IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Mr. Justice Md. Nizamuddin

W.P. A No. 3639 of 2019

Kanchan Oil Industries Limited
Vs.
The State of West Bengal & Ors.

For the Petitioner :- Mr. Vinay Kr. Shraff, Adv.
Ms. Priya Sarah Paul, Adv.
Mr. Kaushal Agarwal, Adv.

For the State :- Mr. Anirban Ray, Ld. Govt. Pleader
Mr. S. Mukherjee, Adv.
Mr. D. Ghosh, Adv.
Mr. N. Chatterjee, Adv.

Judgement On :- 16.08.2022

MD. NIZAMUDDIN, J.

Heard learned Advocates appearing for the parties.

By this Writ Petition petitioner has challenged the impugned order dated 30th June, 2016 rejecting the petitioner's application for allowing it to file its return on-line, for incentive in question, relating to 4th quarter up to 31st October, 2012 and this Writ Petition was filed in February, 2019 against such grievence.

Case according to the petitioner in brief are as hereunder:

Primary issue in the writ petition is whether Respondent No. 6 being empowered under the Industrial Promotional Scheme, 2010 introduced vide Notification No. 483-F.T. dated 31/03/2010 (hereinafter, referred to as the "Scheme"), arbitrarily rejecting petitioner's application under the said Scheme for the Quarter Ending (Q.E.) June, 2012 and the only reason by memo dated 30/06/2016 is that the application had not been filed online.

Petitioner submits that the intention of legislator to introduce the aforesaid Scheme was to provide financial assistance to specified dealers for expansion of their capacities, modernization and improving marketing capabilities. The financial assistance under the Scheme is only provided to such dealers who manufacture goods in West Bengal and maintain proper accounts as specified. Clause 4 of the Scheme casts a duty on the applicant to determine the quantum of financial assistance for a quarter and file an application before the proper authority along with relevant documents and such application is to be filed within 4 months from the end of each quarter. The applicant may submit its application beyond the time limit of 4 months and the proper officer may condone such delay provided that it is a deserving case. The proper officer being a creature of the statute cannot arbitrarily exercise the said discretion, and has to take into consideration the reason for delay along with the intention and purpose of the Scheme, before accepting or rejecting the application.

Petitioner submits that as early as on 02/11/2012 it had informed the authority concerned that it could not upload its application for QE June, 2012 online as it was facing technical glitches. The Petitioner vide its letters dated 04/11/2012 and 05/11/2012 had requested the authority to allow it to file the application either manually or electronically. Since, the petitioner had not received any response from the authority; it proceeded to file the application manually on 05/11/2012 and prayed for condonation of delay, wherein, there was a delay of 5 days. In response to Respondent No. 6's letter dated 16/05/2016, petitioner by its reply dated 01/06/2016, had explained the reasons for the delay in filing the said application. Petitioner further informed Respondent No. 6 that the State authorities had already granted them additional time of 15 days to file their returns due to the aforesaid technical glitch and again on 16/06/2016 petitioner repeatedly informed reasons for delay and prayed to condone the same.

It is the grievance of the petitioner that the respondent No. 6 has not considered the reasons cited by the petitioner for the delay in filing the application and has arbitrarily exercised its discretion under Clause 4 of the Scheme in order to reject the application as non-deserving without considering the explanation of the petitioner.

Petitioner submits that the law relating to time limit for filing the said application is merely procedural law and a substantive right cannot be denied to the petitioner on such ground since the reason for including the proviso to Clause 4 was to ensure that applicants are not denied the substantive benefit of the said Scheme merely due to a procedural lapse of filing a delayed application. It submits that it is eligible to avail benefit under the said Scheme since it has duly maintained the documents as per law and the State government has already provided the petitioner financial assistance under the Scheme for QE March and September of 2012 and June and September of 2013.

Petitioner submits that the Respondent No. 6 has without reason or justification withheld financial assistance amounting to Rs. 37,37,827/-, which was liable to be provided to the petitioner.

Learned Advocate appearing for the petitioner in support of this contention has relied on the following judgments:

(i) Ajay Hasia & Ors. –Vs- Khalib Muji & Ors., (1981) 1 SCC 722 Paras 16 and 17.

(ii) Mangalore Chemicals & Fertilizers Ltd. –Vs- Deputy Commissioner, 1991 (55) ELT 437 (SC) Para 11.

(iii) S. Jain –Vs- Union of India, 2004 (168) ELT (Cal.) Para 5.

(iv) Unreported judgment of this Court dated 14th December, 2021 in MAT No. 558 of 2020 in the case of Principal Commissioner, Central Goods and Services Tax and Central Excise, Kolkata North Commissionerate, GST Bhawan –Vs- M/s. Hazemag India Pvt. Ltd. & Ors.

Learned Advocate appearing for the State respondents opposing the Writ Petition submits as hereunder.

Respondents submit that the Petitioner already had a period of extra 4 months to upload its return which it failed due to alleged internet breakdown according to it. This fact has no corroborative evidence. Petitioner later even could have prayed for filing it electronically. Petitioner could have attempted to file electronically even thereafter if it had failed it could have made a representation to the authorities for extension of time for permitting it to file or for accommodation and had such representations remained unanswered or the demand of the petitioner was not met with in that event petitioner could have a case. Instead it took upon itself, the responsibility of determining the procedure. It filed it physically and expected the department to go out of its way to accept the same. When in case of other years the petitioner had filed in the correct manner and the same was accepted. Petitioner cannot take advantage on both sides – it will not file within time and also not electronically when electronically filling system has become a mandate (Resolution No. 1696-F.T), published by Government of West Bengal, Finance Department, dated 21. 11.2011

Respondents submit that Government has discretion to accept the return beyond 4 months and it was in fact it extended by 15 days which would appear from Para 14, Page-7 of the writ petition. Now after passing so many years, Government should not be compelled to accept the petitioner’s claim and that the incentives cannot be claimed by the petitioner as a matter of right which is always conditional and the conditions have to be strictly adhered to.

Respondents submit that incentive is a benefit like as in died in harness or compassionate appointment cases. Similarly when industry requires financial and other assistance it depends upon prevailing circumstances and after about 10 years, how far the same utility or the requirement remains for the petitioner is a matter of debatable question. Some undeserving party may be benefited if the petitioner is allowed and given this indulgence at the cost of some deserving party if such indulgence is shown to the petitioner now it will open up a sluice gate for litigations when similar type of persons who have slept over their respective rights and missed the bus for incentive and approach the court later all have to be considered.

Respondents further submitted that beneficial legislation or provisions granting exemption from payment of tax should be strictly interpreted and when law says that a particular thing has to be done in a particular manner the said thing has to be done in such manner and in no other manner.

Respondents submit that it is not the case of the petitioner that it has been discriminated against and it has never stated that others under similar circumstances have been permitted and ultimately given such incentive.

Considering the facts and circumstances of the case as appears from record, submission of the parties and the judgments relied upon by the petitioner I am not inclined to grant any relief in this Writ Petition and dismiss the same for the following reasons:

i) Claim of the petitioner for benefit of the incentive in question under the Industrial Promotion Scheme, 2010 relating to quarter ending June 30th, 2012 against which this Writ Petition was filed in 2019 was denied admittedly for the non-fulfilment or failure on the part of the petitioner in filing such claim as per norms of the incentive scheme in question by which it had to file the same on-line within specified time by taking the alleged ground of technical glitches in its internet system which could not be substantiated by the petitioner by any material evidence and whether there was any glitches in the internet connection of the petitioner or not at the relevant point of time in 2012 is a question of fact and matter of evidence and it could not be gone into by the Writ Court in exercise of its constitutional writ jurisdiction under Article 226 of the Constitution of India, moreso in absence of any material evidence by the petitioner in this regard.

ii) Claim of incentive in question made by the petitioner does not arise from any statute and it is based on an incentive scheme by the Government with certain terms and conditions and if there is any failure on the part of the petitioner in compliance of such terms and conditions including time and manner of making such application under the said incentive scheme Writ Court cannot alter or modify the terms and conditions of the said scheme in a way which is suitable to the petitioner and if in case of the petitioner such terms and conditions of a Government scheme is directed to be waived and allowed such benefit in spite of its failure to comply with the conditions of the said scheme after 10 years it will open a flood gate of litigations for those who are under the similar circumstances, moreso when the said scheme is not in existence at present and it is matter of record that in this case petitioner after simply writing few letters in 2012 waited for four years, i.e. till 2016 and waited for another three years after rejection of the petitioner's application in 2016 and filed the instant Writ Petition in 2019 relating to the period quarter ending June 30th, 2012.

iii) Petitioner in this Writ Petition failed to make out any case that any provision of law has been contravened by the respondent authority concerned in passing the impugned order of rejecting the claim of the petitioner or that the impugned order rejecting the claim of the petitioner is contrary to law or is without jurisdiction or is in violation of principle of natural justice or there is any perversity or there is any discrimination against the petitioner by the respondents in rejecting the petitioner's claim of incentive benefits in question.

Judgments relied upon by the petitioner are distinguishable both on facts and in law and are not applicable to this case.

In view of the discussion made above this Writ Petition being WPA No. 3639 of 2019 is dismissed with no order as to costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(MD. NIZAMUDDIN, J.)