D/L. 9.
January 9, 2024.
MNS.

WPA No. 4621 of 2020

Anindya Paul Chowdhury and others
Vs.
Union of India and others

Ms. Sutapa Sanyal,
Mr. Debrup Bhattacharjee,
Mr. Pradeep Kumar Tulsyan

… for the petitioners.

Mr. Tarunjyoti Tewari

…for the Union of India.

Ms. Aparajita Ghosh,
Ms. Susmita Chatterjee

…for the respondent nos. 5 to 7.

1. The gamut of the writ petition is extremely limited.
2. The petitioners claim a subsidy under a Scheme floated by the respondent authorities. In terms of Clause 3.5 of the said Scheme, the coverage of investment is extended only prior to sanction of the loan. In terms of the said clause, advance/token payment up to the margin money for machine cost can be paid by the unit prior to the date of sanction of term loan. However, machines purchased on or after the date of sanction of term loan will be

eligible under RR-TUFS subject to fulfillment of other terms and conditions.

3. Thus, the machines were purchased under the said scheme, thus being eligible for the subsidy in terms of Clause 3.5 of the Scheme dated October 4, 2013, to be purchased “on or after the date of sanction of term loan”.

4. In the present case, the date of sanction of the loan was December 10, 2013. Out of the twelve machines purchased, it is contended by the respondent authorities that in terms of the documents (including invoices) produced by the petitioners themselves at the time of joint inspection by a Joint Inspection Team (JIT) formed under the directions of the Comptroller and Auditor General (CAG), ten were delivered to the petitioners prior to the date of sanction. As such, the Joint Inspection Team opined that the petitioners were not eligible to the subsidies under the said Scheme.

5. Learned counsel for the petitioners, on the other hand, places reliance on several documents annexed primarily to the affidavit-in-reply of the petitioners and also to the writ petition to argue that the substantial tranches

of payments with regard to the machines-in-question were all made after the date of sanction of the Scheme on December 10, 2013.

6. Hence, technically, the purchase was completed only after the date of the sanction and, as such, the petitioners are eligible.
7. Also, advance/token payment up to the margin money for machine cost can be paid by the unit prior to the date of sanction of term loan as per Clause 3.5.
8. Shorn of all unnecessary paraphernalia, it would only be appropriate that the respondent authorities give a further opportunity of hearing to the petitioners to produce all documents, including those which are annexed to the affidavit-in-reply and the writ petition, for a reconsideration on the issue at hand.
9. The specific submission of the respondents is that the petitioners produced documents which were considered by the respondents and were the basis of the adjudication that the petitioners are not eligible.
10. However, the said consideration of the respondents cannot be said to be conclusive

since further documents have come up in the present writ petition.

11. Thus, for the ends of justice, the respondents are required to consider whether the machines were “purchased” within the contemplation of the scheme on or after the date of sanction of term loan, that is, on or after December 10, 2013 and merely advance/token payment up to the margin money for machine cost was paid prior to the sanction of term loan.

12. In this context, it cannot be denied that “purchases” come in different shades. Purchases may take place by way of hypothecation when the title in the immovable machines passes to the purchasers only after the final installment is paid or under other different arrangements.

13. Thus, it is to be ascertained by the respondents whether the purchases of the machinery by the petitioners, on which subsidy has been claimed, were complete after the date of sanction, that is, on or after December 10, 2013, in which case the petitioners would be entitled to the subsidies under the concerned Scheme.

14. In view of the above observations, WPA No. 4621 of 2020 is disposed of by setting aside the impugned refusal of the petitioners' claim under the concerned scheme by the respondent authorities and remanding the matter to the respondent authorities for a fresh consideration of the eligibility of the petitioners to get the benefit of subsidy under the Scheme on the basis of the claims made by the petitioners before the respondents, in the light of Clause 3.5 of the concerned Scheme.
15. The respondents, for such purpose, shall give an opportunity of hearing to the petitioners, when the petitioners will be entitled to produce all documents on which they have relied on in the present writ petition and have been annexed to the pleadings of the petitioners and/or other documents, in original if necessary. Upon a consideration of the said documents and hearing the petitioners, the respondents shall take a fresh decision with regard to the eligibility of the petitioners.
16. It is expected that the said entire exercise shall be concluded by the respondents within a month from date. Upon such reconsideration, the respondents shall

communicate to the petitioners the outcome of the same. If held in favour of the petitioners, the respondents shall take measures to disburse the sum to which the petitioners are entitled under the Scheme as expeditiously as possible.

17. It will be open to either party to challenge the outcome of the said reconsideration.

18. The respondent-bank shall act in terms of the outcome of the reconsideration by the respondent authorities.

19. There will be no order as to costs.

20. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)