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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/165/2023
IA NO. GA/1/2023

THE STATE OF WEST BENGAL
VS.
PRIME COLD STORES PVT. LTD. & ORS.

BEFORE:
THE HON'BLE THE CHIEF JUSTICE T. S. SIVAGNANAM
AND
The Hon'ble JUSTICE AJAY KUMAR GUPTA
Date : 28TH JUNE 2023.

Mr. T.M. Siddiqui, Adv.
for appellant
Ms. Sutapa Sanyal, Adv.
Mr. Debrup Bhattacharjee, Adv.
Mr. Pradeep Kumar Tulsyan, Adv.
...for respondent/writ petitioner

The Court :- We have heard learned Counsel for the either side.

There is a delay of 228 days in filing the appeal. We have perused the affidavit filed in support of the petition and we find sufficient cause has been shown for not preferring the appeal within the period of limitation. Accordingly, the prayer for condonation of delay is allowed and the delay in filing the appeal is condoned.

This intra-Court appeal by the State is directed by order dated 24.09.20 passed in WPO No. 270/2022. The respondent/writ petitioner had impugned the order passed by the Managing Director of the West Bengal Industrial Development Corporation Limited (WBIDC) dated February 10, 2022. The learned Single Bench had held that the said order is unsustainable and the writ petition has been allowed. We have elaborately heard Mr. T M Siddiqui, learned Government Counsel for the appellant and Ms. Sutapa Sanyal, learned Advocate appearing for the respondent/writ petitioner. The order which was impugned in the writ petition sets out the following reason for not granting/disbursing the fixed capital investment subsidy in favour of the appellant. The operative portion of the order reads as follows:

"*GST has been introduced with effect from 01.07.2017 replacing the conventional tax system like VAT, CST etc. The WBIS 2000, WBIS 2004, WBIPS 2005, WBSSIS 2008 etc. were introduced during the earlier VAT, regime and are applicable for VAT/CST etc. elements only and not for GST. WBGST Act, 2017 has no provision for catering to incentive of any kind which a taxpayer may have been enjoying under the erstwhile State Act.*

Now since WBIS is not GST compliant scheme, therefore, the new tax regime of GST cannot be looped into for the purpose of disbursement of incentives under the WBIS in the absence of any policy decision of the State Government.

Accordingly, at present the company may not be considered to be eligible for disbursement/sanction of incentive. The matter stands disposed."

Thus, it could be seen that the only reason for rejecting the request for disbursing of the incentive under the State Subsidy Scheme was that the scheme is not GST complied. The question would be as to whether the appeal could have denied the benefit of the scheme which was undoubtedly brought in to force by Government of West Bengal by notification dated 26.02.2009 to extend certain financial support for promotion of industries in the State namely large and medium scale industrial units. Thus the interpretation which is required to be given by the authorities is to further the scheme and not to make the scheme unworkable. The appellant does not state for certain reasons the respondent/writ petitioner is ineligible to the benefit of the scheme but fault of the scheme for not being GST complied. In our view that can hardly be a reason to deny the benefit of the scheme to the respondent/writ petitioner more particularly respondent/writ petitioner has been granted registration at levels 1 and 2 of the scheme and has also been granted a letter of sanction on 7.6.2016 with regard to capital investment subsidy and sanction has also been made fixing the monetary limit. The learned Single Bench has elaborately referred to the various provisions of the scheme and rightly noted clause 19.2 of the scheme which states that in the event West Bengal Value Added Tax Act, 2003 being replaced by any other Act, the provisions of the scheme will apply mutatis mutandis even after the new Act comes into force. Therefore, according to the appellant if the GST regime come into force on and from 1.7.2017 all that is required is to introduce the provisions of the SGST Act into the provisions of the scheme wherever there is reference the West Bengal Value Added Tax Act 2003. All that might have been required herein to be done by the Government of West Bengal is to issue an amendment notification duly amending the provisions of the scheme wherever the scheme mentions about WBIDC Act and substituting the same with the provisions of the SGST Act. Therefore, we find learned Single Bench was fully justified in allowing the writ petition and also fixing a time limit within which the benefit has to be extended to the appellant. Thus for the above reasons we find no grounds to interfere with the order passed by the learned Single Bench and the appeal fails and is dismissed. The time for compliance of the order as ordered by the learned Single Bench shall commence to run from the date of receipt of the server copy of this order.

Consequently, the application also stands dismissed.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(AJAY KUMAR GUPTA, J.)

Pkd/GH.