

16.09.2022
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Sl. No. 14
Ct. No. 05

WPA 4916 of 2022

Emami Agrotech Ltd.
-Versus-
The State of West Bengal & Ors.

Mr. Jishnu Saha
Mr. Rajarshi Dutta
Mr. Rahul Dhanuka
Mr. Hersh Chaudhury

..... for the petitioner

Mr. N.Chatterjee
Mr. V. Kothari

.....for the State

Md. T.M. Siddiqui

.....for the WBIDC

The petitioner is before the Court against an order dated 20.12.2021 passed by the Secretary, Department of Industry, Commerce and Enterprises, Government of West Bengal. The order was passed in compliance with the directions of the Court in earlier writ petition which related to the petitioner's claim for disbursement of incentive under "West Bengal State Support for Industries Scheme, 2008 as amended up to 2010. The Scheme relates to Industrial Promotion Assistance to industrial units falling under two groups and in the scales mentioned in Clause 10.1 of the Scheme. The incentive, in similar clause, is for refund of a percentage of VAT paid by the industrial units. The petitioner claims to fall under group-B and Scale-2 of Clause 10.1. The Scheme was notified on 22nd February, 2011 and under Clause 19 provides for application of the Scheme *mutatis mutandis* in the event the Scheme is replaced by any other Act.

The GST regime came into force on 1st July, 2017. The petitioner prays for making the Scheme compliant with the GST regime which subsequently came into effect.

The Report filed by the respondent No. 4 being the Department of Industry, Commerce and Enterprises, states that in the absence of the definite policy regarding adjustment of the Scheme with the changed taxation regime, grant of RC-II is not feasible. The grant of RC-II was a step in the direction of securing the incentive under the later Scheme notified on 12th September, 2014 but having same scope of an application under the Scheme of 2008. The petitioner claims to fulfill the relevant criteria for grant of incentive under both the Schemes. The petitioner also prays for the required inspection to be undertaken by the State respondents before grant of RC-II.

The stand of the respondent No. 4, being the Department of Industry, Commerce and Enterprises is not comprehensible to the Court since reluctance is based on the change of tax regime from VAT to GST. The position taken is unreasonable since Clause 19 of the 2008 Scheme, as stated above clearly contemplates subsequent changes in the law and provides for the Scheme to apply irrespective of such changes. The similar Clause was also inserted in the later Scheme of 2014, being Clause 15.2.

Upon considering the Scheme and the fact that the GST regime has come into place since 2017, the respondents should take expeditious steps to make the Scheme GST-compliant for the benefit of industrial units which fall under the Scheme. The industrial units like the petitioner cannot be kept in a limbo and denied the incentives, which were specifically promised to these units at the time of introduction of the Scheme from 2008 onwards. There is a definite case of legitimate expectation in the present case and the petitioners are entitled to be provided with clarity in that regard.

WPA 4916 of 2022 is accordingly disposed of with the direction on the Department of Industry, Commerce and Enterprises and the Finance Department to take requisite steps to make the Scheme GST-compliant within a period of sixteen weeks from date.

Needless to say, the eligibility of the petitioner shall be evaluated by the concerned department before undertaking the requisite steps under the Scheme for grant of incentives to the petitioner. It is also made clear that after making the Scheme GST-compliant, the petitioner shall be at liberty of praying for the RC-II certificate which is the prayer in the present writ petition.

(Moushumi Bhattacharya, J.)