IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Biswaroop Chowdhury

M.A.T. 1142 of 2024
CAN 1 of 2024

The State of West Bengal & Ors.
Vs.
Ashirwad Cold Storage (P) Ltd. & Anr.

For the Appellants	**:**	Mr. Sk. Md. Galib, Sr. Govt. Adv. Ms. Sujata Mukherjee, Adv.
For the Respondent Nos. 1 & 2	**:**	Mr. Pranit Bag, Adv. Mr. Anuj Kumar Mishra, Adv. Mr. Anousko Das, Adv.
Heard on	**:**	18.07.2024
Judgment on	**:**	18.07.2024

Joymalya Bagchi, J.:-

1. Appellants have assailed the impugned judgment and order whereby the appellants were directed to grant benefit of incentive to the petitioners for running a cold storage under the West Bengal Incentive Scheme 2000 (hereinafter to as the Scheme of 2000).

2. The writ petitioners/respondents obtained a license for running cold storage business in 2000 and started operating the cold storage on and from 21st March, 2000.
3. In or about 2001 in supersession of its 1999 Incentive Scheme, the State notified the West Bengal Incentive Scheme 2000 with effect from 1st January, 2000 for a period of five years ending on 31st March, 2004.
4. It may be apposite to mention in the said scheme 'cold storage' had not been incorporated in the negative list thereby disentitling benefit under the Scheme.
5. In such view of the matter, writ petitioners made an application claiming incentive under the Scheme of 2000 before the District Industries Center.
6. The said application being turned down, the writ petitioners moved this court in WP 11992(W) of 2005 which was disposed of by a Hon'ble Single Judge (as his Lordship then was) directing the respondent authorities to consider the application of the writ petitioners under the Scheme of 2000.
7. In the second round also the respondent authority turned down the prayer of the petitioners which again was challenged in WP 3701(W) of 2007 and the matter was remanded for consideration afresh.

8. By the impugned order dated 30th August, 2010 appellant no.3 held the writ petitioners is not entitled to the benefit under the Scheme of 2000 in view of incorporation of clause 17A by way of notification in 2001.

9. Writ petitioners challenged the said decision in the present proceeding.

10. Relying on the ratio in *Brahmanand Himghar Ltd. & Anr. Vs. State of West Bengal.*[1] the Hon'ble Single Judge set aside the decision and directed grant of incentive to the petitioner under the Scheme of 2000.

11. Mr. Galib for the appellants/State contends the Scheme of 2000 had been modified in 12.12.2001 by incorporating Clause 17A whereby the benefit to cold storage was restricted to cold storages operational from 01.01.2002. Accordingly, the writ petitioner was not entitled to the benefit under the Scheme of 2000.

12. Mr. Mishra for the writ petitioner contends his client had made an application prior to the incorporation of Clause 17A and was entitled to relief under the pre-amended scheme.

13. In order to give impetus for setting up of industries in the State of West Bengal, the State had formulated schemes for grant of incentive to certain categories of industries.

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[1] 2007 SCC Online Cal 413

14. The Scheme framed in 1993 included cold storage in the negative list, however, the subsequent schemes framed in 1999 and 2000 omits the said category from the negative list entitling them to benefit of the scheme.

15. Noting this fact, a coordinate Bench of this court in *Brahmanand (supra)* observed as follows:….

> *"23. When the first of such negative lists contained cold storages but the subsequent negative lists did not enlist such cold storage, the real interpretation will be that the Government did not like to extend the concessions or benefits to such cold storages for a particular period that is from the year 1993 to 1998 and that the Government subsequently changed its policy to include the business of cold storage within the purview of such schemes and from the year 1999 to 2004 and for that reason the business of cold storage has not been included in the negative list of 1999 and 2000.*
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> *24. The learned Advocate for the opposite party has contended that the application in the prescribed form having been submitted on 06.08.2002, that is, after the notification dated 12.12.2001 by which a new clause 17A to the scheme of 2000 was incorporated, the same indicated that the appellant No. 1 was entitled to such subsidy from the date of such notification. It is true that the preamble of such notification speaks that such industries were not covered by the scheme of 2000. But such notification appears to have been against the spirit of both scheme of 1999 and 2000. It has already been discussed that such cold storages were within the cover of incentive scheme of 1999 and 2000. Accordingly, such notification cannot be and should not be relied upon to hold that the cold storages were not covered under the original scheme of 2000 and accordingly, such notification should be treated to be a superfluous one for the purpose of cold storage industry."*

16. The aforesaid interpretation of the scheme of 2000 was accepted by the State Government and has not been appealed against.

17. Hon'ble Single Judge has relied upon this interpretation of the Scheme and accorded relief to the writ petitioner.

18. Mr. Galib strenuously contends the rights under the Scheme of 2000 had been restricted by incorporation of Clause 17A thereto.

19. Clause 17A reads as follows:-

> *"Incentives to service related activities in Food Processing sector and development of post harvest infrastructure:*
>
> *1. Units set up having the following mechanised facilities jointly or severally.*
>
> *a. Grading, sorting, washing and pre-cooling*
>
> *b. Controlled atmosphere/modified atmosphere, packaging system*
>
> *c. Cold storage*
>
> *d. Refrigerated vehicle.*
>
> *2. Multi-purpose cold storage units suitable for storing fruits, vegetables, flowers, fish, meat, milk and milk products.*
>
> *3. Units based on application of bio-technology tissue-culture laboratory, hybrid seed production centre, plant health clinic.*
>
> *4. Centre for production of intermediate products and semi processed products for preservation of raw materials to supply the processing unit.*
>
> *5. Units engaged in production of fermented vegetables dehydrated fruit pulp, pickling, nutrient pulp and fruit and vegetable crude oil extraction from aromatic and medicinal plant.*
>
> *6. Bee keeping units and mash room cultivation and processing units in artificially controlled atmosphere will be entitled to the benefits under WBIS, 2000.*

The units registered with District Industries Centre or with the Director of Industries will only be eligible for being considered for benefits under the Scheme. The project will have to be approved by FPI & H Department Cold storage including Multi-purpose cold storage will have to obtain licence, if required from Agriculture Marketing Department of the Govt. Of West Bengal for getting registration from the District Industries Centre in respect of small scale unit and from Director of Industries for large and medium scale units. Release of Incentives will be subject to the technical opinion of FPI & H Deptt, in case of any doubt.

State capital investment subsidy will be released on completion of total work. Project completion certificate should be issued by FPI & H Department of the Govt. of West Bengal. Such units enjoying benefits from any other source will not, however, be entitled to the benefits under West Bengal Incentive Scheme, 2000. This provision will come into force with effect from 1.1.2002. This notification is issued with the concurrence of the Finance Deptt. Vide there U.O. No. FPI-46 dated 15.11.2001.”

20. A perusal of the said Clause shows that the incentive was to be extended to service related activities in food processing sector and development of post harvest infrastructure having cold storage or other mechanized facilities enumerated therein.
21. The provision had come into effect from 01.01.2002.
22. Relying upon the aforesaid Clause Respondent no.3 has come to a finding that as petitioners’ cold storage was set up prior to 2001, he is not entitled to the incentive.
23. In doing so, the respondent authority has wholly misconstrued the prayer of the petitioners for incentive under the Scheme of 2000.

Admittedly, under the Scheme of 2000, cold storages were not included in the negative list; hence the writ petitioners were entitled to incentive for running a cold storage under the Scheme.

24. This view is fortified by the interpretation given to the self-same scheme by a coordinate Bench of this court in *Brahmanand Himghar Ltd. (supra).*

25. By no stretch of imagination his right is whittled down by the incorporation of Clause 17A wherein incentive was sought to be extended to service related industries which had cold storage or other mechanised facility as enumerated therein.

26. The scope of the said Clause was to extend the benefit to the service sector industries provided they complied with the conditions therein and not to forfeit the right of the cold storages existing under the Scheme of 2000.

27. Mr. Galib has sought to rely on *Dollon's Food Products Pvt. Ltd. vs. State of West Bengal*[2].

28. In the said case the Bench presided over by the then Chief Justice was called upon to interpret the claim of an applicant under Clause 17A on the premise whether the applicant was a purely manufacturing unit or a service sector unit.

29. The issue with regard to claim made by an applicant under the Scheme of 2000 had not fallen for consideration therein.

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[2] 2019 SCC Online Cal 1813

30. A judgment is an authority for the proposition it decides and not what a counsel would strenuously infer therefrom. Hence, the cited case does not lay down a proposition contrary to *Brahmanand Himghar Ltd. (supra).*

31. For these reasons, we are of the opinion, the impugned judgment does not call for interference.

32. Appeal and connected application are accordingly dismissed.

33. However, there shall be no order as to costs.

I agree.

(Biswaroop Chowdhury, J.) **(Joymalya Bagchi, J.)**