(2019) 11 CAL CK 0002

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 16 Of 2018

Sai Sulphonates Pvt. Ltd. & Anr	APPELLANT
Vs	
State Of West Bengal & Ors	RESPONDENT

Date of Decision : 01-11-2019

Acts Referred:

Citation : (2019) 11 CAL CK 0002

Hon'ble Judges : Debangsu Basak, J

Bench : Single Bench

Advocate : Abhrajit Mitra, Sarvapriya Mukherjee, Satadeep Bhattacharyya, Arnab Sardar, Manali Ali, Soumo Choudhury

Final Decision : Dismissed

Judgement

Debangsu Basak, J

1. The petitioners have sought for a direction upon the respondents to issue Registration Certificate (RC-II) and Certificate for Commercial Production for the Kalaikunda, Kharagpur unit and to disburse the entitlements under the West Bengal State Support for Industries Scheme, 2008.

2. Learned senior advocate appearing on behalf of the petitioners has submitted that, the petitioners are entitled to disbursement under the Scheme of 2008. He has submitted that, the petitioners obtained consent to establish a factory for manufacturing Sulfuric Acid, spent Sulfuric Acid and Captive Power being comforted by the provisions of the Scheme of 2008. The first petitioner had applied for benefits under such Scheme on December 5, 2011. The application was for obtaining Registration Certificate in part one (RC-I). By a letter dated January 28, 2013, the petitioners informed the respondents that the trial production is to commence from February 3, 2013 and that, the expected date of commencement of commercial production is February 20, 2013. According to him, the second respondent was obliged to issue the registration certificate within 45 days from the date of receipt of the application, that is, on or before

January 22, 2012. However, the registration certificate was issued on March 6, 2013 after a gap of 15 months. Such registration certificate was forwarded under cover of a letter dated March 13, 2013. According to him, the Scheme of 2008 requires an applicant to apply for Registration Certificate in part two (RC-II) only after receipt of the Registration Certificate in part one (RC-I). The petitioners having received the Registration Certificate in part one (RC-I) only on March 13, 2013, thereafter applied for issuance of the Registration Certificate in part two (RC-II) on October 29, 2013. According to him, there was no delay on the part of the petitioners in applying for issuance of the Registration Certificate in part two (RC-II). The petitioners followed up the application for issuance of the Registration Certificate in part two (RC-II) by several correspondence. The respondents replied to the letters written by the petitioners. The petitioners provided all details that the respondents required during the exchange of correspondence. The fourth respondent undertaken fixed capital investment assessment of the first petitioner. The fourth respondent completed the fixed capital investment reassessment of the petitioners and forwarded the RC-II to the second respondent after being satisfied about the credentials of the first petitioner. According to the learned Senior Advocate for the petitioners, this was the second fixed capital investment assessment of the first petitioner done by the fourth respondent. It is thereafter that the second respondent claimed that, the petitioners allegedly violated paragraph 7.2 of the Scheme of 2008.

3. Learned senior advocate appearing for the petitioner has submitted that, delay if any in applying for and obtaining the Registration Certificate part two (RC-II) cannot be attributed to the petitioners. In any event, the same is not fatal to the claim lodged by the petitioners. The respondents cannot deny benefits under the Scheme of 2008 simply on the ground of alleged delay in applying for and obtaining Registration Certificate part two (RC-II). He has referred to the various clauses of the Scheme of 2008 and submitted that, there is clause 70 which allows condonation of delay if there be any. Moreover, in the facts of the present case, there was no delay on the part of the petitioners. Therefore, there is no justifiable reason for the second respondent to withhold the benefits under the Scheme of 2008 by not issuing the Registration Certificate part two (RC-II) of the Scheme of 2008.

4. Learned advocate appearing for the State has submitted that, the petitioners are guilty of violations of clause 7.2 of the Scheme of 2008. She has referred to the various clauses of the Scheme of 2008 particularly to clause 7 thereof and submitted that, the petitioners are guilty of delay in applying for issuance of the Registration Certificate in part two (RC-II). The petitioners were issued Registration Certificate in part one (RC-I) on March 6, 2013. By the letter dated March 13, 2013, the State was informed that, commercial production of the petitioners commenced since February 2, 2013. The petitioners applied for the registration certificate in part two (RC-II) on October 29, 2013. Therefore, according to her, the application for issuance of the Registration Certificate in part two (RC-II) was beyond the time period specified under the Scheme of

2008. There is no justifiable ground for the condonation of delay in applying for issuance of the Registration Certificate in part two (RC-II). The petitioners are therefore not entitled to any relief in the present writ petition.

5. Learned senior advocate appearing for the petitioners in reply has submitted that, the respondents were seeking clarifications from the petitioners on one issue or the other. The petitioners were responding to the same. Therefore, it cannot be said that, there was delay on the part of the petitioners in applying for the requisite Registration Certificate in part two (RC-II). He has submitted that, the petitioners are entitled to the reliefs as prayed for.

6. The petitioners claim that the first petitioner is engaged in the business of manufacturing and supply of Sulfuric Acid, Linear Alkyl Benzene Sulphonic Acid (LABSA), Spent Sulfuric Acid and Captive Power. The petitioners claim that, the first petitioner has a plant at Kalaikunda, Kharagpur, District Paschim Medinupur. The petitioners also claim that, they are entitled to the benefits under the Scheme of 2008. The petitioners applied for benefit under the Scheme of 2008.

The petitioner was issued Registration Certificate Part 1 (RC-I) on March 6, 2013. The petitioners applied for Registration Certificate Part 2 (RC-II) on October 29, 2013. The petitioners were however denied the benefit under the Scheme of 2008 on the ground that, the petitioners delayed in applying for and obtaining Registration Certificate Part 2 (RC-II) as stipulated under the Scheme of 2008.

7. The relevant provisions of the Scheme of 2008 are as follows:-

"5. Non-applicability of WBSSIS-2008 (as amended upto 31.12.2010):

The WBSSIS - 2008 shall not be applicable to :

....

5.4. Eligible units having obtained RC in Part-I shall have to complete investment in the unit for obtaining RC in Part-II as per time period, counted fro, the date of issuing

RC in Part-I, as specified below :-

Scale of Investment

Time limit

Scale- 1 & 2

2 years

Scale-3

3 years

Scale-4

4 years

Else, this scheme will not be applicable to the unit, provided the unit shall have the option to register de novo under any successor scheme operative at that point of time;

....

7. Procedure for obtaining "Registration Certificate" (RC) and cancellation thereof:

7.1. A unit having obtained the IEM shall be required to submit application in Form No-I accompanied by requisite fees to the DI for registration of the unit for being qualified for the incentives under the WBSSIS-2008. Upon receipt of such application, the DI shall cause an enquiry if considered necessary and upon being satisfied with the information furnished by the unit shall issue RC in Part-I. Part-I of the RC shall contain, inter alia, information as to the estimated amount of FCI, approved capacity of production of individual item of finished goods, expected date of commencement of commercial production as would be indicated by the unit in line with other provisions of the WBSSIS-2008 (as amended up to 31.12.2010), types of statutory clearance obtained by the unit, and the period of validity of the certificate.

7.2. The unit shall be required to submit application in Form No. 1A to the DI for RC, Part-II at least one month ahead of commencement of commercial production and the application shall have to be supported with authentic documents/certificates on actual investment in fixed capital on the date of application, estimated quantum of production of each individual item of finished goods and balance sheet of the unit for the preceding three years duly certified by any Chartered Accountant Firm, and such other documents as are considered necessary by the DI.

....

17. Operational Procedures of West Bengal Industrial Support Scheme, 2008 (as amended upto 31.12.2010) for Large & medium scale Industries :

....

17.3. On receipt of application for registration of any unit the DI shall make, as expeditiously as possible, scrutiny of/enquiry into the particulars furnished by the applicant unit, and on being satisfied that the application in terms of the provision of this scheme is in order, shall register the applicant unit with a No. and issue a certificate for such registration in part-I of the RC, to the applicant unit within 45 days, with a copy to the WBIDC, together with a copy of the application. If however, any application is found to be not eligible for Registration under the WBSSIS-2008 (as amended up to 31.12.2010), the DI will issue a letter of rejection, to the applicant unit with intimation to the WBIDC within the same period.

17.4. For obtaining RC in part-II, the unit shall be required to submit application in Form No. 1 to the DI in two sets. DI, with his comments, if any shall send within seven days a copy of that to the Managing Director, WBIDC for his views. 17.5. After receipt of the application, together with the copy of the RC, Part-I, the MD, WBIDC will scrutinize the particulars necessary for ascertaining the extent of eligibility to different incentives and also make such further enquiry as may be deemed necessary in respect thereto. If on such scrutiny/enquiry the WBIDC is satisfied that such unit is eligible for one or more than one types of incentive available under the WBSSIS 2008 (as amended upto 31.12.2010), it shall send a copy of such Assessment report on eligibility to the DI for information within 30 days; and file DI shall record those particulars in Part-II of the RC and issue a copy of it to the unit forthwith, provided before rejecting any application the applicant unit shall be offered an opportunity of being heard.

....

18. Power to amend and/or relax/repeal: Notwithstanding anything contained in any of the provisions of the WBSSIS-2008 (as amended upto 31. 12.2010), the State Government may at any time,

....

18.2. make any relaxation in applying the provisions of this Scheme but such relaxation shall be made on the merits of the approved project in each case, as the State Government may consider necessary and appropriate;"

8. The correspondence disclosed in the present writ petition discloses that, the petitioner informed the respondents that, the commercial production started since February 2, 2013. This information is contained in the letter dated March 8, 2013 issued by the first petitioner to the respondents. Clause 7.2 of the Scheme of 2008 requires a unit applying for the benefits under the Scheme of 2008 to submit an application for Registration Certificate Part 2 (RC-II) at least one month ahead of commencement of commercial production. The petitioners applied for Registration Certificate Part 2 (RC-II) on October 29, 2013 which was beyond the periods stipulated in Clause 7.2 of the Scheme of 2008. The petitioners did not adhere to the Scheme of 2008 while applying for Registration Certificate Part 2 (RC-II). The petitioners not having adhered to such Scheme of 2008, the respondents cannot be directed to grant the petitioners benefits under the Scheme of 2008.

9. The petitioners have contended that, the State can relax the provisions of the Scheme of 2008. In the facts of the present case, the State has chosen not to relax the provisions of the Scheme of 2008. There is no commending reason on record to direct the State to relax the provisions of the Scheme of 2008.

10. In such circumstances, I find no merit in the present writ petition.

11. W.P. No. 16 of 2018 is dismissed. No order as to costs.

