/2000, the cut-off date of Target 2000 scheme.

The service M/s. A.V.Alloys Ltd was released on 04-12-2000 i.e. after 8 months from the cut-off date of Target 2000 scheme.

In view of the above, the averments made in your notice are not correct and the clarification issued vide letter under reference 2nd cited holds good and advise your client to be prompt in payment of electricity bills to avoid penalties and disconnection of power supply."

Hence, the writ petition.

The 2nd respondent filed counter affidavit, denied all the allegations in the writ affidavit and categorically asserted that the petitioner is not entitled for rebate or incentive under "TARGET-2000". According to 2nd respondent, HT agreement for supply of power was executed on 04.12.2000 and prior to that period, the 2nd respondent does not have any obligation with the manufacturing activities of the petitioner. "TARGET-2000" Industrial Policy was effective from 15.11.1995 to 31.03.2000. The petitioner on the basis of captive utilisation of power cannot claim to have undertaken manufacturing activity prior to 31.03.2000. The averment that the petitioner had gone ahead with manufacturing with captive power utilisation is improbable and incorrect, for to accept that captive power was utilized the petitioner is under obligation to show the permission from APERC. In the absence of orders from competitive authority, the utilisation of power from generator sets cannot be accepted. Therefore, for the above two reasons the respondent prays for dismissal of the writ petition.

Learned counsel for parties have reiterated the facts and grounds referred to above in the course of hearing.

Now the point for consideration is whether the letter No. SE/OP/MDK/SAO/HT/D.No.1166 dated 24.11.2004 suffers from illegality or irregularity, the petitioner is entitled for incentive of power consumption at 25% of the bill amount or Rs.30,00,000/- which ever is higher?

The 1st respondent through G.O.Ms.No.108 dated 20.05.1996 disclosed the industrial policy of the State Government. The salient feature of the industrial policy 2000 is that it operates for a period of three years and period reckoned for granting for policy ended by 31.03.2000. The industrial policy refers to ineligible industries which are not entitled for any incentive under “TARGET-2000”. Serial No.58 and 59 as already noted, deal with Alloy steel castings manufacturing units with induction of furnace more than 500 KVA capacity and ferro alloys manufacturing unit. Assuming the petitioner is a small scale unit, still it is not the sole criteria for claiming incentive under “TARGET-2000”. Admittedly, the petitioner did not and could not place any material to show that the petitioner has commenced the production prior to 31.03.2000. There is nothing on record to suggest that during the currency of TARGET-2000, the petitioner with sufficient proof claimed incentive under “TARGET-2000 and, the 2nd respondent arbitrarily refused the incentive. On the contrary from the admitted facts and circumstances, what is apparent is on 04.12.2000, the petitioner entered into agreement for supply of power from 2nd respondent. The 2nd respondent is under no obligation to take note of any activity which is prior to the HT agreement dated 04.12.2000. The alleged commencement of production prior to 31.03.2000 with the help of captive power generator or generators cannot be accepted unless and until such consumption of power is in accordance with law. The payment of incentive towards power consumption is relatable to consumption of power supplied by 2nd respondent. Therefore, without actual consumption and payment of consumption charges, the claim for incentive/subsidy from 2nd respondent is clearly untenable and without entitlement. Since the petitioner failed to discharge the burden cast upon it, the writ petition fails and is dismissed accordingly. No order as to costs.

S.V.BHATT, J

Date:15.03.2016
Stp