(2022) 03 CAL CK 0017

In the Calcutta High Court

Case No : WPO No. 406 Of 2021

Electrosteel Castings Ltd. & Anr. APPELLANT

Vs

State Of West Bengal & Ors. RESPONDENT

Date of Decision : 10-03-2022

Acts Referred:

Citation : (2022) 03 CAL CK 0017

Hon'ble Judges : Krishna Rao, J

Bench : Single Bench

Advocate : Kishore Dutta, A. Ali, Prabhat Kumar Srivastawa

Final Decision : Disposed Of

Judgement

Krishna Rao, J

This writ petition is directed against the order passed by the Director of Industries, West Bengal dt. 13th November, 2020 wherein the application of the petitioner company for amendment of registration certificate was rejected on the ground of non-compliance with Para 13.1 of the West Bengal Insentive Scheme 2004 and the direction of Industries, Commerce and Enterprises Department, West Bengal.

The petitioner company had made an application before the respondent no. 2 for registration under the said Scheme. In the said application the petitioner company indicated that the petitioner company was an existing establishment and the proposed item for which registration was sought, was indicated to be conversion of Furnace Oil to Coal Gas. The Director of Industries issued a Registration Cerificate to the petitioner company under the said Scheme and in the Registration Certificate, the proposed item of manufacture was mentioned as "Piped Coal Gas" and the registration is valid uptill 3rd March, 2008.

On 14th December, 2005 the petitioner company submitted an application for amendment of manufacture item in the the Registration Certificate for use of

Coal Gas in place of Furnace Oil and as per the request of the petitioner, the respondent no. 2 allowed the item of amendment as use of Coal Gas in place of Furnace Oil.

The Executive Director of West Bengal Industrial Development Corporation Ltd. vide its letter dt. 8th February, 2006 informed the petitioner that the unit of the petitioner company is eligible for the incentives declared under the Scheme of 2004. On 9th October, 2007 the General Manager of Greater Calcutta Supply Corporation Ltd. had forwarded the bills and vouchers of paid gas bills for Coal Gas consumption for the period from 06.01.2004 to 02.01.2007 received from the petitioner company for grant of subsidy of consumption of coal gas and accordingly the West Bengal Industrial Development Corporation time to time sanctioned Coal Gas Subsidy to the petitioner company.

The petitioner company had applied for issuance of certificate for obtaining incentive under the said scheme for subsidy of sale tax before the sale tax authorities and in reply to the request made by the petitioner, the Commissioner, Commercial Tax West Bengal informed the petitioner that there is no item for sale and they cannot issue a certificate certifying the tax paid by the petitioner company. On receipt of reply , the petitioner realized that the item of sale being Ductile Iron Pipe is not mentioned in the application and accordingly the petitioner submitted an application to the Director of Industries, Government of West Bengal for amendment of item of manufacture in the Registration Certificate by incorporating as use of coal gas for manufacture of 2,00,000 MTs of Ductile Iron Pipe.

The Director of Industries vide communication dt. 4th February 2015 informed the petitioner that further amendment of Registration Certificate after nine years from the date of issuance by including the product of Ductile Iron Pipe was not feasible as the Scheme expired long back. On 10th February, 2015 the petitioner had again submitted a representation to the Director of Industries by drawing the attention with respect of Clause 13.1 of the Scheme. Thereafter, the petitioner had made several representations to the concern authorities for consideration of amendment of the Registration Certificate. The respondent authorities have issued notice to the petitioner for appearance of the petitioner in person and accordingly the petitoner had appeared and also filed his written submissions. Inspite of personal hearing the respondents failed to take decision, and the petitioner had preferred a Writ Application before this Court being WP. 110 of 2019 and the said writ petition was disposed of by the coordinate bench of this Court by directing the concern authority to decide the application of the petitioner within a period of eight weeks by giving an reasonable opportunity of hearing to the petitioner. After the order passed by the coordinate bench of this Court, the respondents have issued notices to the petitioner and accordingly the petitioner had appeared before the concern authority but inspite of conclusion of hearing the authorities failed to pass final order and finding no other alternative, the petitioner had again filed a writ application being WP No. 345 of 2020 and the Coordinate Bench of this Court had disposed of the writ application by directing the concern authority to pass a reasoned order within a period of four weeks from date.

After the order passed by the Coordinate Bench of this Court, the Respondent no. 2 had passed the following order on 13th November, 2020:

"On scrutiny of the submitted certificate of Expenditure issued by GM, Greater Calcutta Gas Supply Corporation Ltd. (GCGSCL), it is seen that the company has been consuming coal gas from 01.11.2003. It may be mentioned that in terms of West Bengal Incentive Scheme, 2004 an unit is eligible to get subsidy for conversion for use of piped coal gas on or after 01.01.2004. The matter was referred to the Department of Industries, Commerce & Enterprises for necessary instruction.

The Department of Industries, Commerce & Enterprises vide letter No. 260-ICE-15014(11)/2/2021-ADMIN SECTION-Dept. OF ICE, dated 24.06.2020 has confirmed that the actual commencement of supply of coal gas by, M/s. GCGSCL to M/s. Electrosteel Casting Ltd is 01.11.2003 on the basis of communication by GCGSCL and "hence, the question of amendment of RC does not arise as it fails to meet the demand of the WBIS-2004".

Therefore, after careful consideration of the representation dated 30.08.2019 of the company and upon hearing the representatives of the company, the application for further amendment of Registration Certificate is rejected on the ground of non-compliance with Para 13.1 of WBIS, 2004 and direction of Industries, Commerce and Enterprises Department, West Bengal."

Mr. Kishore Dutta, Ld. Senior Advocate representing the petitioner submitted that the impugned order dt. 13th November, 2020 has been issued by the person other than the earlier Director of Industries Ms. Debjani Bhattacharjee who had heard the petitioner in person. It is further submitted that the officer who had passed the impugned order never heard the representative of the petitioner and had passed the order without giving any opportunity of hearing to the petitioner.

Ld. Senior Counsel for the petitioner company further submitted that the impugned order is passed on the basis of the certificate of expenditure issued by the General Manager, Calcutta Gas Supply Corporation Limited wherein it is mentioned that the company has been consuming Coal Gas from 01.11.2003. It is further argued that the respondent no. 2 had referred the matter to the Department of Industries, Commerce and Enterprises, West Bengal for instructions and department vide letter dt. 24th June, 2020 has informed that the actual commencement of supply of Coal Gas by respondent no. 6 to the petitioner company is 1st November, 2003. It is further urged that the petitioner company is consuming coal gas for its commercial production from 2nd January, 2004. On 1st Novemeber, 2003 the meter regulating station was installed at the premises of the petitioner company to enable the company to complete the fabrication work at their end.

Ld. Senior Counsel further argued that the respondent no. 6 had issued letter on 6th November, 2019 stating the fact that the petitioner company had started consuming piped gas on and from 2nd January, 2004. It is further submitted that after the impugned order, the petitioner had applied for certain documents under Right to Information Act, 2005 and on receipt of the information the petitioner came to know that vide letter dt. 13th Januray, 2020 the respondent no. 1 had asked for clarification from the respondent no. 6 wherein it was mentioned that any wrong input may cost an unpleasant burden of Rs. 4,11,87,0004/- to the State Exchequer and referring the same it is argued that such statement was made in order to put pressure upon the respondent no. 6 and due to which the respondent no. 6 had issued the letter dt. 19th June, 2020.

Ld. Senior Counsel further submitted that though the respondent had relied the said documents while passing the impugned order but neither the said document was served upon the petitioner nor any opportunity was given to the petitioner to deal with the said documents.

Heard the Ld. Counsel for the petitioner and considered the documents available on record. The Director of Industries, West Bengal had issued Certificate of Resgistration under the West Benagal Incentive Scheme, 2004 in the name of the petitioner on 04.03.2005 and the item of Manufacture is described as Piped Coal Gas. After issuance of the certificate, the petitioner had applied for amendment in the said certificate and accordingly the concern authority had amended the Certificate of Registration as "use of Coal Gas in place of Furnace Oil". In terms of the certificate of Registration, the petitioner had availed the subsidy under the Scheme. As the petitioner did not apply under Form IV of the said Scheme for issuance of Certificate from the Sale Tax Authorities and accordingly, they had applied for issuance of certificate for obtaining incentive under the scheme for subsidy of sale tax before the sale tax authorities. The sale tax authorities refused to issue such certificate with the reason that there is no item involved in the scheme on sale of which the Commissioner can issue a certificate, certifying the tax paid by the petitioner.

On being refused by the sale tax authorities, the petitioner has made an application before the Director of Industries for amendment in the registration certificate "to read as Coal Gas for manufacture of 2,00,000 MTs of Ductile Iron Pipe". The authority concern had rejected the request of the petitioner with the reason that further amendment of Registration Certificate after 9 years from the date of issuance thereof by including the product of Ductile Pipe is not feasible as the scheme expired long back. The petitioner again made representation to the authority by drawing the attention Clause 13.1 of the Scheme and submitted that the scheme came into force from 01.04.2004 and the same was remain valid till 31.03.2009. The petitioner time and again made representation to the authority and accordingly on 13th November, 2020 the authorities have again rejected the request of the petitioner which is impugned in the instant application.

The petitioner to avail the benefit of incentive under the said scheme for subsidy of sale tax had applied for amendment in the Registration Certificate but the same was rejected on 13.11.2020 by holding that the company has been consuming coal gas from 01.11.2003 and in terms of West Bengal Incentive Scheme, 2004 an unit is eligible to get subsidy for conversion for used of pipe coal gas on or after 01.01.2004 and the matter was referred to Department of Industries, Commerce and Enterprises and it was confirmed that the actual commencement of supply of coal gas by the petitioner company is 01.11.2003. The respondents have rejected the request of the petitioner on the ground of non compliance with Para 13.1 of the WBIS Scheme, 2004.

Clause 13 of the West Bengal Incentive Scheme, 2004 reads as follows:

"13. Subsidy for conversion for use of piped gas:

13.1 An existing unit irrespective of its location, undertaking conversion for use of piped gas for manufacture/operation on or after the 1st January, 2004 will be eligible to subsidy equal to 75 % of the investment for necessary conversion of furnace etc., subject to limit of Rs. 10.00 lakhs.

13.2 A new unit for its approved project set up on or after the 1st January, 2004 envisaging use of piped gas for manufacture/operation will be entitled to the benefit prescribed at sub-para 13.1 above for installation of necessary equipments in the units for use of piped gas.

13.3 An existing unit or a new unit mentioned at sub-para 13.1 & 13.2 above will be entitled to subsidy of 20 % of gas charges on gas used for manufacture/ operation for a period of 5 years from the date of commencement of supply gas for commercial manufacture/ operation of the unit."

The specific case of the petitioner is that the petitioner has been consuming coal gas for it commercial production from 2nd January, 2004 and on 1st November, 2003 the Meter Regulating Station was installed at the premises of the petitioner to enable the petitioner to complete the fabrication work. The petitioner relied upon the Certificate of Expenditure Annexure P-7 (Page 78) wherein it was shown that the bill amount for the period from 01.11.2003 to 06.1.2004 is only Rs. 93,533/-, whereas from 06.01.2004 onwards the amount is much higher. The petitioner also relied upon the certificate issued by the Greater Calcutta Gas Supply Corporation dt. 29.04.2008 and the letter issued by the General Manager, Greater Calcutta Gas Supply Corporation Ltd. letter dt. 06.11.2019 wherein the said authority had certified that the petitioner company had commercially started consuming supply of piped gas from 02.01.2004 and the meter was installed at the premises on 01.11.2003 with a view to complete the fabrication work.

The respondent authorities while deciding the request of the petitioner have called for further clarification from the Greater Calcutta Gas Supply Coproration Ltd. vide their letter dt. 13.01.2020 and in reply to the same the GCGSC Ltd. sent reply to the Industries Department clarifying that "the gas meter was installed at the premises of the petitioner on 01.11.2003 which according to them had been treated as date of commencement of supply and all earlier communication in this regard may be ignored."

The specific case of the petitioner is that the respondent authorities have called for the said clarification behind the back of the petitioner and the copy of the said clarification was not served to the petitioner and the petitioner could not get an opportunity to take exception to the said clarification. The petitioner came to know about the said clarification after getting information through Right to Information Act. The case of the petitioner was heard by one officer and the order was passed by another officer without giving an opportunity of hearing to the petitioner.

Clause 13 of the scheme stipulates that undertaking conversion for use of piped gas for manufacture/operation on or after 01.01.2004 will be eligible for subsidy, the respondents failed to consider the contentions raised by the petitioner company that on 01.11.2003 the Meter Regulating System installed at the premises of the petitioner to complete the fabrication work and the petitioner actual started consuming coal gas for production of commercial use from 02.01.2004.

This Court is of the view that the respondents ought to have been proceeded by an opportunity of hearing to the petitioner. Non-grant of opportunity of hearing in confirmity with the principles of natural justice. On the facts and circumstances, also renders the impugned order passed by the Director of Industries, West Bengal dt. 13.11.2020 vulnerable.

In the result, the impugned order dt. 13.11.2020 stands set aside. The respondent no. 2, the Director of Industries, West Bengal is directed to consider the representations submitted by the petitioner for amendment in the Registration Certificate by passing a reasoned and speeking order after giving an opportunity of hearing to the petitioner within a period of four weeks from the date of communication of the copy of this order.

WPO 406 of 2021 is thus disposed of.

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.