

D/L.37.
March 7, 2024.
MNS.

WPA No. 8525 of 2023

Adani Wilmar Limited and another
Vs.
The State of West Bengal and others

Mr. Rajarshi Dutta,
Mr. Rahul Dhanuka,
Mr. Niraj Baheti

... for the petitioners.

Mr. Tanoy Chakraborty,
Mr. Saptak Sanyal

...for the State.

Mr. T. M. Siddiqui,
Mr. T. Chakraborty,
Mr. S. Adak

...for the WBIDC.

1. The petitioner no. 1 opted for an incentive Scheme floated by the respondent authorities and was granted the benefits under the same. Registration Certificates (RC- I and RC-II) were also issued to the said petitioner in terms of the scheme, thereby recognizing the entitlement of the petitioner to be granted the benefits of the scheme.
2. Subsequently, however, after having disbursed a portion of the dues of the said petitioner under the scheme as lately as on September 1, 2017, the respondent authorities have refused to disburse the rest of the amount of the scheme on the plea that in

the altered GST regime, the scheme cannot be continued, since the scheme did not contemplate of such tax.

3. Learned counsel for the petitioners places reliance on Clause 19.2 of the scheme in particular which provides that in the event of the West Bengal Value Added Tax, 2003 being replaced by any other Act, the provision of the scheme will apply *mutatis mutandis* even after the new Act comes into force.
4. That apart, it is argued that on September 1, 2017, that is, after the coming into force of the GST regime on July 1, 2017, amounts were disbursed under the Scheme to the said petitioner by including GST components. Thus, it is too late in the day for the respondents to deny the claim of the said petitioner regarding the rest of the amount under the scheme.
5. Learned counsel for the petitioners places reliance on a co-ordinate Bench judgement of this court dated September 21, 2022 in *WPO/2308/2022 (Prime Cold Stores Pvt. Ltd. and another Vs. The State of West Bengal and others)* where, while considering the same clause, the learned Single Judge held in favour of disbursement of the incentive, since the petitioners therein had fulfilled all the other

conditions of the Scheme. The said matter went up to a Division Bench and thereafter to the Supreme Court and the order of the learned Single Bench was upheld.

6. Learned counsel appearing for the respondent authorities controverts the arguments of the petitioners.
7. It is contended that the GST Act subsumed all the pre-existing indirect tax statutes, including those relating to VAT. It is sought to be argued that in such scenario, the GST Act has replaced not only the VAT Act but also the other statutes governing indirect tax. Hence, the provisions of Clause 19.2, which only contemplates a statute replacing the VAT Act alone, cannot be considered to be a replacement of the VAT Act in view of the GST taking into account other indirect taxes as well.
8. That apart, learned counsel for the petitioner cites the judgment in the case of *Union of India Vs. Mohit Minerals Private Limited*, reported at (2022) 10 SCC 700. In the said judgment, the Supreme Court had observed inter alia that in the pre-GST regime, the Union of India had the exclusive powers to contemplate to impose indirect taxes, that is, on intra-state sale of goods, customs duty,

service taxes and excise duty. The states had the exclusive power to impose tax on intra-state sale of goods, luxury tax, entertainment tax, purchase tax and taxes on gambling and betting. The GST regime, it was held, has subsumed all the indirect taxes.

9. Learned counsel for the respondents next argues that the incentive scheme is in the nature of concession and the petitioner cannot claim a right as such.

10. That apart, the doctrines of estoppel or promissory estoppel are not applicable to an incentive scheme.

11. In addition, learned counsel for the respondent authorities places reliance on Clause 7.2 of the Incentive Scheme, under which provision a hearing has been fixed by the respondent authorities. A notice was given to the petitioners for such hearing, which has been annexed and assailed by way of a supplementary affidavit.

12. It is argued that in view of the issuance of the said notice, it is in doubt whether the petitioners are entitled to the Scheme at all, since the RC-II granted to the said petitioner is itself under scrutiny.

13. That apart, it is contended that on a plain reading of the Scheme, read with the relevant

documents, in particular, the document dated November 16, 2016 annexed at page 93 of the writ petition whereby the said petitioner was given the benefit of the Scheme, it transpires that the petitioners do not come within the purview of the Scheme.

14. Clause 3.1.6.3 of the Scheme defines a new unit to include expansion for a new product in the same location of an existing unit already registered under a previous scheme.

15. It is submitted that in the sanction of the Scheme to the petitioners dated November 16, 2016, it was mentioned that the application for granting the Industrial Promotional Assistance to the petitioners was for the petitioners' expansion of a new item for Manufacturing Refined Palmolein Oil (other than Hydrogenated). However, in paragraph 6 of the writ petition, the petitioners have admitted that they used to produce the same product previously. As such, it cannot be said that the item is new.

16. Hence, the petitioners are not entitled to come within the framework of the Scheme at all.

17. A perusal of the judgement cited by the respondents indicates that the Supreme Court merely elaborated that the GST Act has subsumed primarily the indirect taxation

regime previously existing, both vis-à-vis the Centre and the States.

18. However, it is not the case of either party that there has been any other statute, which has subsumed the VAT Act specifically. The GST regime has subsumed all indirect taxation statutes including the VAT Act.

19. A close scrutiny of Clause 19.2 of the subsidy scheme indicates that the same specifically stipulates that in the event of the West Bengal Value Added Tax Act, 2003 “being replaced by any other Act”, the provision of the Scheme will apply *mutatis mutandis* even after the new Act comes into force.

20. Thus, in the absence of any other Act being introduced apart from the GST Act, which has subsumed the VAT Act, the argument advanced by the respondents cannot be accepted.

21. It is not in doubt that the GST Act has subsumed all indirect tax including VAT, which entitled the petitioners to continue to be governed under the subsidy scheme-in-question.

22. The argument as to there being distinction between the entitlement of the Centre and the States is neither here nor there.

23. Admittedly and even as per such judgment as cited by the respondents, the said component is also envisaged within the GST scheme of things. Both the Centre and States have their respective shares in the GST taxes. Hence, it cannot be said that the respondents would be deprived of any component if the petitioners come within the purview of the GST scheme.

24. Insofar as the argument on promissory estoppel not being applicable to the present case, such argument is not tenable in the eye of law.

25. In the present case, the petitioners were issued both RC-I and RC-II and the petitioners' application under the subsidy scheme was duly sanctioned.

26. Not only that, a substantial portion of the amount due under the scheme to the tune of Rs. 15.05 crore was paid to the petitioner on September 1, 2017, thereby further bolstering the entitlement of the petitioners' claim under the Scheme. Even after the promulgation of the GST regime such disbursement was made. Hence, the petitioners were not only granted sanction under the scheme but were also issued RC-I and RC-II without any demur by the respondents at any point of time and a

substantial portion of the same was paid to the petitioners.

27. The petitioners, in fact, have continued commercial production under the specific promise made by the State of giving the incentive/subsidy under the scheme-in-question.

28. Hence, the doctrine of promissory estoppel is squarely applicable in the present case.

29. The argument that promissory estoppel does not apply to schemes in the nature of concession has spent its force, since much water has flown after the scheme was floated.

30. The concession given by the scheme has been accepted by the petitioners and the petitioners, acting on the said promise of the State, have continued commercial production for a considerable time. The respondents have acceded to the claim of the petitioners under the Scheme, concession or otherwise, by granting RC-I and RC-II and also disbursing a part of the payment. Hence, it is too late in the day to raise a demur to the entitlement of the petitioners to the scheme itself.

31. Insofar as the invocation of Clause 7.2 of the Scheme is concerned, the same is patently an attempt on the part of the respondent

authorities to render the writ petition infructuous and to frustrate the claim made by the petitioners for subsidy in the writ petition.

32. The notice was issued during pendency of the writ petition on a flimsy pretext that there was some deficiency on the part of the petitioners for which the grant of RC II to the petitioners was defective.

33. However, the respondents are squarely barred by estoppel from raising the issue at this belated juncture. Having acted on the RC-II and having disbursed a part of the claim of the petitioners under the scheme long thereafter, the respondents cannot now question the RC-II.

34. Insofar as the further challenge to the entitlement of the petitioners sought to be raised by learned counsel for the respondents regarding the product not being 'new' within the contemplation of Clause 3.1.6.3 of the scheme, the same has been made only from the bar as an afterthought and at the time of final hearing of the writ petition and was never urged by the respondents at any point of time.

35. Rather, the sanction was granted to the petitioners under the said Scheme, thereby clearly admitting the fact and acquiescing to

the position that the petitioners were entitled to the benefits of the scheme.

36. In fact, if there was any demur on such count, the respondents ought to have taken the steps as contemplated under the scheme much earlier.

37. Having not done so, the respondents are precluded from taking such a plea at this belated juncture.

38. In such view of the matter, the petitioners are squarely entitled to claim the benefits of the subsidy scheme-in-question even after coming into force of the GST Act, as per Clause 19. 2 of the Scheme.

39. Such position has also been strengthened by the respondents themselves by disbursing a substantial portion of the dues of the petitioners on September 01, 2017, after the coming into force of the GST Act, in fact including GST components in the said bills.

40. In such view of the matter, the challenge thrown in the present writ petition succeeds. The respondent authorities have acted palpably *de hors* the scope of the scheme in passing the impugned order dated February 17, 2022 authored by the Managing Director, West Bengal Industrial Development Corporation Limited where it has been held

that the petitioners are not eligible for disbursement/sanction for incentive under the Scheme. The said order is, thus, set aside.

41. Apart from setting aside the said order, the notice issued on March 30, 2023, directing the petitioners to appear for hearing regarding alleged violation of Clause 7. 2, which is Annexure A at page 5 of the supplementary affidavit, is also palpably contrary to the representation given by the respondent authorities to the petitioners. The respondents have proceeded on the premise of the RC-II already issued to the petitioners being valid. Hence the notice dated March 30, 2023 is also palpably unlawful and *de hors* the scope of the Scheme. Hence, the notice dated March 30, 2023 and any act, if done in consequence thereto, are hereby set aside as well.

42. The respondents are directed to disburse the balance amount of the claim of Rs.4070 lakhs under the West Bengal State Support for Industries Scheme, 2008, in favour of the petitioners at the earliest, preferably within two months from date, subject to the petitioners complying with the other formalities as contemplated in the said Scheme.

43. With the aforesaid observations and directions, WPA No. 8525 of 2023 is disposed of.

44. There will be no order as to costs.

45. 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.)