

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Harish Tandon

And

The Hon'ble Justice Prasenjit Biswas.

FMA 490 of 2024

IA No. CAN 1 of 2024

**The Joint Secretary,
Department of Micro, Small and Medium Enterprise,
Government of West Bengal and others**

Vs.

Fena (P) Limited and others.

For the Appellants

**: Mr. Md. T. M. Siddiqui,
Mr. Tanoy Chakraborty,
Mr. Saptak Sanyal.**

For the Respondent No. 1

**: Mr. Saptansu Basu
Mr. Sayan Sinha,
Mr. Adil Naskar,
Mr. Nilanjan Bhattacharya,
Mr. Soham Kumar.**

Heard on : 20.05.2024, 15.07.2024 & 23.08.2024

Judgment on : 23rd August 2024.

The Court:

The writ petitioner/respondent approached the Writ Court assailing the decision/order of the General Manager, District

Industries Centre, Howrah communicated through various letters of divulged dates with a further prayer to issue a Writ of Mandamus upon the respondent authorities to extend Eligibility-cum-Registration Certificate as a small enterprise under the West Bengal Incentive Scheme, 2013 (in short “Incentive Scheme of 2013”) and the benefits arising therefrom.

Undeniably, the writ petitioner/respondent is the manufacturer of the detergent soaps having several units in different parts of the country and, subsequently, set up a manufacturing unit within the State of West Bengal to avail the benefits, which the State intended to provide to the various manufacturers upon promulgating the West Bengal Incentive Scheme, 2010 (in short “Incentive Scheme of 2010”).

The unit was set up and the benefit under the said Scheme was availed of and to that regard there does not appear to be any dispute. However, subsequently, another Incentive Scheme of 2013 was promulgated under which several components of the incentives were included for which the application was made to claim the same as the Micro, Small and Medium Enterprise, which was denied by the respondent authorities.

Initially, the defence was taken by the respondent authorities that the moment the small enterprise has various units Pan India; the unit set up within the State of West Bengal cannot be construed as a new industrial unit, which could not be accepted by the Single Bench. However, a little digression is made at the time of argument in the instant appeal. The reliance appears to have been placed upon the averments made in paragraph 52 of the writ petition wherein the writ petitioner/respondent has categorically averred that they had an existing unit at Howrah and availed the benefit under the Scheme of 2010 as a small scale enterprise. The aforesaid statement is construed by the appellants in juxtaposition with the definition of a

new industrial unit defined in the Incentive Scheme of 2013, which means a Micro, Small and Medium Enterprise in the manufacturing sector, which has started production on and after 1st April 2013 and filed EM (Part-III) and, therefore, if any further unit is set up in the State, it would be treated as new industrial unit. The said Clause 4(vii) defining new industrial unit is reproduced as under:

“4(vii). “New Industrial Unit” means a micro, small or medium enterprise in the manufacturing sector which has started production on or bafter the 1st April, 2013 and filled EM(Part-II). If an existing industrial unit sets up a branch as second/third unit etc, in different location in the State and manufactures new items, its second/thid unit etc. will only be treated as a new Industrial unit provided EM(Part-II) is filed for the same.”

The interpretation sought to be made to the said definition clause does not convey the intention of the Government while framing the said Scheme. The language is explicit and clear to the effect that in the event the existing industrial unit, which is micro, small and medium enterprise, sets up the branch as second or third unit in different location in the State and manufactured new items, will be treated as a new industrial unit provided the EM(Part-II) is filed for the same. The expression “existing industrial unit” connotes the setting up of a unit in the State and the expression “second and third unit” with no ambiguity would indicate another industrial set up within the different parts of the State. It cannot by any stretch of imagination be construed that the unit, which is set up outside the State, shall be clubbed together and bring within the definition of the same.

Mr. Md. T. M. Siddiqui, learned Additional Government Pleader appearing on behalf of the appellants, also concedes to that effect and does not intend to take said plea, which was initially taken

before the Single Bench. The reliance appears to have been stressed upon Clause (6) of the Incentive Scheme of 2013 containing the provision relating to exclusion of the units within the purview of the Incentive Scheme of 2013. It is sought to be contended that if unit has already been registered and the eligibility certificate is issued and the incentive has been disbursed, it would continue to be disbursed under the respective Incentive Scheme and, therefore, cannot avail a further incentive under the subsequent Scheme.

What is sought to be contended that once the benefit under the Incentive Scheme of 2010 is availed of, it would foreclose the doors of enterprises in claiming further benefit under the subsequent Incentive Scheme of 2013.

The aforesaid argument is primarily founded upon in Clause 7.1(v) of the Incentive Scheme of 2013 containing the provision relating to the eligibility of the enterprise to avail the incentives under the new Incentive Scheme of 2013. The said clause is quoted under:

“(v) An eligible enterprise which has availed of incentive/subsidy in respect of any of the items specified under any other Incentive/Subsidy Scheme of Govt. of India/State Govt. shall also be eligible to get the benefits of other items only under WBIS-2013 for MSMEs subject to fulfillment of terms and conditions of the Scheme.”

Mr. Siddiqui is very much vocal in his submission that the said provision disentitles the enterprise to avail the incentives under the Incentive Scheme of 2013, if they have availed the benefit of the Incentive Scheme of 2010 for the same item. It is sought to be contended that the writ petitioner/respondent is manufacturing detergent soap, which cannot be said to have started manufacturing the new item, which is akin to a new finished product and, therefore, cannot come within the four corners of the Incentive Scheme of 2013.

Mr. Saptansu Basu, learned Senior Advocate appearing on behalf of the writ petitioner/respondent, refuted the aforesaid contention that the item has to be understood not in the perspective of the new finished good, but the incentives, which are covered within the respective Schemes. According to him, the item has to be construed in such perspective and the moment the enterprise has availed the benefit under the old Scheme in relation to any incentive, such incentive cannot be again claimed in the Incentive Scheme of 2013, but it does not debar the enterprises to claim the other incentives provided in the Incentive Scheme of 2013.

Such being the gamut of dissent perceived in course of hearing, we do not intend to delve upon the other issues, which were, in fact, raised before the Single Bench so far as it relates to the clubbing of the units spanning over the entire country.

The point boils down to the interpretation of the word “item” in Clause 7.1(v) appearing in the Incentive Scheme of 2013 whether to mean the new finished goods or in relation to the specific incentives provided in the aforesaid two Incentives Schemes. We had an occasion to peruse the Scheme of 2010 annexed to the stay application as well as the Incentive Scheme of 2013 in order to understand the meaning of the word “item” appearing in the aforementioned Clause under the Incentive Scheme of 2013.

The said Clause on a bare look indicates that the eligible enterprises, which has availed of the incentive/subsidy in respect of any of the item specified in any other Incentive/Subsidy Scheme of Government of India/State Government of India shall also be eligible to get the benefit of the other items only under the Incentive Scheme of 2013, subject to the fulfillment of the terms and conditions of the said Scheme.

The expression “as availed of” is required to be considered in pragmatic manner to decipher the intention of the maker of the Scheme, which is beneficial piece of legislation. It conveys laudable intention that the enterprise, which has availed the benefit of incentive/subsidy under the earlier Scheme or the other Scheme, shall also be entitled to a benefit of the incentive/subsidy in the Incentive Scheme of 2013. The logical inference drawn from the aforesaid expression leaves no ambiguity that the existing enterprise if eligible despite having availed of the incentive/subsidy under the other scheme, shall also be entitled to benefit of incentive/subsidy under the Incentive Scheme of 2013. Having found so, it leads to a core issue relating to the interpretation of the word “item” appearing therein.

Our endeavour has failed to find out from the Incentive Scheme of 2010 that any nature of the finished goods or the product is incorporated therein in order to ascertain that the item would mean such finished goods or a particular type of goods.

Ordinarily, the item would mean a particular product, but it is of varied form having wide connotation and, therefore, the proper meaning has to be assigned in relation to the nature of the Schemes and the intention to be gathered therefrom. The item used in the said Clause is further clarified by the expressions “specified under the other incentive/subsidy” and, therefore, a proper meaning should be ascribed to the said word in juxtaposition with the aforesaid expressions. The moment the Incentive Scheme of 2010 does not vividly reflect the product or the goods, we do not find any ambiguity in the stand of the writ petitioner/respondent that the item should mean the component of incentives provided in the respective Schemes.

The Incentive Scheme of 2010 was restricted to the disbursement and/or refund of the Value Added Tax and Central Sales Tax and the Industrial Protection Assistance. Apart from the same, there is no component, which we could decipher from the Incentive Scheme of 2010. The Incentive Scheme of 2013 had various component of incentive/subsidy apart from the Value Added Tax and Central Sales Tax and the Industrial Protection Assistance.

The cumulative effect of both the Schemes in relation to the said Clause is explicit to the extent that the moment the incentive/subsidy is availed by the small enterprise under the other Scheme, such incentive/subsidy cannot be reclaimed under the Incentive Scheme of 2013. This is how the word “item” has to be construed in conjunction with the expression “specified in any other incentive /subsidy scheme”. Any components, which were not included in the earlier Incentive Scheme of 2010 can be claimed under the Incentive Scheme of 2013, as such component was not included in the earlier Scheme and, therefore, cannot be regarded as an item under the old Scheme.

It is an ardent duty of the Court while interpreting the language used in the document to read the same as a whole conjointly with the other provisions and above all bearing in mind the object and purpose underlining the promulgation thereof.

The Scheme is floated by the Government to invite various manufacturing enterprises to set up the units within the State of West Bengal, which would give impetus to the economic growth as well as generates employment, directly or indirectly. Such being the object, the small enterprises, who set up the unit is entitled to the benefits in the form of incentive/subsidy as extended by the Government and, therefore, the various terms and the clauses contained therein has to be construed in such perspective.

Mr. Siddiqui was very much vocal in his submission that the Court should adopt a strict interpretation to the clause of the Scheme providing the exemption and the plausible interpretation, which lean in favour of the Government should be adopted first and placed reliance upon a judgment of the Apex Court in case of **Commissioner of Customs (Import), Mumbai vs. M/s. Dilip Kumar and Company and others**, reported in **(2018) 9 SCC 1**. It is categorically held in the said judgment that while interpreting the taxing statute and the exemption notifications, the Court should interpret the provision in the event of any ambiguity is found in the taxing statute to the benefit of the assessee, but while interpreting the exemption notification, the Court should adopt the stricter interpretation to uphold the same in favour of the revenue in the following:

“After considering the various authorities, some of which are adverted to above, we are compelled to observe how true it is to say that there exists unsatisfactory state of law in relation to interpretation of exemption clauses. Various Benches which decided the question of interpretation of taxing statute on one hand and exemption notification on the other, have broadly assumed (we are justified to say this) that the position is well settled in the interpretation of a taxing statute: it is the law that any ambiguity in a taxing statute should enure to the benefit of the subject/assessee, but any ambiguity in the exemption clause of exemption notification must be conferred in favour of the Revenue – and such exemption should be allowed to be availed only to those subjects/assesses who demonstrate that a case for exemption squarely falls within the parameters enumerated in the notification and that the claimants satisfy all the conditions precedent for availing exemption. Presumably for this reason the Bench which decided Surendra Cotton Oil Mills case observed that there exists unsatisfactory state of laws and the Bench which referred the matter initially, seriously doubted the conclusion in Sun Export case that the ambiguity in an exemption notification should be interpreted in favour of the assessee.”

We do not find any quarrel to the aforesaid proposition as in case of taxing statute, the Court should adopt the tool of interpretation, which would enure to the benefit of the assessee, but the exemption being an exception should be construed rigidly in favour of the revenue. The exemption is in effect keeps the thing beyond the purview of the taxing statute and, therefore, has to be understood in such perspective. What does not form component of the taxing provisions has to be construed in such perspective, which cannot be stretched to a situation where it forms an integral part of the taxing component, but under the Scheme is liable to be reimbursed and/or returned to the assessee. There lies a distinction between the taxing provisions and the exemptions. The Scheme in hand does not contain any provision relating to exemption from the purview of any taxing statute. What it provides is that the beneficiary under the said Scheme has to pay the certain components, which are engulfed into incentive/subsidy and the Government would recompense the same once the claim is made in this regard.

As already held that the interpretation ascribed to the word “item” by Mr. Siddiqui does not appear to be in consonance with the spirit of the Incentive Scheme of 2013 and, therefore, we do not find that the said point warrants any interference with the impugned order.

The appeal is, thus, dismissed. Consequently, the connected application being CAN 1 of 2024 is also dismissed.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

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(Prasenjit Biswas, J.)

