

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 102

Civil Writ Petition No.12730 of 2023
Date of Decision: July 07, 2023

M/s S.B. Packagings Pvt. Ltd.

..... PETITIONER(S)

VERSUS

State of Haryana & others

..... RESPONDENT(S)

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CORAM: **HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

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PRESENT: - Mr. Kshitij Sharma, Advocate, for the petitioner.

Mr. Harish Nain, Assistant Advocate General, Haryana.

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Tribhuvan Dahiya, J (Oral)

This petition has been filed seeking a writ of *certiorari* for quashing the order dated 20.04.2023 (Annexure P-9) passed by the appellate/competent authority under the Testing Equipment Assistance Scheme (Annexure P-3).

2. Notice of motion.

3. Mr. Harish Nain, Assistant Advocate General, Haryana, appearing on advance notice, accepts notice on behalf of the respondents.

4. The petitioner is a private limited company and a leading manufacturer of flexible packaging materials for pharma, food and hygiene products. It is a 'medium enterprise' with the Government of Haryana, and entitled to assistance/subsidy under the aforesaid Scheme. It had purchased Print Inspection System Detect Axis on 30.11.2021, vide receipts Annexure P-4 and P-5. Being entitled to claim 50% subsidy under the Scheme, it

moved an application dated 25.06.2022 (Annexure P-6) for claiming the same to the competent authority, who declined to entertain the claim, vide the order dated 24.07.2022 (Annexure P-7), holding it to be time barred having been filed four months after expiry of limitation. The Scheme required the claim to be submitted within three months of purchase, i.e., upto 28.02.2022. The order was challenged before the Appellate Authority claiming that the delay was not intentional and was caused due to COVID-19 restrictions. Therefore, it may be condoned.

5. Learned counsel for the petitioner contends that the impugned orders are wrong, and for the reasons stated in the application the delay in submitting the claim should have been condoned by the competent authority. It was on account of COVID-19 restrictions that the officers of the petitioner company could not submit the claim within the specified period of limitation. The restrictions prevented them as well as the supporting staff from attending the office before expiry of the period of limitation, and only on that account the claim could not be submitted within time. The delay is, therefore, *bona fide* and has been caused on account of circumstances beyond the petitioner's control. He has also referred to a Supreme Court judgment, dated 10.01.2022 (Annexure P-10), passed in *suo motu* exercise of powers in Writ Petition (C) No.3 of 2020, *inter alia*, directing that the period of limitation of filing of the claims/petitions/suits/appeals etc., would stand extended for a period of 90 days from 01.0-3.2022. Therefore, on this account also, rejection of the petitioner's claim by the respondents is not maintainable being contrary to law.

6. Learned State counsel, on instructions, submits that though there was COVID-19 Pandemic at the relevant time, and limited restrictions

were also in force, same could not have prevented the petitioner or its officers from raising the claim within the prescribed period of limitation as it was to be submitted on-line. The Scheme clearly provides the maximum period for which delay can be condoned is six months. Since the claim was raised/appeal was filed after the said date, the competent authority had no option but to reject the same.

7. Learned counsel for the parties have been heard.

8. Para 7 of the Scheme requires that in case the claim for subsidy, complete in all respects, is not submitted within three months of purchase of the Testing Equipment, the enterprise shall forfeit its entitlement for the assistance/subsidy. The Additional Director is competent authority to sanction the subsidy, as per Para 8 of the Scheme. An appeal against an order the competent authority can be filed before the Director/Director General, Micro, Small and Medium Enterprises, within 30 days from the date of communication of the order, as per Para 10 of the Scheme. It has also been provided in Para 11(a) of the Scheme that delay in submission of the application and appeal can be condoned by the director/Director General in case delay is up to a period of three months after the prescribed limit. Para 11(b) empowers the Administrative Secretary, Department of Industries and Commerce, Haryana, to condone the delay upto a period of six months after the prescribed limit, provided the competent authority is satisfied with the reasons of late submission of the application on the basis of substantial evidence/documents/arguments presented by the applicant.

9. In the instant case, the Testing Equipment was purchased by the petitioner on 30.11.2021. It was required to file the subsidy claim within three months therefrom, i.e., upto 28.02.2022. The claim was, however, filed

on 25.06.2022, after a delay of three months and twenty five days from the last date of filing the claim as per the Scheme. In these circumstances, as per Para 11(b) of the Scheme, the Administrative Secretary was competent to condone the delay, since it was not beyond the period of six months after the prescribed limit. The impugned order passed by the Appellate Authority/Administrative Secretary shows it found no justification in the reasons assigned by the petitioner seeking condonation of delay, i.e., inability of company officers to attend office during COVID-19 restrictions, since the claim was required to be filed through online portal.

10. Undisputedly, COVID-19 restrictions were in place at the relevant time. It has not been established on record that during those restrictions, the company officers had unrestricted access to the company office as well as the full staff support to enable them to file the claim within the prescribed limit. Therefore, the petitioner's claim regarding inability of the company officers to submit claim due to COVID-19 restrictions appear to be *bona fide* which deserves to be accepted. The reasons assigned by the Appellate Authority in refusing to condone the delay are not valid, and are hereby rejected. Merely because the claim was to be filed through on-line portal, it cannot be said the same could have been done without any secretarial/office assistance. There is a strong possibility that the prevalent restrictions prevented the company from doing so within the period of limitation. Besides, there is no evidence or document to the contrary on record which could even *prima facie* indicate that the company did not face any such handicap in filing the claim within limitation. Further, it is settled principle of law that procedural requirements should not be allowed to take away substantial rights of the parties.

11. In view of the aforesaid, the impugned orders, dated 24.07.2022 and 20.04.2023, passed by the competent as well as Appellate Authorities, are hereby set aside directing the respondent/competent authority to consider and decide the petitioner’s claim on merits, in accordance with law.

12 . Disposed of.

(Tribhuvan Dahiya)
Judge

July 07, 2023
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<u>Whether Speaking/ Reasoned:</u>	<u>Yes/ No</u>
<u>Whether Reportable:</u>	<u>Yes/ No</u>