

GA No. 229 of 2013

W.P. No. 980 of 2011

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

EMAMI BIOTECH LTD. & ANR.

Versus

STATE OF WEST BENGAL & ORS.

BEFORE:

The Hon'ble JUSTICE I. P. MUKERJI

Date : 22nd July, 2013.

Appearance :
Mr. Samaraditya Pal, Sr. Advocate
Mr. Debal Banerjee, Sr. Advocate
Mrs. V. Meheria, Advocate
Mr. M. Bose, Advocate
Mr. S. Majumder, Advocate
Mr. S. Kar, Advocate
Ms. T. Lahiri, Advocate
... for the Petitioner.

Mr. Bimal Chatterjee, Ld. Advocate General
Mr. P. Sinha, Advocate
Mr. A. Majumder, Advocate
Ms. P.S. Tibrewal, Advocate
... for the State

Mr. R.S. De, Advocate
Mr. S. K. Gupta, Advocate
... for the W.B.I.D.C.

The Court : On 24th March, 2004, the Government of West Bengal announced, by a notification, an incentive scheme for promotion of industries in the State. It was entitled "The West Bengal Incentive Scheme- 2004". It came into effect from 1st April, 2004.

The petitioner company became a beneficiary of the scheme fulfilling the eligibility criteria. On 8th July 2010, this company was registered under the

scheme by the government to manufacture edible oil and chemically manufactured vegetable fats. The petitioner company's above manufacturing process was a Mega project under the Scheme.

Under clause 20(e) thereof, they became entitled to industrial promotion assistance @ 75% of the sales tax paid in the year previous to the year for which the claim would be made. The other material parts of the scheme are in paragraph 21 thereof particularly sub- paragraphs 7,8 & 9 thereof which are set out below :-

- "7. The unit will also apply to the Commissioner, Commercial Taxes, West Bengal in the form shown in Annexure - VI requesting him to certify the total amount of sales tax paid during the year in respect of which the application has been made. Such application should be filed at the end of each year.*
- 8. Upon receipt of the application, the Commissioner, Commercial Taxes, West Bengal would verify the payments and other particulars as contained in the application and issue a certificate to the Managing Director, WBIDC Ltd. certifying the sales tax paid by the unit during the year in question.*
- 9. MD, WBIDC Ltd. on receipt of the information, as above, will issue cheque/s in favour of the Commissioner, Commercial Taxes to be deposited by him into the Reserve Bank of India, Kolkata or Government Treasuries in Sales Tax Challan as advance payment of tax made by the unit for the year. Such cheque/s shall be drawn in favour of the Commissioner, Commercial Taxes, West Bengal on account of the unit only in a year in respect of the concerned unit."*

The payment of incentive would follow a systematic procedure. The Commissioner, Commercial Taxes, West Bengal according to sub-para 7 would be requested to certify the exact amount of sales tax paid by the petitioner. This certificate would be issued to the Managing Director, WBIDC Ltd. under sub-para 8. The Managing Director would in turn under sub-para 9 issue a cheque for 70% of the tax paid in favour of the Commissioner, Commercial Taxes, West Bengal as advance payment of tax by the Petitioner Company under the scheme.

According to a statement handed up by Mr. Pal, Ld. Sr. Advocate appearing for the petitioner, it seems to me that the petitioner company has made rapid progress. Its production and sales have increased by leaps and bounds. This would appear from a part of the statement for the year 2008-2009 to 2011-2012 relating to certification under sub para 8 (supra), which is as follows:

SL No.	Year	Amount certified by CCT (Rs. in lac)
01.	2008-09	415.78
02.	2009-10	1626.52
03.	2010-11	3161
04.	2011-12	4798.81

Now, according to the above statement, in terms of this scheme, the amount to be paid by WBIDC to the writ petitioner for 2008-09 till 2011-2012 was Rs. 7651.61 lakhs. But, unfortunately, only a sum of Rs. 801.70 lakhs was paid which means, that the outstanding is Rs. 6849.91 lakhs. But according to the State as submitted by the learned Advocate General there was a difference of only about Rs. 3000/- in their calculation. The amount of subsidy remaining unpaid to the petitioner company is Rs. 6849.88 lakhs.

On merits the State seemed to have no defence to the claim of the petitioner company. Its only justification was claiming exception to the

application of the doctrine of promissory estoppel. The learned Advocate General cited three cases decided by the Supreme Court; **M/s. Motilal Padampat Sugar Mills Co. Ltd. vs. State of Uttar Pradesh and Others** reported in (1979)2 SCC 409; **Shrijee Sales Corporation and Another vs. Union of India** reported in (1997) 3 SCC 398; **Bannari Amman Sugars Ltd. vs. Commercial Tax Officer and Others** reported in (2005) 1 SCC 625. The stand of the State as put forward by the Ld. Advocate General was that it was in acute financial distress and utilizing whatever funds it had as equitably as possible. Hence, it was not possible for it to strictly adhere to the scheme. The state should be excused from performance of its promise.

I do understand that the State has acknowledged that the above amount is due to the petitioner company on account of the above incentive scheme but due to its impecuniosity, it has been unable to make payment punctually.

The learned Advocate General also submitted that because of a policy decision the State was unable to remit payment of taxes by the petitioner, so that only 25% of it was paid by them, to fulfil the purpose of the scheme.

The learned Advocate General also submitted that with effect from 1st April 2013 an annual allocation of Rs. 300 crores has been made to WBIDC out of which it could draw Rs. 25 crores a month towards making payment of its liability in respect of various incentive schemes.

In my notion, the financial situation of the State is not so grave so as to warrant a finding that the State is no longer bound by its promises. Indeed, in my opinion, the State is bound by its promise to pay the above subsidy amount to the petitioner. In fact, in the case of **Municipal Council, Ratlam vs. Shri Vardichan and Others** reported in AIR 1984 SC 162 para 12 cited by Mr. Pal,

Sr. Advocate, the Supreme Court opined that in the discharge of obligations by the government, the defence of financial impecuniosity does not find favour in a court of law.

But, nevertheless, I take note of the paucity of financial resources of this State.

In my opinion, this financial liability of the State towards the petitioner company upto 2011-2012 aggregating to Rs. 6849.88 lakhs should be paid by them in 30(thirty) equal monthly instalments commencing from 1st September 2013. In default of any two consecutive instalments, the petitioner would be entitled to execute the balance amount as a decree of this Court order accordingly.

It was also submitted on behalf of the petitioner that the claim for 2012-2013 was under process by the Chief Commissioner of Taxes. I also observe that the payment of instalments under this order will not preclude the State from making payment of the amount certified for the year 2012-13 onwards, in accordance with the Scheme. In fact, I order the State to make such payment, as punctually as possible.

This Writ Application is disposed of. G.A. 229 of 2013 is also disposed of.

All parties concerned are to act on a signed photocopy of this order on the usual undertakings.

(I. P. MUKERJI, J.)