IN THE CALCUTTA HIGH COURT
Constitutional Writ Jurisdiction
Original Side

Present :- Hon'ble Justice Amrita Sinha

WPO No. 574 of 2017

Murlidhar Ratanlal Exports Ltd. & Anr.

Vs.

State of West Bengal & Ors.

For the writ petitioners	:-	Mr. Abhrajit Mitra, Sr. Adv. Mr. Rajshree Kajaria, Adv. Mr. Satadeep Bhattacharya, Adv.
For the State	:-	Md. T.M. Siddiqui, Adv. Mr. P. Sinha, Adv. Mr. N. Chatterjee, Adv.
For WBIDCL	:-	Mr. Ayan Banerjee, Adv.
Hearing concluded on	:-	06.04.2022
Judgment on	:-	06.06.2022

Amrita Sinha, J.:-

The order dated 25th July, 2017 passed by the Additional Chief Secretary, Department of Industry, Commerce and Enterprises is under challenge in the present writ petition. The said order was passed allegedly in compliance of the order passed by this Hon'ble Court on 15th June, 2017 in WP No. 339 of 2017.

In the said order the Court was of the view that the Secretary, Department of Commerce and Industry should take a decision sympathetically for condoning the delay in filing the application by the petitioner for issuance of RC part-II. If there was delay in filing the application by the petitioner and the said delay took place under circumstances beyond the control of the petitioner, the delay should be condoned for giving effective and proper remedy under the Scheme.

The dispute in the writ petition arises out of a Scheme called 'The West Bengal State Support for Industries Scheme, 2008' ('WBSSIS-2008' for short). The said Scheme was floated by the Commerce and Industries Department and was specifically meant for extending financial support to industrial projects of large and medium scale units to be set up in the State. The said Scheme dated 26th February, 2009 was published in the Kolkata Gazette, Extraordinary on 26th February, 2009 and was effective from 1st April, 2008 to 31st March, 2013.

According to paragraph 4 of the said Scheme, the same was applicable to all large and medium scale units to be set up in the State of West Bengal upon commencement of the Scheme and also for expansion of existing units. According to paragraph 4.3 of the Scheme, irrespective of the date of issue of the Registration Certificate ('RC' for short), an eligible unit shall be entitled to the benefits of the Scheme with effect from the date of having obtained all kinds of statutory clearance but shall not be entitled to any benefit for the period intercepted between the date of commercial production and that of obtaining the last statutory clearance.

According to paragraph 5.4 of the Scheme, eligible units having obtained RC in part-I shall have to complete investment in the unit for obtaining RC in part-II as per the time period, counted from the date of issuing RC in part-I, as specified. The time limit for obtaining RC in part-II in respect of investment in scale I and scale II is two years or else the Scheme will not be applicable to the unit, provided the unit shall have the option to register de novo under any successor Scheme at that point of time.

Units with investment in fixed capital of Rs. 5 crore and upto Rs. 50 crore has been categorised as scale I and units having fixed capital investment of Rs. 50 crore and upto Rs. 500 crore is categorised as scale II.

According to the Scheme a unit in the large and medium scale sector, set up for the purpose of manufacture of goods, having RC issued by the Director of Industries is an eligible unit for receiving incentive sanction under the Scheme.

As per the Scheme, 'Fixed Capital Investment' means investment made in plant and machinery and also equipment installed for pollution control measures of the approved project by the eligible unit made after the date of obtaining RC in part-I.

According to paragraph 3.16 of the Scheme, 'new unit' means a unit in large and medium scale sector established and commissioned for the manufacture of goods in West Bengal for the first time and registered with the Director of Industries upon commencement of the Scheme. Expansion in a new location of an existing unit already registered under a previous incentive Scheme for the same or a different product is also considered as new unit in terms of the Scheme.

Procedure for obtaining RC and cancellation thereof has been mentioned in paragraph 7 of the Scheme. A unit having obtained the IEM shall be required to submit application in Form I accompanied by requisite fees to the Director of Industries for registration of the unit for being qualified for the incentives under the Scheme. Upon receipt of such application, the Director of Industries shall call an enquiry if considered necessary and upon being satisfied with the information furnished by the unit shall issue RC in part-I.

The unit shall be required to submit application in Form no. 1A to the Director of Industries for RC part-II at least one month ahead of commencement of commercial production and the application shall have to be supported with authentic documents/certificates on actual investment in fixed capital on the date of application, estimated quantum of production of each individual item of finished goods and balance sheet of the unit for the preceding three years duly certified by any Chartered Accountant firm and such other document as are considered necessary by the Director of Industries.

Upon receipt of such application, the Director of Industries shall obtain the views of the West Bengal Industrial Developmental Corporation Limited ('WBIDCL' for short) and after such enquiry as is considered necessary shall issue final RC in part-II within 45 days stating therein the approved capacity of production of each item of finished goods, actual Fixed Capital Investment made by the unit, scale and eligibility period for each item of incentive, period of validity of the certificate and other terms and conditions as would be considered appropriate.

RC part-II shall stand revoked if the unit fails to start commercial production and report it in writing to the Director of Industries within the period prescribed in the Scheme.

According to paragraph 16.4 of the Scheme, on commencement of commercial production the unit will have to submit application to the Managing Director, WBIDCL in the prescribed form praying for release of incentives.

As per paragraph 17.3 of the Scheme, on receipt of application for registration of any unit the Director of Industries shall make, as expeditiously as possible, scrutiny of/enquiry into the particulars furnished by the applicant unit, and on being satisfied that the application in terms of the provision of the Scheme is in order, shall register the applicant unit with a number and issue a certificate for such registration in part-I of the RC to the applicant unit within 45 days.

For obtaining RC in part-II, the unit shall be required to submit application in Form no. 1A to the Director of Industries who with his comments, if any, shall send within 7 days a copy of the same to the Managing Director, WBIDCL for his view. After receipt of the application, together with the copy of the RC part-I, the Managing Director will scrutinise the particulars necessary for ascertaining the extent of eligibility of different incentives available under the Scheme. If the Managing Director of WBIDCL is satisfied that the unit is eligible for one or more types of incentives available under the Scheme it shall send a copy of the assessment report on eligibility, to the Director of Industries for information within 30 days and the Director of Industries shall record those particulars in part-II of the RC and issue a copy of it to the unit forthwith. Before rejecting any application, the applicant shall be offered an opportunity of being heard.

It is only after receipt of the RC in part-II from the Director of Industries the unit may apply to the WBIDCL for the incentives to which it may be entitled to under the Scheme. Before disbursement of incentives, WBIDCL will make necessary verification to ensure that the nature of incentives of the unit continues to be the same and the units are in operation.

Paragraph 18.2 of the Scheme provides for relaxation in application of the provisions of the Scheme but such relaxation shall be made on the merits of the approved project in each case, as the State Government may consider necessary and appropriate.

The petitioner no. 1 is a registered Company and the petitioner no. 2 is its Secretary and the principal officer of the petitioner no. 1. The petitioner no. 1 claims to be one of the leading manufacturers and suppliers of jute bags and jute related products in India.

The petitioners in and around June 2009 set up a unit ‘Barshul Tex’ at Shaktigarh Jute Park, a green field project, for the purpose of manufacturing and supply of jute bags and jute related products. The jute park was established under the Jute Technology Mission Scheme, Ministry of Textiles, Government of India.

The petitioner no. 1 on 5th August, 2009 applied for issuance of RC in part-I and on 8th June, 2011 RC in part-I was issued in favour of the petitioner no. 1. The unit was categorised as scale I in terms of the fixed capital investment mentioned in the said certificate. The certificate was valid for a period of two years subject to the conditions mentioned therein.

The Directorate of Industries sanctioned a term loan of Rs. 13.95 crore in favour of the petitioner no. 1 for the said project. Though the term loan of Rs. 13.95 crore was sanctioned by the Directorate of Industries, the same was not disbursed in favour of the petitioner no. 1 allegedly on the ground of a litigation which was pending before the Company Law Board. On account of non-disbursal of the term loan amount delay was caused in commencement of the project. The petitioners had to seek self-finance by obtaining financial accommodation/loan from private sources.

Barshul Tex unit was formally set up and commenced commercial production on 1st October, 2012 after obtaining all necessary statutory licenses and clearances from the concerned department.

The petitioners applied for issuance of RC part-II on 3rd October, 2012 and the application was received by the respondent authority on 4th October, 2012. In the said application the date of commissioning the project was mentioned as 1st October, 2012. As the RC part-II was not issued within the time mentioned in the Scheme, the petitioners made several representations for issuance of the same.

By a letter dated 4th April, 2014 the Director of Industries requested the Managing Director, WBIDCL to scrutinise the particulars as contained in the application made by the petitioner for issuance of RC part-II and to send a copy of the assessment report enabling the office to issue RC part-II in favour of the unit. The petitioner was thereafter requested to submit further supporting documents by WBIDCL.

Several communications between the Company, WBIDCL and the Directorate of Industries followed. The petitioner was requested to attend a meeting on 20th September, 2016 for disposal of his application for RC part-II.

By a communication dated 4th January, 2017, the petitioner was intimated that as per the Scheme, for issuance of RC part-II, application ought to have been made by the petitioner at least one month ahead of commencement of commercial production. The petitioner submitted application for RC part-II on 4th October, 2012 by mentioning the date of commencement of commercial production of the unit as 1st October, 2012. The petitioner was requested to state reasons for non-compliance of the provision of paragraph 7.2 of the Scheme. It was further mentioned that all cases relating to non-compliance of provision of paragraph 7.2 of the Scheme have been sent to the Department of Commerce and Industry for a policy decision.

In reply to the aforesaid letter the representative of the petitioner Company by a letter dated 16th January, 2017, intimated that the delay in making application for issuance of RC part-II was due to the continuous thrust of improvement of quality during trial production and at the same time the Company was required to obtain VAT/CST number by declaring commercial production. To avail the sales tax number sales transactions were executed out of the trial production and as such commercial production was declared to have commenced from 1st October, 2012. After declaration of commercial production, application for issuance of RC part-II under the Scheme was made on 4th October, 2012.

The letter further mentioned that the Company was of the impression that RC part-II can be applied only after commencement of commercial production. On combination of all the aforesaid factors there has been a delay in submission of application for issuance of RC part-II. Prayer was made for condoning the delay in submission of the said application.

The petitioner was again intimated by a letter dated 24th March, 2017 that all cases relating to non-compliance of provision of 7.2 was pending for a policy decision before the Department.

As no further intimation was given to the petitioners, a detailed representation was submitted before the Directorate of Industries in May 2017. As the representation of the petitioners was not answered by the respondents, the petitioners filed a writ petition before this Court being WP No. 339 of 2017 which stood disposed of by this Court on 15th June, 2017. Hearing was conducted and the impugned order was passed in compliance of the order passed by the Court.

The petitioners are aggrieved by the same.

It has been submitted that the delay in making the application for issuance of RC part-II is marginal and the same is liable to be condoned keeping in mind the very purpose for which the Scheme was floated.

It has been argued that as the application for issuance of RC part-II was made during the validity of the Scheme, accordingly, the fact that the Scheme stood lapsed on the date of hearing and consideration of the application, is immaterial for grant of benefit under the Scheme.

It has been contended that it is not necessary that in each and every situation there has to be a precedent for dealing with the same. Each and every case is required to be decided upon its own facts irrespective of any precedence.

In support of the aforesaid submissions, the petitioners rely upon the judgment delivered by the Hon'ble Supreme Court in the matter of ***Coal India Limited & Ors. –vs- Saroj Kumar Mishra*** reported in ***(2007) 9 SCC 625*** (paragraph 19) wherein the Hon'ble Supreme Court was of the opinion that only because there is a possibility of flood gate litigation, a valuable right of a citizen cannot be permitted to be taken away.

The petitioners also rely upon the judgment delivered by the Constitution Bench of the Hon'ble Supreme Court in the matter of ***Commissioner of Customs (Import), Mumbai –vs- Dilip Kumar & Co. & Ors.*** reported in ***AIR 2018 SC 3606*** paragraphs 45, 46 and 47 wherein the Court was of the view that ambiguity in a notification for exemption must be interpreted to benefit the subject/assesse. Liberal and strict construction of exemption provision is to be invoked at different stages. The question whether a subject falls in the notification or in the exemption clause, has to be strictly construed. When once the ambiguity or doubt is resolved by interpreting the applicability of exemption clause strictly, the Court may construe the notification by giving full play bestowing wider and liberal construction.

The petitioners also rely upon the judgment delivered by the Hon'ble Supreme Court in the matter of ***Ramnath & Co. –vs- The Commissioner of Income Tax*** reported in ***Manu/SC/0470/2020*** paragraph 17.1 on the self-same proposition as laid down in Dilip Kumar & Co. (supra).

The petitioners pray for setting aside the impugned order dated 25th July, 2017 and for issuance of RC part-II in favour of the Company.

The respondents have opposed the prayer of the petitioners.

It has been submitted that the application made by the petitioners for issuance of RC part-II received on 4th October, 2012 was found incomplete on scrutiny. A communication was made to the Company seeking required documents for processing the said application vide letter dated 20th November, 2013. In reply to the said letter the Company vide letter dated 25th November, 2013 intimated that it was a self-financed project. Assessment report was sought for by the Directorate of Industries from WBIDCL. As the assessment report on fixed capital investment and self-finance was not received as sought for, a reminder was sent by the Directorate to the WBIDCL. The representative of the Company thereafter attended a meeting on 20th September, 2016 when the Company was informed about the violation of the provision of Clause 7.2.

The respondents stress on the fact that the subsidy under the Scheme is payable only in accordance with the terms and conditions as mentioned in the Scheme itself. The respondent, as a matter of policy, has decided not to relax the time limit in making application for issuance of RC. It has been submitted that there are several units which failed to apply within the stipulated time period for grant of benefit under the Scheme. Delay on the part of the units has not been condoned in a single case. There may be a flood gate of litigations in the event the delay on the part of the petitioners in making application for issuance of RC part-II is condoned.

It has further been contended that as the Scheme expired long back, accordingly, subsidy in respect of a lapsed Scheme cannot be granted at such a delayed stage.

It has been argued that in dealing with fiscal matters the terms and conditions of the Scheme are required to be construed strictly. Subsidy ought not to be granted contrary to the provisions of the Scheme.

Learned advocate for the respondents rely upon the observation made by the Hon'ble Supreme Court in paragraphs 17.4 and 20 of Ramnath & Co. (supra) wherein the Court laid down that the exemption notification has to be interpreted strictly. The burden of proving its applicability is on the assesse and in case of any ambiguity the benefit thereof cannot be claimed by the subject/assesse, rather it would be interpreted in favour of the Revenue. The ambit and scope of provisions for the purpose of applicability cannot be expanded or widened and remains subject to strict interpretation but, once eligibility is decided in favour of the person claiming such deduction, it could be construed liberally in regard to other requirements which may be formal or directory in nature.

Learned advocate for the respondents also rely upon paragraphs 28, 40 and 41 of the judgment delivered by the Constitution Bench of the Hon'ble Supreme Court in the matter of Dilip Kumar & Co. (supra) on the self-same proposition that, every taxing statute including charging, computation and exemption clause at the threshold stage, should be interpreted strictly. In case of an exemption notification the benefit of ambiguity must be strictly interpreted in favour of the Revenue/State.

The respondents pray for dismissal of the writ petition.

I have heard and considered the rival submissions made on behalf of both the parties.

The Scheme in question was solely for the purpose of extending financial support for promotion of industries in the State. The Scheme was valid for a period of five years only with effect from 1st April, 2008. Incentive(s) under the Scheme was available only upon compliance of the stipulations mentioned therein.

It appears that the petitioner Company was treated as an eligible unit for receiving benefits under the Scheme. RC part-I was issued in favour of the Company but dispute cropped up at the stage of issuance of RC part-II. As per the Scheme eligible units having RC in part-I was required to complete investment in the unit for obtaining RC part-II within a period of two years from the date of issuance of RC in part-I.

RC in part-I was issued in favour of the petitioner Company on 8th June, 2011 valid for a period of two years.

The respondents have alleged violation of provision of paragraph 7.2 by the Company for which RC part-II has not been issued. According to Clause 7.2 the

Company ought to have submitted application for obtaining RC part-II at least one month ahead of commencement of commercial production, whereas in the present case, the Company made application for RC part-II three days after commencement of commercial production resulting in delay of total thirty three days in making the application.

The respondents construed the same as violation of paragraph 7.2 and rejected the prayer of the petitioners for issuance of RC part-II.

The petitioners in their letter dated 16th January, 2017 (annexure P-18) have categorically admitted that the delay in making application for RC part-II was due to their continuous thrust on improvement of quality during trial production and for obtaining VAT/CST number. To avail the sales tax number, sales transactions out of the trial production were executed and as such the date of commencement of commercial production was declared as 1st October, 2012. It was only after declaration of commencement of commercial production, the application for RC part-II was made. The letter also mentions that the Company was of the impression that RC part-II can be applied only after commencement of commercial production.

From the aforesaid statements which have been made in the letter of the Company it appears that the Company misread and misunderstood the terms and conditions of the Scheme. The Company was more interested in obtaining the sales tax number rather than obtaining the RC part-II. Subsidy is liable to be released only after RC part II is issued in favour of the unit.

It appears from the communications made by and between the parties that the petitioner's application for issuance of RC part-II could not be processed due to want of documents which were necessary for preparation of the assessment report. The Company Secretary of the petitioner no. 1 in the letter dated 20th January, 2014, in reply to the letter dated 10th January, 2014 issued by the Assistant

Director of Industries, admitted that figures mentioned in the application was wrong and has been rectified according to the certificate issued by the Chartered Accountant. A new application was submitted with the corrected figures.

The aforesaid implies that the application filed by the Company on 3rd October, 2012 was a defective one which stood rectified only upon submission of fresh application in January, 2014. In the meantime the Scheme ended on 31st March, 2013. Had the petitioners been genuinely interested to receive subsidy in terms of the Scheme, then the petitioners ought to have been a bit more cautious and diligent and should have acted strictly in accordance with the provisions of the Scheme, within its validity period.

It is true that the respondents ought to have acted promptly upon receipt of the application made by the petitioner Company for issuance of RC part-II and ought to have intimated the petitioners for rectification of any defect in the same. The respondents have simply sat tight over the matter for a considerable period of time even after repeated reminders were sent by the petitioners. The petitioners were in fact not even intimated about the fate of the application on the plea of a policy decision being pending in respect of all applications wherein there has been violation in the provision of paragraph 7.2.

Though the policy decision of the State has not been placed before the Court, but it has been submitted by the learned advocate appearing on behalf of the State respondents that, the State has decided not to relax the time limit or to condone the delay in making applications for issuance of RC.

The flood gate theory and the non-availability of a precedent as relied upon by the respondents to reject the prayer of the petitioners do not appeal to the Court. It is not always necessary that there has to be or there will be a precedent in each and every situation. As and when a dispute arises, the same has to be dealt with accordingly in terms of law applicable in a given case. The case at hand can act as a precedent in respect of similar cases which arise in future. The Court has not been made aware as to whether there has been any other instance where an aggrieved party has approached this Court for relief on account of rejection of application for issuance of RC part-II.

The authority has opined that on examination of the documents there appears to be no substantial ground for delayed submission of the application for RC part-II.

RC part-II is issued only after the Director of Industries receives the assessment report after enquiry/scrutiny of the documents/certificates submitted by the unit on actual investment in fixed capital on the date of application, estimated quantum of production of each individual item of finished goods and the balance sheet of the unit for the preceding three years duly certified by any Chartered Accountant firm. It is not that RC part-II is issued as and when application is made for issuance of the same. It is only upon getting a favourable assessment report from the WBIDCL, that the certificate is issued.

In the instant case it appears that WBIDCL did not issue a favourable assessment report in favour of the petitioners. RC part-II cannot be issued in absence of the same.

It is too late in the day to direct WBIDCL to prepare the assessment report in terms of the Scheme for the purpose of processing the application of the petitioners for issuance of RC part-II. The fact that the petitioner Company has commenced commercial production without the subsidy being granted by the State implies that the Company can maintain itself and prosper without the subsidy available under the Scheme. It is no doubt true that the subsidy will certainly come to the aid of better development and improvement in the business of the petitioners, but at the same time, it has to be accepted that the petitioners were themselves at fault in misconstruing and mis-reading the provisions of the Scheme and failed to make the application within the prescribed time period.

The delay in making the application is completely and solely attributable to the petitioners themselves and the delay could have been avoided had the petitioners been a bit more vigilant and conscious about the terms and conditions of the Scheme under which they sought subsidy. None else but the petitioners themselves were responsible for the delay in making the application. The said delay ought not to be condoned after such a long period of time and nearly after nine years after the Scheme came to an end.

Though the petitioners have tried to make out a case that there is ambiguity in the Scheme itself as two years' time period has been mentioned for the validity of RC part-I within which the petitioners made the application for RC part II, but the petitioners failed to take note of the definite and specific time period mentioned for making application for obtaining RC part-II.

The aforesaid period of two years is the outer time limit within which the eligible unit which obtained RC part-I shall have to complete investment in the unit for obtaining RC part-II, but for obtaining RC part-II, .application shall have to be made a month ahead of commencement of commercial production.

RC part-I contains information as to the estimated amount of FCI, approved capacity of production, individual item of finished goods, expected date of commencement of commercial production, types of statutory clearance obtained by the unit and the period of validity of the certificate but RC part-II is issued mentioning the approved capacity of production of each item of finished goods, actual fixed capital investment made by the unit, scale and eligibility period for each item of incentives, period of validity of the certificate and other items and conditions as would be considered appropriate.

The aforesaid implies that the two certificates, that is part-I and part-II, are meant and issued for two different purposes. The fact that RC part-I is valid for two years does not mean that the application for part-II can be made any time within the validity period of two years. A specific time period has been mentioned for making application for issuance of RC part-II and a unit is required to comply the same in order to avail the benefits under the Scheme. In deviation thereof, the unit ought not to be found fit for availing the subsidy as per the Scheme.

From the above discussion it is apparent that there is absolutely no ambiguity in the provisions of the scheme. The time limits within which applications are to be made for obtaining the different parts of the registration certificate are clearly mentioned. The petitioners themselves are solely responsible for the delay in making such application. Accordingly, the ratio laid down in the judgments of the Hon'ble Supreme Court in the matter of Dilip Kumar (supra) and Ramnath & Co. (supra) will not be applicable in the facts and circumstances of the instant case. The order passed by this Hon'ble Court also does not come to the aid of the petitioners as the delay was attributable to the petitioners alone.

In view of the above, no relief can be granted in favour of the petitioners in the instant case. The writ petition fails and is hereby dismissed. No costs.

Urgent photostat certified copy of this judgment, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Amrita Sinha, J.)