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W.P.A. 21792 of 2010

Ashirwad Cold Storage (P) Ltd. & Anr.

-vs-

State of West Bengal & Ors.

Mr. Pranit Bag,
Mr. Anuj Kumar Mishra

....for the petitioners.

Mr. Sk Md. Galib,
Ms. Sujata Mukherjee

....for the State.

In the writ petition the order of the General Manager, District Industries Centre, Murshidabad dated 30th August, 2010 is under challenge whereby application of the petitioners dated 13th/19th February, 2001 seeking grant of incentive under the West Bengal Incentive Scheme, 2000 (hereinafter referred to as “said Scheme of 2000”) issued vide notification dated 13th February, 2001, was spurned.

While rejecting the prayer of the petitioners to grant incentive under the said Scheme of 2000 reliance was placed by the concerned respondent authority on subsequent notification dated 12th December, 2001 whereby on insertion of Clause 17A after Clause 17.2 cold storage was brought within the ambit of incentive scheme provided the cold storage commences its commercial activity on

and from 1st January, 2002. Since it was found that the petitioners' cold storage commenced its activity prior to 1st January, 2002 it was decided that the said cold storage is not entitled to receive the benefit of incentive in terms of Clause 17A of the notification dated 12th December, 2001.

Mr. Bag, learned advocate representing the petitioners submits that an application was made by the petitioners on 13th/19th February, 2001 seeking grant of incentive under the said Scheme of 2000 and it emanates from the memo dated 29th December, 2004 issued by the General Manager, District Industries Centre, Murshidabad that primarily the said application was processed and placed before the District Level Committee on 25th February, 2003 and the same received approval. But subsequently in view of the notification dated 12th December, 2001 the application of the petitioners was rejected and such decision to reject was made on 27th August, 2004.

The decision to reject the application of the petitioners seeking incentive was challenged by a writ petition being WPA 11992 of 2005 and the same was disposed of by a coordinate Bench on 27th October, 2006 by setting aside the memo dated 29th December, 2004 thereby the concerned

respondent authority was directed to consider and dispose of the application of the petitioners dated 13th/19th February, 2001 for grant of subsidy under the scheme as published vide notification dated 13th February, 2001. While setting aside the decision of rejection of the concerned respondent authority it was categorically held by the coordinate Bench in the order dated 27th October, 2006 that since the petitioners filed an application for grant of subsidy on 13th/19th February, 2001 the situation does not call for applying subsequent notification dated 12th December, 2001 which was effected from 1st January, 2002. As a result whereof according to the petitioners the concerned authority is required to decide the application of the petitioners dated 13th/19th February, 2001 based on the said Scheme of 2000 which was promulgated vide notification dated 13th February, 2001.

Subsequently, the authority again took decision on 19th December, 2006 rejecting the claim of the petitioners seeking grant of incentive wherein applying the cut off date i.e. 1st January, 2002 as contemplated under the subsequent notification dated 12th December, 2001 the claim of the petitioners was turned down which triggered the second writ petition being WPA 3701 of 2007

and the same was disposed of by a coordinate Bench on 19th May, 2010. In the said order dated 19th May, 2010 the coordinate Bench again observed that there was requirement to consider the application of the petitioners seeking grant of incentive based on the said Scheme of 2000 and accordingly the impugned order dated 19th December, 2006 was set aside thereby directing the concerned respondent authority to consider the application of the petitioners afresh in accordance with the conditions prescribed in the said Scheme of 2000. Subsequently, another order has been passed by the General Manager, District Industries Centre, Murshidabad dated 30th August, 2010 which is subject matter of challenge in the present writ petition.

It has been contended on behalf of the petitioners that considering the date of the application which is 13th/19th February, 2001 the concerned respondent authority is required to apply the relevant clauses as contained in the said Scheme of 2000 instead of rejecting the application of the petitioners repeatedly on applying the later scheme which was issued vide notification dated 12th December, 2001 inserting Clause 17A after Clause 17.2 wherein cold storage has been

included. Such submission of the petitioners rests on the decision of the coordinate Bench in the order dated 27th October, 2006.

It is also submitted that in view of the decision of the coordinate Bench dated 27th October, 2006 the concerned authority is not required to consider the later notification dated 12th December, 2001 and in support of such submission reliance is placed on the judgment of the Hon'ble Division Bench, reported in **2007 SCC OnLine Cal 413, (Brahmanand Himghar Ltd. & Anr.-vs- State of West Bengal & Ors.)**.

Mr. Ghalib, learned advocate has strenuously argued on behalf of the State respondents to defend the decision of the General Manager, District Industries Centre, Murshidabad dated 30th August, 2010 upon laying much emphasis on the later notification dated 12th December, 2001.

The learned advocate for the State has echoed the reasons as contained in the impugned decision dated 30th August, 2010 and has submitted that as per the latest notification dated 12th December, 2001 the benefit of incentive has been given to those cold storages which have

started its commercial activity on and from 1st January, 2002 whereas petitioners' cold storage started its commercial activity prior to 1st January, 2002 which made the said cold storage not eligible to come under the umbrella of the incentive scheme. In the course of submission made on behalf of the State respondents various relevant clauses as contained in the Scheme of 2000 as well as the notification dated 12th December, 2001 have been placed before this Court to refute the contentions made on behalf of the petitioners. Lastly reliance has also been placed on the judgment of the Hon'ble Division Bench, reported in **2019 SCC OnLine Cal 1813 (Dollon's Food Products Pvt. Ltd.-vs- State of West Bengal & Ors.)**.

This Court has heard the submissions made on behalf of the learned advocates representing the parties and also perused the relevant Scheme of 2000 and subsequent notification dated 12th December, 2001 as well as the impugned order passed by the concerned respondent authority on 30th August, 2010. In order to adjudicate the validity and legality of the order dated 30th August, 2010, this Court is required to first consider the order dated 27th

October, 2006 passed by the coordinate Bench on the writ petition being WPA 11992 of 2005 wherein it has been specifically observed by the coordinate Bench that the petitioners made application seeking grant of incentive on 13th/19th February, 2001; therefore the concerned respondent authority to rely upon the relevant clauses as contained in the Scheme of 2000.

From the observations and directions contained in the said order dated 27th October, 2006 conclusion can be made that while taking decision on the application of the petitioners dated February, 2001 authorities are required to find out the eligibility of the petitioners to be brought under the umbrella of incentive scheme on the anvil of the said Scheme of 2000 and the later notification dated 12th December, 2001 ought not to be pressed into service. While chronologically examining the orders passed by the concerned authority on the application of the petitioners dated February, 2001 consistently misconceived approach has been made by applying the cut of date of 1st January, 2002 leading to repeated rejection of the prayer of the petitioners.

It is a case where this Court finds in view of the order dated 27th October, 2006 passed by the

coordinate Bench that the concerned respondent authority while deciding the fate of the application seeking incentive has no other option but to place reliance of said Scheme of 2000 since no appeal has been preferred against the order dated 27th October, 2006 and the said order of the coordinate Bench attained finality due to efflux of time.

Two Hon'ble Division Benches' judgments have been placed before this Court by the learned advocates representing the petitioners and the State respondents and this Court needs to arrive at conclusion on consideration of the observations made by the Hon'ble Division Benches in the judgments of ***Brahmanand*** (supra) and ***Dollon's*** (supra). On comparative perusal of the observations of the Hon'ble Division Benches made on the aforesaid Scheme of 2000 along with later notification dated 12th December, 2001 applicability of those judgments in present fact situation needs to be delved into. In ***Brahmanand*** (supra), the Hon'ble Division Bench in paragraph 28 has observed that considering all relevant aspects subsequent amendment dated 12th December, 2001 made by the State by inserting Clause 17A to the said Scheme of 2000 should be ignored at least for the purpose of giving benefit to the cold storage

industry and the refusal of the State to render benefits to the appellant no.1 upon its application with effect from 1st March, 2000 was illegal and was quashed.

Being confronted with separate decisions of the Hon'ble Division Benches as referred to above this Court needs to find out which one is applicable in the present case. On consideration of facts as delineated hereinabove as well as in view of the decision of the coordinate Bench dated 27th October, 2006 since it has already been decided in the preceding paragraphs that the authority has no other option but to rely upon of the said Scheme of 2000; according to the appreciation of this Court the ratio of ***Dollon's*** (supra) is inapplicable in the present case.

This Court would not have other alternative but had to rely upon the ratio of ***Dollon's*** (supra) in the event the subsequent notification dated 12th December, 2001 could have been pressed into service while deciding the application of the petitioners in the present case seeking benefit of incentive. But the issue has been crystallized in view of the order dated 27th October, 2006 passed on the first writ petition instituted by the petitioners. Therefore, in the present case it is

found that paragraph 28 of ***Brahmanand*** (supra) is squarely applicable wherein it has been decided that the subsequent notification dated 12th December, 2001 should be ignored.

In the above conspectus, the decision dated 30th August, 2010 of the General Manager, District Industries Centre, Murshidabad stands set aside.

The concerned respondent authorities are directed to grant benefit of incentive to the petitioners' cold storage upon compliance of necessary formalities in terms of the said scheme of 2000 within a period of ten weeks from the date of communication of this order.

With the aforesaid observations and directions the writ petition stands disposed of.

However, there shall be no order as to costs.

After the order is dictated in open Court Mr. Ghalib, learned advocate representing the State respondents has prayed for stay of operation of the order. Such prayer is considered and refused.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Saugata Bhattacharyya, J.)

