(2019) 12 UK CK 0113

In the Uttarakhand High Court

Case No : Special Appeal No. 1024 Of 2019

B.A. Alloys Pvt. Ltd APPELLANT

Vs

Union Of India & Others RESPONDENT

Date of Decision : 17-12-2019

Acts Referred:

Citation : (2019) 12 UK CK 0113

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : Aditya Singh, Pankaj Chaturvedi, B.P.S. Parihar

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. This Special Appeal is preferred against the order passed by the learned Single Judge in WPMS No. 551 of 2015 dated 21.11.2019. The appellant

herein invoked the jurisdiction of this Court by filing WPMS No. 551 of 2019 seeking a writ of certiorari to quash the order dated 06.01.2015 issued by

the second respondent; and a writ of mandamus commanding the respondents to accept and consider the petitionerâ??s application for grant of

benefit of capital subsidy under the 2003 Scheme, and as extended.

2. Facts, to the limited extent necessary, are that the Government of India, with a view to provide incentives to industries which are established in the

Hilly States like Himachal Pradesh and Uttarakhand, introduced the Central Capital Investment Subsidy Scheme, 2003 on 08.01.2003. The said

scheme was made effective w.e.f. 07.01.2003, and was to remain in force till 06.01.2013. Thereafter, by notification dated 04.02.2014, the Central

Capital Investment Subsidy Scheme, 2013 was introduced which was to come into effect from 07.01.2013, and remained in force upto and inclusive of

31.03.2017.

3. The appellant-writ petitioner submitted an application for registration of its Industrial Unit on 21.02.2009, and receipt of such an application was

acknowledged by the Industries Department. The fact, however, remains that the appellant-writ petitioner made no claim for being granted subsidy

either under the Central Capital Investment Subsidy Scheme, 2003 or the 2013 Scheme. Pursuant to an application made by the appellant-writ

petitioner on 03.01.2015, the General Manager, District Industries Center, Udham Singh Nagar informed the District Magistrate, Udham Singh Nagar,

by letter dated 06.01.2015, that the 2003 Scheme was in force only from 07.01.2003 to 06.01.2013; though the petitionerâ??s Industrial Unit had

commenced production in March, 2010, they had not applied for grant of subsidy; and they were, therefore, not entitled for any such grant.

4. It is this order of the General Manger dated 06.01.2015, which is impugned in the writ petition. In the order under appeal, the learned Single Judge,

after referring to Clause 6 of the 2013 Scheme, observed that the appellant-writ petitioner did not apply, between 07.01.2003 to 06.01.2013, for grant

of subsidy; the 2003 Scheme of the Central Government came to an end on 06.01.2013; it was extended by the Government for a period of four years

from 07.01.2013 to 31.03.2017; the Scheme was, however, available only to industrial units which had filed its claim before the District Industries

Center within time; the petitioner had moved an application, for grant of subsidy under the said scheme, which was rejected by the District Industries

Center, Udham Singh Nagar stating that the petitioner is not eligible under this Scheme; though the petitionerâ??s company was registered between

2003 to 2013, they did not raise any claim for subsidy between 2003 to 2013 as was provided under the original Scheme; though the scheme was

extended, the extended scheme does not cover the case of the petitioner; the petitionerâ??s Industrial Unit was registered between 2003 to 2013 and,

admittedly, they had not raised any claim for grant of subsidy during this period; and, therefore, their claim was rightly rejected by the District

Industries Center, Udham Singh Nagar. Aggrieved thereby, the present appeal.

4. Mr. Aditya Singh, learned counsel for the appellant-writ petitioner, would submit that, unlike Clause 6 of the 2013 Scheme, the 2003 Scheme only

required the Industrial Unit to be registered, and nothing more; it does not stipulate any particular time frame within which the claim, for grant of

subsidy, should be made; the appellant-writ petitionerâ??s Unit was registered on 21.02.2009; they commenced production in March, 2010; and since

the subsidy, which the petitioner had claimed, was in terms of the 2003 Scheme, and not under the 2013 Scheme, their claim would be governed by the

conditions stipulated under the 2003 Scheme alone; and since no time frame is stipulated under the 2003 Scheme, unlike Clause 6 of the 2013 Scheme,

the learned Single Judge had erred in non-suiting the appellant-writ petitioner on the ground of having failed to make an application before the expiry of

the 2003 Scheme on 06.01.2013.

5. Mr. Aditya Singh, Learned Counsel, would further state that the respondents have not denied the applicability of the 2003 Scheme to the appellant-

writ petitioner, nor have they stated that, under the 2003 Scheme, any time frame is stipulated for making an application; and, therefore, the appellant-

writ petitioner, who falls within the ambit of the 2003 Scheme, is entitled for grant of subsidy in terms thereof.

6. From the acknowledgment issued by the General Manager, District Industries Center, Udham Singh Nagar, it does appear that the appellant-writ

petitioner had made an application for registration on 21.01.2009. The said acknowledgment also records that the activity is proposed to commence on

31.10.2009. However, from the order impugned in the writ petition, it is evident that the appellant-writ petitioner commenced production in March,

2010. Since the petitionerâ??s entitlement for grant of subsidy would depend on the contents of both the 2003 Scheme and 2013 Scheme, it is

necessary to make a brief reference to the relevant clauses of both the subsidy schemes.

7. While the 2003 Scheme was notified on 08.01.2003, the 2013 Scheme was notified on 04.02.2014. The 2013 Scheme is not an extension of the 2003

Scheme. It, however, contains a Clause with respect to Industrial Units registered before 07.01.2013 also i.e. Units governed by the 2003 Scheme.

Clause 6 of the 2013 Scheme, which has been referred by the learned Single Judge in the order under appeal, reads as under:-

â??The Industrial unit registered before 07.01.2013 under the erstwhile scheme of subsidies and have filed the claims within one year from the date of commencement of commercial production/operation would be eligible for subsidies under erstwhile scheme. Units which have registered on or after

07.01.2013 would be covered under the present scheme. However, if such a unit has not registered with DIC (District Industry Centre) due to non

existence of the package during the intervening period or not submitted claim within one year of the date of commencement of commercial production/

operation, the unit can to so not later than 31st May, 2014.â??

8. Since the appellant-writ petitionerâ??s claim is based on the 2003 Scheme, it is also useful to refer to Clause 9 of 2003 Scheme which reads as

under :-

â??9. Procedure for claiming Capital Investment Subsidy :-

Industrial units eligible for subsidy under the scheme will get themselves registered with the State Industries Department prior to taking effective steps

for setting up the new units or undertaking substantial expansion of the existing units and indicate, in their claim for investment subsidy, their

assessment of the total fixed capital/additional fixed capital likely to be invested by them in the plant and machinery of their unit.â??

9. Mr. Aditya Singh, learned counsel for the appellant-writ petitioner, would fairly state that the appellant-writ petitioner would, at best, fall within the

first limb of Clause 6 of the 2013 Scheme, and not under the second limb. The first limb of Clause 6 of the 2013 Scheme related to Industrial Units

registered on or before 07.01.2013 and, since the acknowledgement letter dated 21.02.2009 does show that the petitioner had applied for registration,

we shall proceed on the premise that the said Industrial Unit was registered on that day. It would, therefore, fall within the ambit of an Industrial Unit

registered on or before 07.01.2013 under the erstwhile scheme of subsidy i.e. the 2003 Scheme. Such Industrial Units are required, in terms of Clause

6 of the 2013 Scheme, to have filed their claims within one year, from the date of commencement of commercial production/ operation, to be entitled

for subsidies under the erstwhile scheme i.e. the 2003 Scheme. Since the appellant-writ petitioner commenced commercial production in March, 2010,

the one year period from the date of commencement of commercial production expired in March, 2011, before which they ought to have made a claim

for subsidy in terms of Clause 6 of 2013 Scheme.

10. Mr. Aditya Singh, learned counsel for the appellant-writ petitioner, however

contends that Clause 6 of the 2013 Scheme has no application, and it is Clause 9 of 2003 Scheme which would apply; and, since it does not stipulate any time frame within which the claim for subsidy should be made, the appellant-writ petitioner is entitled, by way of this application dated 03.01.2015, to seek grant of subsidy; and subsidy should have been extended to them.

11. It is necessary, in this context, to examine whether Clause 9 of the 2003 Scheme, as extracted hereinabove, prescribes any time frame with which the claim for subsidy should be made. In terms of Clause 9, Industries eligible for subsidy under the Scheme are required to register themselves with the State Industries Department prior to taking effective steps for setting up a new Unit. The petitioner has complied with this limb of Clause 9. The second limb of Clause 9, of the 2003 Scheme, requires such industrial units to indicate, in their claim for investment subsidy, their assessment of the total fixed capital likely to be invested by them in the plant and machinery of their unit. It is evident, from the second limb of Clause 9, that the claim for investment subsidy should be made before investment by the Unit in its plant and machinery. The Industrial unit of the appellant was required to assess the total fixed capital, which it was likely to invest in plant and machinery, for claiming subsidy. The words â??their assessment of the total fixed capital likely to be invested by them in the plant and machinery of their Unitâ? show that the claim for investment subsidy should be made even before fixed capital is invested in plant and machinery i.e. the application seeking subsidy should be made before the Unit procures plant and machinery. Since the Unit commenced production in March, 2010, it is clear that they must have procured the plant and machinery prior thereto. Even if we were to presume that March, 2010 is when they purchased their plant and machinery, the claim for subsidy, in terms of Clause 9 of the 2003, Scheme should have been made prior thereto.

12. In terms of the 2003 Scheme, the application for subsidy should have been made by appellant-writ petition before March, 2010, and in terms of the 2013 Scheme they ought to have made an application before March, 2011. The appellant-writ petitioner has done neither and is, therefore, not entitled to claim the benefit of subsidy under either of these two schemes.

13. It is true that the order, impugned in the writ petition, only states that they

are not entitle for subsidy as they had not made the application within

time. It does not specifically refer either to Clause 9 of the 2003 Scheme or to Clause 6 of the 2013 Scheme. The counter affidavit filed by the

respondents is also bereft of the required particulars. The fact, however, remains that the appellant-writ petitionerâ??s entitlement for grant of

subsidy must be adjudicated strictly in terms of the conditions stipulated in the 2003 and the 2013 Schemes; and, since we are satisfied that the

appellant-writ petition has failed to adhere to the conditions stipulated in Clause 9 of the 2003 Scheme, and Clause 6 of the 2013 Scheme, in making a

claim for subsidy within time, they are not entitled for the relief sought for in the writ petition. The learned Single Judge has, in our view, rightly

dismissed the writ petition, albeit on other grounds. The Special Appeal fails and is, accordingly, dismissed. No costs.

