
(2011) 05 CAL CK 0101

In the Calcutta High Court

Case No : APO No. 332 of 2008; W.P. No. 1970 of 2004

Abhijit Tea Company Pvt. Ltd.

APPELLANT

Vs

West Bengal Industrial Development Corporation Ltd.

RESPONDENT

Date of Decision : 19-05-2011

Acts Referred:

Contract Act, 1872 — Section 23

Income Tax Rules, 1962 — Rule 2

Industries (Development and Regulation) Act, 1951 — Section 10, 10(2)

Citation : (2011) 05 CAL CK 0101

Hon'ble Judges : Shuhla Kabir (Sinha), J; Pinaki Chandra Ghose, J

Bench : Division Bench

Advocate : Saptansu Basu, Abhrajit Mitra and Ananya Das, for the Appellant; Ashok Dhandania, Rudra Samar Dey and Soumyajit Bhatta, for the Respondent

Final Decision : Dismissed

Judgement

Pinaki Chandra Ghose, J.—This appeal is directed against a judgment and/or order dated 30th September, 2008 passed by the Hon'ble Single Judge in a writ petition being W.P. No. 1970 of 2004. The writ petition was filed before the writ petitioner/appellant herein. The writ petition was filed by the writ petitioner praying for the following orders:

"(a) A writ in the nature of mandamus be issued directing and/or commanding the respondents to forthwith cancel, rescind and/or recall the purported decision of the respondent No. 1 contained in the letter dated 30th May, 2003 and 23rd June, 2003 being in Annexure "P-20" hereto and the purported observation of the respondent No. 2 in his letter dated 24th May, 2003 that the tea plantation is not an industry and contained in Annexure "P-19" hereto and act according to law;

(b) A writ in the nature of mandamus do issue directing and/or commanding the respondents to forthwith consider and admit the claim of the petitioner on

account of state capital investment subsidy on capital investment made in the tea plantation as well as interest subsidy and intimate the mode of disbursement thereof to the petitioner in pursuance of the West Bengal Incentive Scheme, 2000 and act according to law;

(c) An order and/or direction be given to the respondents to produce all relevant records relating to the purported decision of the respondent No. 1 contained in the letters dated 30th May, 2003 and 23rd June, 2003 being in Annexure "P-20" hereto and the purported observation of the respondent No. 2 in his letter dated 24th May, 2004 that the tea plantation is not an industry and contained in Annexure "P-19". So that the same may be quashed and/or set aside and conscionable justice is rendered;

(d) A writ in the nature of prohibition do issue prohibiting and restraining the respondents, their servants and agents from acting upon or giving any effect or further effect to the purported decision of the respondent No. 1 contained in the letters dated 30th May, 2003 and 23rd June, 2003 being Annexure "P-20" hereto and the purported observation of the respondent No. 2 in his letter dated 24th May, 2004 that the tea plantation is not an industry and contained in annexure "P-19" hereto and from refusing or denying the claim of the petitioner on account of state capital investment subsidy in respect of the investments made in the tea plantation and interest subsidy under the West Bengal Incentive Scheme, 2000.

(e) Rule Nisi in terms of prayers (a), (b), (c) and (d) and

(f) Injunction restraining the respondents from acting upon or giving any effect or further effect to the purported decision of the respondent No. 1 contained in the letters dated 30th May, 2003 and 23rd June, 2003 being Annexure "P-20" hereto and the purported observation of the respondent No. 2 in his letter dated 24th May, 2004 that the tea plantation is not an industry and contained in Annexure "P-19" hereto.

(g) An order directing the respondents to forthwith consider and admit the claim of the petitioner on account of state capital investment subsidy on capital investment made in the tea plantation as well as interest subsidy and additional interest subsidy and intimate the mode of disbursement thereof to the petitioner in pursuance of West Bengal Incentive Scheme, 2000 and act according to law;

(h) Ad interim order in terms of prayers (f) and (g) above;

(i) Costs of and incidental to this application be paid by the respondents;

(j) Such further or other order or orders made and direction or direction be given as to this Hon"ble Court may deem fit and proper."

2. After hearing the parties the Hon"ble Single Judge was pleased to dismiss the said writ petition.

3. Being aggrieved and dissatisfied with the said judgment and order dated 30th September, 2008 the present appeal has been filed.

4. The facts of the case briefly are as follows:

5. The writ petitioner Abhijit Tea Company Private Limited owned a tea estate known as Raja Tea Estate. The company inter alia carries on its business for plantation of tea at the said tea estate and further set up a tea manufacturing and processing factory at the said tea estate.

6. For the purpose of promotion and growth of industries, the State of West Bengal formulated an Incentive Scheme known as West Bengal Incentive Scheme, 2000 (hereinafter referred to as "the said Scheme"). The said scheme came into force from 1st January, 2000 and was valid for a period of five years, i.e. 31st December, 2004. The company decided to avail of the benefits under the said scheme. For such reason the company expanded the yield of its tea plantation from 7.5 lac kgs. to 10 lac kgs. per annum by undertaking new plantation and filling of the vacancies in the existing plantations and also by expanding the capacity of the factory for manufacturing and processing tea from 7 lac kgs. to 10 lac kgs. per annum by installing new plant and machinery. The said scheme was available to the units who have obtained acknowledgements in the prescribed form from the Secretariat for Industrial Assistance, Ministry of Industry, Government of India. Under the said scheme it has been specifically stated that the incentive is not available to the industries mentioned in the Negative List.

7. Under the said scheme the territory of the State of West Bengal had been classified into three zones and/or groups. The District of Jalpaiguri falls under Group - C Zone. The subsidy available under Group C has been specifically mentioned under clauses - 8, 9 and 15(2) of the said scheme. It is the case of the writ petitioner/appellant that the writ petitioner was entitled to get the benefit under the said scheme. Accordingly, the writ petitioner applied to the authorities for obtaining certificates required under the said scheme.

8. In pursuance of such application, the appellant received acknowledgement from the Secretariat for Industrial Assistance, Ministry of Industry, Government of India and thereafter the company applied before the Director of Industries on 8th October, 2001 for registration and for issuance of eligibility certificate under the said scheme. On 19th October, 2001 the Director of Industries, West Bengal issued requisite certificate of registration under the said scheme to the company. Thereafter, West Bengal Industrial Development Corporation Limited (WBIDC) forwarded eligibility certificate under the said scheme to the company. The said eligibility certificate clearly provides tea plantation as an item of manufacture. Subsequent thereto, the writ petitioner invested substantial amount in respect of said two expansion projects to the tune of Rs. 283.04 lacs. The said investment of Rs. 283.04 lacs was met by the writ petitioner in the following manner :

"(a) Term loan from Bank of India Rs. 150.00 lacs

(b) Unsecured loan from third parties lacs Rs. 70.00

(c) Internal accruals and investments lacs Rs. 62.28

By promoters/shareholders

TOTAL Rs. 283.04."

9. On 18th June, 2002 the company made an application to WBIDC for disbursement of State Capital Investment Subsidy of 25% of the total invested amount of Rs. 283.04 lacs amounting to Rs. 70.76 lacs along with necessary documents including certificate from a Chartered Accountant. It is the case of the appellant/writ petitioner that the company paid interest of Rs. 24,78,528/- to the Bank of India and the company made an application to WBIDC for disbursement of interest subsidy amounting to Rs. 12,39.264/- and it is entitled to interest subsidy of 50%. Thereafter, WBIDC processed the application of the company and agreed to grant subsidy of 25% on the capital investment of Rs. 181.97 lacs. It is further the case of the writ petitioner that WBIDC admitted the claim of the writ petitioner for capital investment subsidy only on the project relating to expansion of the factory but did not take any action on the claim on account of tea plantation.

10. It is further the case of the appellant/writ petitioner that the tea plantation is an industrial activity and issued acknowledgement dated 17th January, 2002. It is contended that the agro and food processing industries is covered under the said scheme and tea industry being an agro-based industry is also covered by the said scheme. It is further the case of the appellant/writ petitioner that tea plantation is not an annual crop. It takes a couple of years to nurture and develop the tea plantation and green tea leaves are plucked only from the development the tea plantation. Therefore, cost and expanses incurred in planting, nurturing, developing tea plantation are capitalized and shown as fixed assets in the balance sheets of the tea company.

11. It is further the case of the appellant that a tea industry is an agro based industry and there is no reason why a tea industry should not form part of agro and food processing industries. It is further the case of the appellant that a tea industry being an agro and food proceeding industry is entitled to all the benefits under the said scheme. By reason of the terms the appellant is entitled to total interest subsidy of 60% of the annual interest liability on loans borrowed from any commercial bank subject to limit of Rs. 120 lacs for a period of nine years and stated that it is recovered under clause 15(2) of the said scheme.

12. On 8th February, 2003, the appellant received a letter dated 29th January, 2003 issued by the Director of Industries whereby it came to learn that by an order dated 24th December, 2002 issued by the Commerce and Industry, Department of the Government of West Bengal, wherein it has been stated that no subsidy under the said scheme can be recommended by the State Government on tea plantation as there are schemes under the Tea Board for the said purpose. The registration certificate issued by the Director of Industries dated 13th February, 2002 should be treated as cancelled.

13. It is the case of the writ petitioner that the writ petitioner on the basis of such registration certificate duly acted in the matter and invested huge amounts and further there is no alternative scheme exists either by the Tea Board or by the other authority for grant for subsidy on expansion of tea plantation.

14. In these circumstances, the appellant challenged the action on the part of the respondent from amending or cancelling the registration certificate and further the conducts of the respondent in refusing or denying the subsidy to the appellant in respect of the expansion of tea plantation stating action on the part of the respondent authority wholly arbitrary, wrongful and the respondents are estopped from denying or refusing to pay such subsidy to the appellant.

15. The grievances of the writ petitioner/appellant herein as ventilated in the said writ petition that the respondent authority wrongly and illegally did not treat the tea plantation as an industry.

16. The only issue in this appeal is that whether tea plantation can be treated as an industry and the appellant/writ petitioner is entitled to get the subsidy to the appellant.

17. Mr. Saptansu Basu, learned Counsel appearing in support of this appeal submitted that on the ground of wrongful refusal of the respondent to grant state capital subsidy on the investments made on tea plantation and the interest subsidy and additional interest subsidy and the appellant according to the learned Counsel is entitled to get the same. Our attention has been drawn to the Incentive Scheme 2000, in particular our attention has also been drawn to the clause 3(vii) of the said scheme which is reproduced hereunder:-

Clause 3 (vii)

".....Unit means any industrial project in large and medium scale having approval in the form of letter of intent, industrial licence or registration certificate, as the case may be, under the Industries (Development and Regulation) Act, 1951 (65 of 1951) or an acknowledgement in the form of Secretariat from Industrial Assistance reference number from Central Government excluding those mentioned in the negative list of industries at Annexure-I of 2000 Schemes:..."

Our attention has been drawn to clauses 3 (xv) & (xx) of the scheme which is also setout hereunder:-

Clause 3 (xv)

"....."Approved Project" means the industrial complex set up in the public or private sector in the State approved by the State or Central Government....".

Clause 3 (xx)

"....."Fixed Capital Investment" mens investment made in land, building, plant and machinery and equipment installed for pollution control measures of the

approved project of the eligible unit on or after the 1st April, 1999 subject to other conditions laid down in paragraph 6 of the 2000 Schemes".

18. Our attention has also been drawn to the "Explanation" under clause (c) which reads as follows:-

"Plant & Machinery: The fixed capital investment in plant and machinery shall be calculated as below:-

The cost of plant and machinery as erected at the approved location. Including the cost of productive equipment such as jigs, dies, moulds etc. and items pertaining to pollution abatement measures but excluding the cost of any second hand plant and machinery as also plant and machinery purchased and installed under hire purchase agreement.

In the case of plant and machinery taken on lease, the leasing fee/charge shall be taken into account, provided that on the expiry of the leasing contracts, the said plant and machinery become the property of the unit.

"Plant & Machinery" will include computer (hardware only) where such computer are used exclusively for the purpose of manufacturing. In case of IT and Electronic Project, plant & machinery includes hardware elective from 01.07.2001: (vide notification No. 538-C1/II dt. 14.08.2001)"

19. Mr. Basu further submitted that in view of the representation made by the State the appellant undertook to go ahead with such expansion project due to availability of the capital investment subsidy of 25 per cent. Accordingly, application was made to the concerned authority for obtaining certificates stipulated under the said scheme. The acknowledgement was also received on 30th July, 2001. Then the company applied to the Director of Industries on 8th October, 2001 for registration and for issuance of eligibility certificate under the scheme which was issued by the said Director of Industries under the said scheme to the company.

20. It is further submitted that the WBIDC also forwarded eligibility certificate under the said scheme to the company. The said eligibility certificate provides tea plantation as an item of manufacture. After obtaining those certificates, substantial investment was made in the expansion project of tea plantation. Mr. Basu contended that all the concerned authority proceeded on the basis that tea plantation is an industrial activity and on the same basis the Director of Industry, West Bengal amended the registration certificate of the company and WBIDC also issued the requisite eligibility certificate.

21. Thereafter, the petitioner was informed by Director of Industries that no subsidy under the said scheme can be recommended by the State Government on tea plantation as there are schemes under the Tea Board for the said purpose. The registration certificate issued by the Director of Industries was treated as cancelled. According to Mr. Basu the respondents, thus, deprived the appellant of its legitimate entitlement of subsidy on the ground of alleged existence of

subsidy scheme of Tea Board. From the letter of the Tea Board it would appear that there is no subsidy that exists or has been granted by the Tea Board. Therefore, denial of subsidy on tea plantation was arbitrary, perverse and a product of non-application of mind.

22. On the contrary, Mr. Ashok Dhandania, learned Counsel appearing on behalf of the respondent contended that for entitlement to get the subsidy the plant and machinery are required to be "erected", therefore, he contended that the tea bushes are not erected but are grown. His further contention is that the plant and machinery are to be erected at the approved location and approved location means any industrial complex set up in the public or private sector in the State approved by the State or the Central Government. Therefore, his first contention that the area of tea garden where the tea bushes are grown cannot attract or can come within the meaning of "plant & machinery".

23. He further pointed out that in a tea garden two activities are undertaken by the tea garden (1) tea plantation where tea bushes are grown and (2) the factory of the tea garden where tea leaves are processed. The investments made on "plant and machinery" in the factory of the tea garden would come with the expression "plant and machinery". But the investments made for growing bushes in the tea plantation would not come with the expression "plant and machinery" or "fixed capital investment". Therefore, he submitted that the incentive is not available under the said scheme in respect of the tea plantation.

24. He further submitted that the appellant suppressed the material fact that the subsidy was not included in the proposed means of finance for expansion of tea plantation. But it was considered as means of finance only for expansion of the factory. The appellant have been deliberately mixed up to phases of expansion in order to claim the subsidy as a means of finance for expansion of tea garden.

25. The sanction of term loan was made on by a sanctioned letter dated 19th May, 2001 for such expansion. Therefore, on that date the appellant/writ petitioner did not have either registration certificate or the eligibility certificate regarding tea plantation. He further submitted that no eligibility certificate could also be issued under the scheme in respect of tea plantation. It is his case that the appellant is not entitled to capital investment subsidy in respect of the investment made by the appellant for expansion to tea plantation.

26. According to Mr. Dhandania the appellant is entitled to subsidy in respect of investment made for expansion of the factory since the factory attached to the tea garden is an agro based industry. Therefore, according to him, tea plantation cannot be considered as part of the plant and machinery for the purpose of State Capital Investment subsidy under the said scheme. Therefore, he submitted that the order passed by the Director of Industries dated 24th May, 2004 is a correct order and the investment made by the WBIDC cannot be said to be illegal.

27. The following decisions have been cited at the bar:-

1. AIR 1999 SC 235 (State of Bihar vs. Steel City Bekerages Ltd.);
2. COMMISSIONER OF Income Tax, MADRAS Vs. MIR MOHAMMAD ALI. ARUNA MILLS LTD. : INTERVENER.,
3. Delhi Cloth and General Mills Ltd. Vs. Union of India (UOI),

28. In State of Bihar vs. Steel City (supra) the Supreme Court dealt with the matter in the context in which the word "plant" is used in Rule 2(v) indicates that it is not used in its wider sense and does not include within its meaning land, building and machinery. It also appears that the Rule-making authority did not intend "plant" mean what is not a fixed asset and the Supreme Court also held that by "plant" what is intended by the rule-making authority is that apparatus which is used by the industry for carrying on its industrial process of manufacture. In respect of an industry manufacturing soft drinks and beverages, it can be said that plant would mean that apparatus which is used for manufacturing soft drinks or beverages and not articles like crates and bottles used for storing the manufactured product.

29. In CIT vs. Mir Mohammad Ali (supra) the Supreme Court decided whether an assessee who is a bus owner and transport operator owning a fleet of buses, replaces in the account year relevant to the assessment year 1950-51 the petrol engines in two of his motor buses by new diesel engines, he is entitled to extra depreciation admissible u/s 10(2)(vi) and 10(via) of the Act. In deciding the said question the Supreme Court held that the word "machinery" when used in ordinary language prima facie, means some mechanical contrivances which, by themselves or in combination with one or more other mechanical contrivances, by the combined movement and interdependent operation of their respective parts generate power, or evoke, modify, apply or direct natural forces with the object in each case of effecting so definite and specific a result. Prima facie the ordinary meaning of the word machinery - and the word machinery is an ordinary and not a technical word - must, unless there is something in the context, prevail in income tax Act also. According to this definition, a diesel engine is clearly machinery.

30. In Delhi Cloth & General Mills Ltd. (supra) the Court decided that the applicability of promissory estoppel will arise in favour of a person acting on the representation and such representation must be clear and unambiguous and not tentative or uncertain.

31. The Supreme Court in the said decision further held as follows:-

"Here the Railways Rates Tribunal apparently appears to have gone off the track. The doctrine of promissory estoppel has not been correctly understood by the Tribunal. It is true, that in the formative period, it was generally said that the doctrine of promissory estoppel cannot be invoked by the promisee unless he has suffered "detriment" or "prejudice". It was often said simply, that the party asserting the estoppel must have been induced to act to his detriment. But this

has now been explained in so many decisions all over. All that is now required it that the party asserting the estoppel must have acted upon the assurance given to him. Must have relied upon the representation made to him. It means, the party has changed or altered the position by relying on the assurance or the representation. The alteration of position by the party is the only indispensable requirement of the doctrine. It is not necessary to prove further any damage, detriment or prejudice to the party asserting the estoppel. The Court, however, would compel the opposite party to adhere to the representation acted upon or abstained from acting. The entire doctrine proceeds on the premise that it is reliance based and nothing more."

32. In the said decision the Supreme Court also quoted in its earlier decision Motilal Padampat Sugar Mill where the Supreme Court held as follows :

"22.....We do not think that in order to invoke the doctrine of promissory estoppel it is necessary for the promise to show that he suffered detriment as a result of acting in reliance on the promise. But we may make it clear that if by detriment we mean injustice to the promise which could result if the promisor were to recede from his promise then detriment would certainly come in as a necessary ingredient. The detriment in such a case is not some prejudice suffered by the promise by acting on the promise, but the prejudice which would be caused to the promise, if the promisor were allowed to go back on the promise."

"25. It is, however, quite fundamental that the doctrine of promissory estoppel cannot be used to compel the public bodies or the Government to carry out the representation or promise which is contrary to law or which is outside their authority or power. Secondly, the estoppel stems from equitable doctrine. It, therefore, requires that he who seeks equity must do equity. The doctrine, therefore, cannot also be invoked if it is found to be inequitable or unjust in its enforcement."

33. Therefore, it appears to us that the benefits under the said scheme cannot be granted to the company, keeping in mind the fact, that the tea plantation is not classified as an industry and is actually classified under "section O" - i.e. agricultural, hunting, forestry and fishing. Therefore, in our considered opinion, the decision cannot be a help to the appellant.

34. In an unreported judgment in W.P. No. 13542 (W) of 2003 (Kharibari Tea Company Ltd. & Anr. vs. West Bengal State Electricity Board & Ors.), the Court came to the conclusion that on the basis of admitted fact that there was no electrical supply lying in the existing industrial unit of the said writ petitioner while was engaged for harvesting the green leaves as the unit was being operated by a generator, there was no satisfaction of the meaning of the word "additional consumption" and accordingly the concerned clause of concession is not attracted. The petitioner was never the consumer of electricity and accordingly there was no question of additional consumption due to setting up of

processing and manufacturing units de novo by installing the new machines and the Court upheld the decision of the authorities dismissing the writ petition.

35. In *M/s. Pawan Alloys and Casting Pvt. Ltd., Meerut etc, etc. Vs. U.P. State Electricity Board and others*, , where the Supreme Court held as follows :

"It was, therefore, held that incentives to new industries by way of tax holiday or tax exemption could validly form the subject-matter of promissory estoppel as it would not be against public policy but insofar as any representation seeks to enable the promise to get refund of the collected sales tax it would remain unconstitutional being violative of the taxation scheme of the Constitution and, therefore, would be contrary to public policy and would get voided u/s 23 of the Contract Act."

36. In *Kasinka Trading and another, etc. etc. Vs. Union of India and another*, the Supreme Court observed as follows :

"11. The doctrine of promissory estoppel or equitable estoppel is well established in the administrative law of the country. To put it simply, the doctrine represents a principle evolved by equity to avoid injustice. The basis of the doctrine is that where any party has by his word or conduct made to the other party an unequivocal promise or representation by word or conduct, which is intended to create legal relations or effect a legal relationship to arise in the future, knowing as well as intending that the representation, assurance or the promise would be acted upon by the other party to whom it has been made and has in fact been so acted upon by the other party, the promise, assurance or representation should be binding on the party making it and that party should not be permitted to go back upon it, if it would be inequitable to allow him to do so, having regard to the dealings, which have taken place or are intended to take place between the parties.

12. It has been settled by this Court that the doctrine of promissory estoppel is applicable against the Government also particularly where it is necessary to prevent fraud or manifest injustice. The doctrine, however, cannot be pressed into aid to compel the Government or the public authority "to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make". There is preponderance of judicial opinion that to invoke the doctrine of promissory estoppel clear, sound and positive foundation must be laid in the petition itself by the party invoking the doctrine and that bald expressions, without any supporting material, to the effect that the doctrine is attracted because the party invoking the doctrine has altered its position relying on the assurance of the Government would not be sufficient to press into aid the doctrine. In our opinion, the doctrine of promissory estoppel cannot be invoked in the abstract and the Courts are bound to consider all aspects including the results sought to be achieved and the public good at large, because while considering the applicability of the doctrine, the Courts have to do equity and the

fundamental principles of equity must for ever be present to the mind of the Court, while considering the applicability of the doctrine. The doctrine must yield when the equity so demands if it can be shown having regard to the facts and circumstances of the case that it would be inequitable to hold the Government or the public authority to its promise, assurance or representation."

37. In the case of State of Orissa and Others Vs. Mangalam Timber Products Ltd., where the Supreme Court held to attract the applicability of the principle of estoppel it is not necessary that there must be a contract in writing entered into between the parties. The only question is whether there was any persuasion on behalf of the State authority to establish an industry and the respondents having acted on the solemn promise of the State Government, purchased the raw materials at a fixed price and also sold its products by pricing the same taking into consideration the price of the raw materials fixed by the State Government and supplied the State Government which cannot be permitted to revise the terms for supply of raw materials adversely to the interest of the company. But in the instant case, it appears that the said principle cannot be help to the appellant in the facts and circumstances of this case.

38. In Scientific Engineering House (P) Ltd. Vs. Commissioner of Income Tax, Andhra Pradesh, , also cannot be a help to the writ petitioner since the Supreme Court dealt with the Income Tax Act and the relevant Income Tax Rules and in the facts and circumstances of this case the said decision has no application.

39. The decisions in Harinagar Cane Farm and Others Vs. State of Bihar and Others, and Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, are not applicable in the facts and circumstances of this case.

40. Therefore, the question in this case that whether the assurance given under the scheme was clear and unambiguous or was there any representation made on behalf of the authority or was there any assurance? Unfortunately all such elements are absent in the given facts. Therefore, we do not find that the writ petitioner had to alter its position on an assurance given by the authority. Therefore, in our opinion, writ petitioner is not entitled to get any benefit, on the ground of promissory estoppel.

41. The question is whether the tea plantation can be equated with "plant & machinery"? We have duly considered the meaning as given in the scheme. We found that tea plantation is nothing but where tea bushes are grown. Therefore, the activities in a garden is to have the tea leaves out of the tea bushes which are grown and thereafter in the factory it has to be processed. Therefore, investments for such processing through "plant & machinery" would come within the meaning of "plant & machinery" as given in the scheme. But tea bushes, in our opinion, cannot be treated as "plant & machinery" under the meaning as stated in the scheme with regard to "plant & machinery".

42. After appreciation of materials placed before us on behalf of the respondent authorities and after keeping in mind the definition of "plant and machinery" in

the said scheme, in our opinion, the appellant is not entitled to get benefit under the scheme.

43. We have also noticed that the first loan was sanctioned on 19th May, 2001 and second loan was sanctioned on 14th May, 2002. The petitioner at that point of time could not produce any material or document which would show that there had been any assurance given by the respondent to grant incentives prior to the sanction of the said loan. It was pointed out on behalf of the respondent that the registration certificate was not subsisting as on the date of the sanction of the first loan. It was submitted that there was no eligibility certificate available or produced even on the date of sanctioning the second loan by the appellant/writ petitioner. Therefore, on such ground the appellant cannot have the benefit out of the said scheme as claimed in the writ petition.

44. We have noticed from the negative list mentioned in the schedule appended to the scheme, wherefrom it appears that the said industry of the writ petitioner/appellant cannot have any benefit under the said scheme. It further appears that from the communication of Director of Industries dated 29th January, 2003 wherefrom it is clear that the tea plantation, at that time, in the tea garden in this State cannot be recommended for granting incentives as there were other incentives in existence at the instance of the Tea Board for the said purpose.

45. Therefore, on that ground also the appellant cannot get any benefit under the said Scheme of 2000.

46. Accordingly for the reasons stated hereinabove we do not have any hesitation to affirm the order passed by the Hon"ble Single Judge. The order of the Hon"ble Single Judge does not suffer from any illegality or irregularity. There is no merit in this appeal.

47. Hence, we dismiss this appeal.

48. Photostat certified copy of this judgment, if applied for, be supplied to the parties.

LATER:

49. Stay of operation of this judgment as prayed for is granted for a period of six weeks from date.

Shukla Kabir (Sinha), J.

I agree.