OD-18

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/286/2023
IA NO: GA/2/2023
WEST BENGAL INDUSTRIAL DEVELOPMENT
CORPORATION LIMITED AND ANR.
VS
M/S. ALOM POLY EXTRUSIONS LIMITED AND ORS.

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
DATE : 24TH APRIL, 2024.

*Appearance :*
*Mr. T. M. Siddiqui, Ld. AGP,*
*Mr. Tanoy Chakraborty, Adv.*
*Mr. S. Adak, Adv.*
*…for appellant*
*Mr. Abhrajit Mitra, Sr. Adv.*
*Mr. Farhan Ghaffar, Adv.*
*Ms. Swati Bhattacharyya, Adv.*
*…for respondents.*
*Mr. Somnath Ganguli, Ld. AGP,*
*Mr. Sukalpa Seal, Adv.*
*Mr. Paritosh Sinha, Adv.*
*…for State.*

The Court :- This intra-court appeal arises out of an order dated 15.6.2023 in WPO No.274 of 2020 by the respondent. The respondent contended that they are entitled to the incentives/subsidies under a scheme furnished by the State West Bengal State Support for Industries Scheme, 2008. The respondent was granted sanction under Scheme on 02.12.2011 and for the year 2015 interest subsidy was also granted. However, the subsidies were never disbursed in favour of the writ petitioner which prompted them to approach learned Writ Court. The learned Writ Court has elaborately considered the factual position and in particular clause 16 of the scheme which stipulates the mode of payment. The said clause states that no claim shall be entitled if it is found that the concerned unit defaulted in the matter of payment of VAT dues under the West Bengal Value Added Tax 2003 of the Central Sales Tax Act, 1956. Once the unit is found to be not a defaulter in the matter of payment of VAT/CST they become eligible for payment under the scheme and the procedure for such payment as stipulated in clause 16.1 to 16.13. The learned Single Bench, after taking into consideration the scope and ambit of the said clause and more particularly an opinion rendered by the Additional Commissioner of Commercial Taxes, West Bengal dated 19.05.2018, had allowed the writ petition. It is a submission before us in this appeal that the Additional Commissioner of Commercial Taxes, West Bengal is not competent to issue such an opinion. Even assuming, for the sake of argument we accept such a contention that the fact contained therein being not in dispute, the learned Writ Court was correct in referring to the said opinion. The opinion has been rendered after a discussion with CCT-MD/WBIDC. The undisputed fact being that the respondent writ petitioner is liable to pay VAT on his intra State sales but no VAT payable for the entire period 2011-12 (F.Y.) to 2015-16 (F.Y.) is reduced to nil due to excess I.T.C. set off against the VAT output tax liability. Further the situation of nil VAT payability being reduced to nil arises due to inverted duty structure characterized by higher rates of tax on inputs, locally purchased and lower rates of taxes on intra State sales of any final products and thus there is always accumulation of excess I.T.C. even after setting off against VAT liability. An empirical statement has been referred to which is generated from the database of the Commercial Tax Department on the basis of the quarterly return filed for each of the four quarter of the consecutive financial years, which reflects tax payment behaviour of the dealer. After considering this fact and which are culled out from the database it was opined that the case of the respondent cannot be treated as an export oriented dealer but situation where the respondent is not in a position to fully or partly adjust VAT payable with the sanctioned amount of capital interest subsidy as per Terms and Conditions of the WBISS 2008 scheme. Thus upon interpretation of the factual position the learned Single Bench in our view rightly held that writ petitioner was entitled to the sanction of the subsidy. That apart the learned Single Bench has also rightly interpreted the clause 16 of the terms of the scheme which states that the unit should not have been defaulter. Thus in the facts and circumstances of the case the learned Single Bench rightly granted the relief as sought for. Thus we find no grounds to interfere with the order passed by the learned Single Bench.

After we have dictated the order the learned Counsel appearing for the State requests that time for complying with the direction passed by the learned Single Bench may be extended. Time for compliance is extended by twelve weeks from the date of the receipt of the server copy of this order.

Learned Advocate appearing for the respondent submitted that subsidy amount may be paid along with interest. Such a prayer is negative, since adjudication was whether the respondent was entitled to grant of subsidy and the writ petition was pending for three years and the matter stood finally resolved as of now. Therefore, the respondent shall not be entitled to any interest.

The appeal is accordingly dismissed.

The connected application also stands closed.

.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

pkd/GH.