

(2023) 05 J&K CK 0054
In the Jammu And Kashmir High Court
Case No : Writ Petition (C) No. 1830 Of 2020

M/S VJ Jindal Cocoa Pvt. Ltd

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 26-05-2023

Acts Referred:

Citation : (2023) 05 J&K CK 0054

Hon'ble Judges : Sanjeev Kumar, J;Puneet Gupta, J

Bench : Division Bench

Advocate : Ankit Awal, J.A. Hamal, Jagpaul Singh

Final Decision : Dismissed

Judgement

Sanjeev Kumar, J

1 The petitioner earlier known as M/S Jindal Drugs Private Ltd., (Cocoa Division) was registered with Central Excise Department vide Central Excise Registration No.AAACJ100AXM004. After the implementation of Goods and Services Tax Act, 2017, all area-based exemption notifications were rescinded. The petitioner got itself registered under the new regime vide GST Registration No. 01AAFCV7278R1ZL. Since the withdrawal of exemptions under the Central Excise Act caused financial hardship to the Industrial units availing such exemptions, the Government came up with Budgetary Support Scheme ['Scheme'] for eligible units in lieu of exemptions vide Notification dated 05.10.2017 issued by the Department of Industrial Policy and Promotion ['DIPP'] in the Ministry of Commerce and Industry, Government of India. This Budgetary Support was available to the eligible units for the residual period in respect of eligible goods subject, of course, to the inspection by the competent team of DIPP. Since the unit of the petitioner fell under the category of eligible units, as such, the petitioner filed its claim under the Scheme. The competent Authority sanctioned the claim and forwarded the same for disbursement as and when the funds were received from DIPP.

2 It appears that the claim of the petitioner though sanctioned, could not be released in its favour in time due to non-availability of requisite funds from DIPP. The petitioner, who was expecting immediate release of its claim felt aggrieved by the inaction of the respondents and, as such, filed the instant petition seeking, inter alia, a direction to the respondents to disburse the amount of Budgetary Support already sanctioned by respondent No.5 in its favour with interest in a time bound manner. A further direction was sought to direct respondent No.5 to decide the applications moved by the petitioner for release of Budgetary Support for the remaining quarters. It seems that, during pendency of this petition, the sanctioned amount was released in favour of the petitioner. The petitioner, however, decided to pursue this petition in respect of its claim for interest on the delayed payment of amount.

3 The petition is contested by the respondents. In the reply affidavit filed by respondent No.4, it is submitted that the amount of Budgetary Support could not be disbursed to the petitioner for the quarter ending March 2019 to quarter ending December 2019 even after its sanctioning because of non availability of requisite funds from the DIPP in the Ministry of Commerce and Industry, Government of India. The respondents are fair enough to state that, in terms of a Circular dated 10.1.2019, the claims under the Scheme are required to be disposed of within two weeks. It is, however, submitted that DIPP allocated only Rs.14.66 crores under the Scheme to UT of Jammu and Kashmir for the financial year 2019-20, whereas the claim of the petitioner alone accounted for Rs.46.61 crores. Apart from the claim of the petitioner, there were other claims pending disbursement in respect of units falling under the jurisdiction of Division-I of CGST Commissionerate, Jammu. CGST Commissionerate, Jammu itself consists of other Divisions such as Jammu-II, Samba and Srinagar. It is the further stand of the respondents that the Scheme does not envisage providing of any interest on the delayed payment. The benefit envisaged under the Scheme is in the shape of concession/incentive provided by the Government for the welfare of eligible industries and, therefore, cannot be claimed as a matter of right.

4 Heard learned counsel for the parties and perused the material on record.

5 It is not in dispute that, during pendency of this petition, the entire amount payable under the Scheme has been disbursed to the petitioner. True it is, that, in terms of Circular dated 10.01.2019, the claims under the Scheme are required to be disposed of within two weeks. It is not the case of the petitioner that the claims for release of payment under the Scheme were not considered or disposed of by the respondents within the stipulated time frame. The amount payable to the petitioner under the Scheme was duly sanctioned in favour of the petitioner. However, the said amount could not be disbursed due to non availability of requisite funds from DIPP. It is also not in dispute that that the benefit envisaged under the Scheme is in the nature of concession/incentive granted by the Government in favour of eligible industries, so as to provide them necessary cushion to face the financial hardship that may have visited such units/industries

due to withdrawal of area based exemption notifications issued under the Central Excise Act. Such being the nature of concession given, no unit could lay a claim to the payment of amount under the Scheme as a matter of right. We are not saying that the Government can refuse to release such benefit in favour of an industry even if it is fully eligible for the benefit under Notification dated 05.10.2017 issued by the DIPP in the Ministry of Commerce and Industry. Absent any specific provision made in the Scheme for grant of interest on the delayed payment of benefit, it is not available to the petitioners to claim interest for each day's delay that occurs in the disbursement of the sanctioned amount. True it is, that the claims submitted under the Scheme are required to be disposed of within a period of two weeks, but, there is no complaint by the petitioner that his claim was not considered or disposed of by the respondents within the stipulated period. Sanction for release of amount was granted in time, but, disbursement of the amount took sometime. It is also not the case of the petitioner that there was deliberate delay on the part of the respondents to release the benefit.

6 Admittedly, the funds at the disposal of Commissionerate were far less than the claims received and, therefore, the amount though sanctioned in favour of the petitioner could not be released till the requisite funds were made available to the Commissionerate by the DIPP. In these circumstances, it is difficult for us to say that the amount payable to the petitioner under the Scheme was illegally, arbitrarily or without any reason withheld by the respondents. We, therefore, do not find the petitioner entitle to interest on the amount disbursed to it under the Scheme for the following reasons:

(i) That having regard to the nature of Scheme, the benefit under the Scheme is not claimable by the eligible industrial units as a matter of right. The benefit envisaged is in the nature of concession/incentive extended by the Government of India to enable the industrial units to tide over the financial hardship to which they may have been exposed with the withdrawal of area-based exemptions under the Central Excise Act;

(ii) That the respondents had a valid reason not to disburse the amount sanctioned immediately. The Commissionerate was facing acute shortage of funds and the funds placed at its disposal by DIPP were not sufficient enough to meet even the claim of the petitioner. The amount was disbursed immediately when the funds became available; and,

(iii) That there is no provision in the Scheme which provides for payment of interest in case of any delay in actual release of the benefit envisaged under the Scheme. Unless, it is pleaded and demonstrated that the amount payable under the Scheme was unauthorisedly and, without any reason, withheld by the respondents, it would be difficult for this Court to penalize the respondents by directing them to pay interest .

7 Viewed from any angle, we find no merit in this petition and the same is, accordingly, dismissed. We, however, make it clear that dismissal of this petition

shall not come in the way of the respondents to process and dispose of the pending claims of the petitioners, if any, in accordance with the Scheme and release the amount, if any, payable to the petitioner without causing any undue delay.