

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(ORIGINAL SIDE)**

Present:

The Hon'ble Justice Rai Chattopadhyay

WPO 398 of 2019

Hooghly Extrusions Ltd. and Anr.

Vs.

The Government of West Bengal and Ors.

For the Petitioners : Mr. Siddhartha Banerjee
: Mr. Shaunak Ghosh
: Mr. Rajib Mullick
: Ms. Shreyashi Maity
: Ms. Sonia Mukherjee

For the State : Mr. T.M. Siddiqui, Ld. AGP
: Mr. Suddhadev Adak

For the respondent No. 4 : Mr. S.K. Singhi
: Ms. Riti Basu
: Ms. Piyali Pan
: Mr. Diptendu Acharya

Judgment on : **31.03.2026**

Rai Chattopadhyay, J. :-

1) The instant writ petition is directed against an order dated February 22, 2019, of the Joint Secretary to the Government of West Bengal, by dint of which, the said Authority has refused prayer of the petitioners for grant of "interest subsidy" on bank loan under the West Bengal Incentive Scheme, 2013 [in short "WBIS 2013], for a newly launched project of the petitioners. The said impugned letter of the Joint Secretary to the Government of West Bengal may be quoted as herein below:-

“Sub: Your representation against non-granting of “Interest Subsidy” on Bank Loan for your Project in the District of Hooghly

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It appears that the Incentive Claim for your Project in question was rejected by General Manager, DIC, Hooghly in its entirety for the reason, inter alia, that the prime conditions for making such claim admissible, viz., vetting of the Project Report prior to implementation of the Project and availing of Bank Loan before setting the Project were not fulfilled as found on examination of the claim by the DIC, Hooghly.

Subsequently, on the basis of your further approach, this Department took a reasoned stand and considering the aspects related to project appraisal, relaxed the condition of eligibility and such decision was conveyed in terms of the Department’s Memo No. 1201/MSMET (III)/155-03 dated 12.04.2017. This made you eligible under WBIS 2013. Such relaxation should not be taken as a guarantee for being eligible for all the components of the Scheme even if the conditions of eligibility for any of such components were not fulfilled.

As far as the “Interest Subsidy” on Bank Loan is concerned, it was observed that the unit started commercial production i.e implemented the project before availing of Bank Loan. In other words, the Bank Loan was sanctioned and disbursed after the implementation of the project. Owing to such reason the unit could not but be deemed as own-financed unit and as such did not qualify for incentive on Bank Loan interest. Therefore, the non-consideration of interest subsidy under WBIS 2013 by DIC, Hooghly stands valid.”

- 2)** Therefore, according to the said respondent, the necessary preconditions for availing “Interest Subsidy” under the said Scheme of 2013 are vetting of the project report prior to implementation of the project and availing of bank loan before setting up of the project. Also, that the petitioners have failed to comply with such prerequisites as they have implemented the

project before vetting of the project report and completed setting up of the same even before availing the bank loan. On this basis the respondent has categorised the petitioner No.1 / company as an 'own financed unit', not eligible to be qualified for the benefit of "Interest Subsidy" under the WBIS 2013.

- 3) The respondent authority mentions in the said impugned order as to a letter issued to the writ petitioners earlier issued by the same, that is No. 1201/MSMET (III)/155-03 dated April 12, 2017, to state that by dint of the same the department took a reasoned stand and considering the aspects related to project appraisal, relaxed the condition of eligibility; that, this made the petitioners eligible under WBIS 2013; however, such relaxation should not be taken as a guarantee for being eligible for all the components of the Scheme even if the conditions of eligibility for any of such components were not fulfilled.
- 4) In this regard, the earlier letter issued by the Special Secretary to the Government of West Bengal dated April 12, 2017, also assumes importance. Let the relevant portion thereof be quoted as below:-
 - a. *"Since appraisal of the project and sanction were made after commencement, the unit will be treated as an own financed unit. In this case, as SIDBI appraised, approved, sanctioned and disbursed the project after being satisfied of the basic criteria of the project even after commencement, such appraisal /approval of SIDBI would be taken into consideration for the purpose of making the unit eligible under the said scheme relaxing/waiving the provision as laid down for the own financed unit under the relevant clause of the said scheme.*
 - b. *The case may now be dealt with as per observation made above if the unit is otherwise found eligible to qualify for incentives under the said scheme."*

- 5) Mr. Banerjee, learned counsel for the petitioners has submitted that, therefore, after this letter the petitioners have to be treated as an '*own financed unit*' and to be considered eligible under the WBIS 2013, for all the relaxation/waiver as provided thereunder as an '*own financed unit*' and not otherwise. According to the writ petitioners, once having treated it to be eligible under the WBIS 2013, the respondent authority cannot lawfully deny the petitioners any benefit under the said Scheme. "Interest Subsidy" is a benefit under the said Scheme, against the bank loan for a project. The writ petitioners claim to have fulfilled all criteria for being eligible to the same. Hence, they have termed the alleged denial of the said benefit to them, as arbitrary and illegal. They have also alleged violation of principles of natural justice in their case due to the fact that, before issuance of the impugned order dated February 22, 2019, the respondent Authority has not granted opportunity of hearing to the petitioners.
- 6) It is necessary that, the relevant facts may be mentioned here in a nutshell. The petitioner No. 1/company is a small manufacturing unit recognized by the Directorate of Micro, Small and Medium Enterprises and Textiles. WBIS 2013 is a Scheme of the Government of West Bengal, meant for micro, small and medium enterprises and textiles (in short, "MSMEs"), in which the Government grants certain incentives by way of financial benefits to the entities registered with the Department, like the petitioner No. 1, in this case.
- 7) The Scheme contemplates grant of subsidy on the interest of term loan, which has been borrowed from any financial institution for implementation of the approved projects. Apart from subsidy on interest, the Scheme contemplates several other waivers and subsidies on electricity duties for being energy efficient, on stamp

duty and registration fees etc. Grant of subsidy under the said Scheme of 2013 is applicable if the unit has procured loan from other sources to operationalize its project.

- 8)** The petitioner company contemplated for setting up of a plastic extrusion sheet manufacturing plant, at a premises adjoining National Highway NO. 2, Delhi Road in District- Hooghly. For the purpose of availing term loan to set up the project, the petitioners applied before the Small Industries Development Bank of India [in short "SIDBI"], vide application dated January 19, 2015. The petitioners say that, unless substantial amount of money is put in by the entity seeking loan, the financial institution does not disburse the same; the majority has to be self-financed.
- 9)** During the pendency of the aforesaid application for term loan, and in view of the fact that it is difficult to get the machinery, the petitioner No.1 had procured the same from M/s. Hindustan Steel Industries, with an understanding that if in future the petitioner is granted loan, the cost amount for the machine would be directly disbursed to M/s. Hindustan Steel Industries by the Bank from the total sanctioned amount of loan. After procuring the machinery the manufacturing activity of the unit was started and the production commenced from 10.02.2015.
- 10)** Hence, admittedly, the petitioner started production with effect from February 10, 2015. Later on, an upfront term loan to the tune of Rs. 3 crores was sanctioned in favour of the petitioners on April 24, 2015 by the SIDBI. As per instruction of the petitioners, the bank disbursed Rs. 98 lakhs in favour of M/s. Hindustan Steel Industries, being reimbursement to the same on account of supply of machine to the petitioner company for the project in question. Rest of the amount to the tune of Rs. 2,02,00,000/- was released in favour of the petitioners.

- 11)** Thereafter, on October 13, 2015, the petitioners have made an application before the Directorate of Micro, Small and Medium Enterprises and textiles, for grant of incentive including “Interest Subsidy”.
- 12)** Vide a letter dated December 07, 2016, the said prayer of the petitioner was refused for the first time. It has been contended in the letter dated December 07, 2016, that, the petitioner company was not eligible for grant of ‘Interest Subsidy’ under the Scheme, in view of provisions of *sub-para 7.1 (iv)* of the said Scheme vide notification dated May 22, 2015. Let the relevant portion of the said letter be quoted as hereinbelow:-

“In reference to your application for subsidy dated 13-10-2015 your claim for incentive under WBIS, 2013 modified upto 22-05-2015 has been examined thoroughly and the following points found:

Date of commencement of commercial production: 10-02-2015

Date of approval of project report : 02-04-2015.

Date of sanction of term loan : 24-04-2015 and 26-04-2015.

So from the above points, it is found that your unit started its commercial production before approval of the project. As per notification no. 1585-MSMET-III/15S-02/15 dated 22-05-2015 under sub para 7.1 (iv) your unit is not eligible to get incentive under the said scheme.”

- 13)** Two years thereafter, vide an online application dated October 05, 2018, the petitioners again applied for grant of subsidy under the aforesaid Scheme. However, in response to the said application of

the petitioners, the respondent did not proceed for grant of the “Interest Subsidy” component, quoting the reason that, as per the order of the Special Secretary, Government of West Bengal, the unit of the petitioners should be treated as a self-financed unit and hence ineligible for such grant. In response to further query, a copy of the letter dated April 12, 2017 (as quoted above), of the Special Secretary, Government of West Bengal, was furnished to the petitioners by the respondent.

- 14)** Mr. Banerjee submits that, according to the said Scheme, particularly Clause 10 thereof, they are eligible for “Interest Subsidy” on annual interest liability on the term loan borrowed from the said financial institution, which the respondent authority has failed to appreciate; further that, there is no bar or impediment or restriction in respect of a self-financed unit in availing “Interest Subsidy”, after it had subsequently availed the loan from any outside source; the respondent has wrongly apprehended about ineligibility and non-fulfillment of the essential criteria by the petitioners to be granted the subsidy as prayed for.
- 15)** Hence, the instant writ petition has been filed by the petitioners with the prayer that, the impugned order dated February 22, 2019 be set aside; the respondent authority be directed to disburse immediately the “Interest Subsidy” in accordance with Clause 10 of the WBIS, 2013 in respect of the term loan granted to the petitioner company by SIDBI, along with the arrears of such “Interest Subsidy”.
- 16)** The respondent is represented by Mr. S. K. Singhi, learned advocate. The respondent says that, before applying to the SIDBI for term loan, the petitioner applied to the Central Bank of India for sanction of Rs. 273 lakh (fund-based and non-fund based), which was sanctioned by the Central Bank of India on March 1,

2014. That, the petitioners did not avail the facility so provided by the Central Bank of India (reference to letter dated January 5, 2017 of the petitioner to the Central Bank of India). The respondent further says that, petitioners applied for term loan to SIDBI on January 19, 2015, that is, after 10 months and 18 days from the date of sanction by the Central Bank of India. That, the petitioner invested money and started commercial production on and from February 10, 2015 without availing bank finance and providing any collateral security to the SIDBI for the same. It is the contention of the respondent that all these relevant facts have been intentionally suppressed by the petitioners in this writ petition. Hence, the same suffers from suppression of material facts.

- 17)** The respondent says further that, SIDBI has issued “Letter Of Intent” to finance the petitioner on April 24, 2015, appraised the project report on April 02, 2015 and disbursed the loan amount to the petitioner on June 08, 2015. Whereas the respondent has relied on some other dates that the petitioners made investments in plant and machinery on April 30, 2014, August 08, 2014 and November 11, 2014 respectively. According to the respondent, the same by itself indicates that the petitioners, despite being aware that for sanction of loan, collateral security has to be provided to the Bank, preferred to arrange finance from own source and implemented the project before approval of the project report and sanction of loan by SIDBI. The respondent says that, Clause 10.1 of WBIS, 2013 has not provided for grant of “Interest Subsidy” on term loan where disbursement of loan was made after investment made for plant and machinery and implementation of the project.
- 18)** The respondent relies on Clause 7.1 (iv) as the eligibility criteria for an enterprise in micro, small and medium sector, which is as follows:-

“A new project should be approved before its implementation by any Directorate under the Department of Micro, Small & Medium Enterprises and Textiles, Government of West Bengal or Commercial Banks/Financial Institution (Central and State)/Co-Operative Banks/Scheduled Banks approved by RBI/RRBs financing the project...”

- 19)** According to the respondent, the project of the petitioners was implemented and started commercial production on and from February 10, 2015, that is, before its approval, which was accorded on April 24, 2015. Hence, the project was approved only after its implementation and commercial production having been started, which, according to the respondent, violates Para 7.1 (iv) of the Scheme of 2013. So far as the petitioner’s contention as regards violation of natural justice by way of not granting it any opportunity of hearing before curtailing the incentive to it, the respondent has stated that, its reasoned decision was duly communicated to the petitioner vide letter dated December 07, 2016 which was self-explanatory and clear as to why, by application of provision under Clause 7.1 (iv) of the said Scheme, the petitioners would not be eligible for interest subsidy under WBIS, 2013. The respondent says that, therefore, the petitioners cannot raise any grievance that, reasons for rejection of their prayer have not been furnished to them.
- 20)** Regarding the letter issued by it on April 12, 2017, the respondent has stated that, by exercise of his discretionary power the GMDIC has relaxed the stipulated conditions of satisfaction in case of the writ petitioners in the said letter as mentioned above, regarding arrangement of finance by the petitioners on their own. The respondent has emphasized that, the said letter has never revealed the petitioner No. 1 to be eligible for interest subsidy. The respondent says that, making the petitioner eligible under the Scheme does not mean the company to be automatically entitled

for incentive on each item. That, to become entitled for incentive for a particular item, the unit has to satisfy the terms and conditions of that particular item. That, since the petitioner No. 1 company was treated as an '*own-financed unit*', subsidy on term loan interest is not applicable in its case. According to the respondent, the decision of the department so communicated to the petitioners vide letter dated April 12, 2017 has effect of only providing an opportunity to the petitioner company to avail of the benefit of the scheme except on one item that is, for interest subsidy on term loan. According to the respondent, entitlement for the interest subsidy depends on fulfillment of conditions in Clauses 10.1 and 10.2 of the Scheme simultaneously.

- 21)** Mr. Singhi has mentioned that exemption or exception clauses are ordinarily to be construed strictly; so is with regard to incentives which is a form of exemption granted under the law. He submits that exemption notification has to be interpreted strictly and in this regard has relied on the Larger Bench decision of the Supreme Court in ***Ramnath and Company Vs. Commissioner of Income Tax*** reported in **(2021) 12 SCC 217**. It is submitted further that if any of the conditions laid down in notification is not fulfilled, the party is not entitled to the benefit of that notification [as per ***State of Gujarat vs Arcelor Mittal Nippon Steel India Limited*** reported in **(2022) 6 SCC 459**].
- 22)** It is submitted that, even in case of any ambiguity being in existence in the exemption clause of the notification, that must be conferred in favour of the Revenue and exemption should be allowed to be availed by those only, who can demonstrate that a case for exemption squarely falls within the parameters enumerated in the notification and all the conditions precedent for availing exemption are duly satisfied (as per Commissioner of Customs).

- 23)** The respondent say that the petitioner is not entitled to a prerogative remedy due to misrepresentation committed by them by way of suppression of the material fact. That, in these circumstances their case is liable to be dismissed, as held in ***K.D. Sharma Vs. Steel Authority of India Limited & Others*** reported in ***(2008) 12 SCC 481*** and ***Vijay Syal and Another Vs. State of Punjab And Others*** reported in ***(2003) 9 SCC 401***.
- 24)** Another decision of Supreme Court has been relied upon that is, ***Eagle Flask Industries Ltd. Vs. Commissioner of Central Excise, Pune*** reported in ***(2004) 7 SCC 377*** to submit that condition precedent for grant of exemption has to be strictly complied with to avail the same or else the same is prohibited to be disbursed under the law.
- 25)** Hence, Mr. Singhi, learned advocate for the respondent insists that the present writ petition be dismissed.
- 26)** In general strict construction is applicable to the exception clause in a statute. In the cases of ***Ramnath (supra)*** and ***Arcelor Mittal Nippon Steel India Limited (supra)*** as referred to by the respondent, the Supreme Court has upheld this principle. Strict construction means the exception is interpreted narrowly and application thereof only to those cases which are clearly covered by the wordings of the exception. The issue is whether any liberal construction as to the same is permissible under the law, in any eventuality. The answer is in assertive when strict interpretation defeats the purpose of law itself, a liberal interpretation and broader meaning may be assigned to the provisions to fulfil the purpose. Legislative intent is to be given effect to maintain balance between rule and the exception, to promote justice in welfare context. Let some precedents be discussed.

27) In ***R.M.D. Chamarbaugwala versus Union of India*** reported in **1957 SCC OnLine SC 11** the Supreme Court observed that while exceptions are generally constructed strictly, the interpretation must align with the statute and should not defeat the purpose of legislation. In ***J.K.Cotton Spinning & Weaving Mills Company Limited versus State of Uttar Pradesh*** reported in **1960 SCC OnLine SC 16** the Court has held that provisions (including exceptions) must be interpreted in a way that makes the statute workable. In a landmark case supporting liberal interpretation in tax law, in ***Mangalore Chemicals and Fertilizers Limited versus Deputy Commissioner*** reported in **1991 SCC OnLine SC 9** the Court has held that procedural conditions in exemption clauses should be interpreted liberally when substantive requirements are fulfilled; that, procedural requirements should not defeat the substantial benefits. In ***Union of India versus Wood Paper Limited*** reported in **(1990) 4 SCC 256** the Court has clarified a nuanced rule that eligibility to the exception or benefits is subject to strict interpretation whereas scope of exemption once eligible can attract liberal interpretation. The following portion of the judgment may be mentioned in this regard:-

“4. Entitlement of exemption depends on construction of the expression “any factory commencing production” used in the Table extracted above. Literally exemption is freedom from liability, tax or duty. Fiscally it may assume varying shapes, specially, in a growing economy. For instance tax holiday to new units, concessional rate of tax to goods or persons for limited period or with the specific objective etc. That is why its construction, unlike charging provision, has to be tested on different touchstone. In fact an exemption provision is like an exception and on normal principle of construction or interpretation of statutes it is construed strictly either because of legislative intention or on economic justification of inequitable burden or progressive approach of fiscal provisions intended to augment State revenue. But once

exception or exemption becomes applicable no rule or principle requires it to be construed strictly. Truly speaking liberal and strict construction of an exemption provision are to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction. Therefore, the first exercise that has to be undertaken is if the production of packing and wrapping material in the factory as it existed prior to 1964 is covered in the notification.”

- 28)** Now it may be considered whether the petitioners’ prayer for grant of “Interest Subsidy” under the WBIS, 2013 should be defeated by applying provisions of the said Scheme strictly in case of the petitioners or in their case to uplift and comply with the legislative intent, liberal construction of the same is desirable and also permissible under the law. To proceed further with the discussion, certain dates are immensely relevant for consideration in this case. Let those be written down in a tabular form, as follows:-

1 st March, 2014	Petitioners applied before the Central Bank of India for loan.
19 th January, 2015	Petitioners applied before the SIDBI for term loan.
10 th February, 2015	The petitioners operationalized their unit and started company production.
2 nd April, 2015	Project report appraisal by SIDBI.
24 th April, 2015	“Letter of Intent” issued by the SIDBI.
8 th June, 2015	Disbursement of loan amount to the petitioners by SIDBI.

29) Evidently the petitioners have purchased machinery and the project was implemented and operationalized before appraisal of project report and disbursement of loan by the SIDBI. At this stage, it is necessary to look into the relevant provisions of the said Scheme of 2013: -

“7. Eligibility criteria for incentives under WBIS 2013 for MSMEs as modified up to 22.05.2015.

7.1 Any micro, small or medium unit/enterprise in the manufacturing sector shall be eligible for incentives under WBIS-2013 for the MSMEs as modified up to 22.05.2015 excluding those mentioned in the negative list of industries at Annexure-IV subject to the fulfillment of the conditions specified below :

i) A micro, small or medium enterprise shall commence its commercial production within the period of the Scheme and shall submit its first incentive application in prescribed form to the General Manager, District Industries Centre within 12 (twelve) months from the date of commencement of commercial production.

Explanation

A micro, small or medium enterprise which will commence its production on 29.03.2018 shall submit its first incentive application in prescribed form within 28.03.2019 to the General Manager, District Industries Centre concerned.

ii) The unit/enterprise shall file Entrepreneurs Memorandum (Part - II).

iii) The project will be covered by a detailed feasibility report / project prepared for the purpose and approved in terms of Sub-para 7.1 (iv).

iv) A new project should be approved before its implementation by any Directorate under the Department of Micro, Small & Medium Enterprises and Textiles, Government of West Bengal or concerned DIC or Micro Small and Medium Enterprises Development Institute (MSME-DI), Government of India or Food Processing Industries and Horticulture Department, Govt. of West Bengal or Commercial Banks /Financial Institution (Central and State) / Co-Operative Banks/Scheduled Banks approved by RBI/ RRBs financing the project. In case of projects with arrangement of finance from own resources, Eligibility of the unit / enterprise shall be considered provided the General Manager, District Industries Centre is satisfied about the arrangement of such finance.

v) An eligible enterprise which has availed of incentive/ subsidy in respect of any of the items specified under any other Incentive/Subsidy Scheme of Govt. of India / State Govt. shall also be eligible to get the benefits of other items

only under WBIS-2013 for MSMEs as modified up to 22.05.2015 subject to fulfillment of terms and conditions of the Scheme.

vi) The enterprise will submit a 'self- declaration' affirming:

(a) That the unit /enterprise has installed Modern/Hi-tech plant & machinery that conform to the standard productivity.

(b) That the unit/enterprise will strictly observe requisite pollution control compliances.

(c) That the unit/enterprise will conduct regular Energy Audit and ensure standard energy efficiency wherever applicable.

(d) That the unit /enterprise will follow/maintain labour laws.

(e) That the unit / enterprise will remain in production for at least five years from the date of commencement of commercial production.

(f) That the unit/enterprise has not defaulted in payment of any government dues /dues of Financial Institutions.

(g) That the enterprise has not misrepresented or withheld any information and not suppressed any fact/ information related to the claim submitted.

(h) That all documents like approved project report, bills/ vouchers of the plant and machinery etc. submitted by the enterprise with the claim are genuine.

(i) That the terms and conditions of WBIS -2013 for MSMEs as modified up to 22.05.2015 are binding on the enterprise.

(j) That the enterprise will not divert/ utilize the loan amount disbursed by the bank / financial institution for carrying out any activity / project other than the implementation of the approved project.

7.2 The Unit/Enterprise will make application in prescribed form to the General Manager of District Industries Centre after commencement of commercial production for grant of incentives under the Scheme.”

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“10. Interest Subsidy on Term Loan

10.1 An eligible micro, small or medium enterprise will be entitled to Interest Subsidy on annual interest liability on the Term Loan borrowed from a Commercial Bank/ Cooperative Bank/ Scheduled Banks approved by RBI/ RRBs/ Financial Institution (Central and State) for implementation of the approved project as follows .

Micro & Small Enterprise –

Zone A & B – Subvention of 6% for 5 years.

Zone C, D & E – Subvention of 7.5% for 5 years

Explanation:

The interest subsidy admissible for an eligible micro or small enterprise in Zone – A & B area will be calculated in the following manner :-

Annual interest liability on Term Loan paid by the enterprise x 6

Rate of Interest charged by the Bank/ F.I.

Medium Enterprise -

Zone – B & C: - The interest subsidy will be 25% of total Term Loan interest paid by the enterprise subject to a ceiling of Rs. 175 lakh per year for 5 years.

Zone – D & E: - The interest subsidy will be 25% of total Term Loan Interest paid by the enterprise subject to a ceiling of 175 lakh per year for 7 years.

Explanation :

The Interest Subsidy admissible for an eligible medium enterprise will be calculated in the following manner :

Annual interest liability on Term Loan paid by the enterprise x 25

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10.2 The interest subsidy will be payable annually subject to submission of a statement / certificate (in annexure-II) by the lending Bank / Financial Institution to substantiate that the unit has paid the due interest to the institution on the due dates and has not defaulted in payment of interest at any time during the period.”

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It is also pertinent to mention the following provisions thereof: -

“5. Applicability of WBIS 2013 for MSMEs.

5.1 The WBIS 2013 for MSMEs as modified up to 22.05.2015 shall generally be applicable to all micro, small and medium enterprises in the manufacturing sector which have started production on or after 1st day of April 2013.

5.2 The units may be in the private sector, cooperative sector and joint sector undertaking as also companies/undertakings owned and managed by the State Government and the Industrial SHGs.”

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“6. Non-applicability of WBIS 2013 for MSMEs.

The WBIS 2013 for MSMEs as modified up to 22.05.2015 shall not be applicable to the industrial units/enterprises:

(i) That have been registered and for which eligibility certificates have been issued / incentives have been sanctioned and/ or disbursed under the respective Incentive Scheme of the State. This will continue to be governed by the respective Incentive Scheme of the State.

(ii) That have been registered and for which eligibility certificate have been issued in terms of the respective Incentive Scheme of the State but no sanction or disbursement of incentive has been made. The claim will be governed by the respective Incentive Scheme of the State.

(iii) That have been registered and for which eligibility certificates have been issued in terms of the respective Incentive Scheme of the State but no claim has been made. The claim will be governed by the respective Incentive Scheme of the State.

(iv) That have commenced production before 01.04.2013 and applied for registration and EC under the respective Incentive Scheme of the State within the stipulated date. The claim will be governed by the respective Incentive Scheme of the State.

(v) That are engaged in manufacture of textiles, apparel/garment, technical textile and enterprises in hosiery, textile, handloom and powerloom sector and have commenced production on or after 01.09.2013.”

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“12. Power Subsidy

An eligible micro, small or medium enterprise for its approved project will be entitled to power subsidy on the electricity consumed for the manufacturing activity as follows :

Micro, Small and Medium Enterprise

Subsidy of Re.1.00 / Kwh for enterprises located in Zone – A & B area and Rs.1.50/ Kwh. for enterprises located in Zone – C, D & E area for five years from the date of commencement of commercial production.

The power subsidy will not exceed Rs.20 Lakh per year for a small enterprise and Rs.30 Lakh per year for a medium enterprise and will be payable annually.”

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“22. Power to amend and/or relax

Notwithstanding anything contained in any of the provisions of WBIS 2013 for MSMEs as modified up to 22.05.2015, the State Government may at any time-

(i) modify, vary, alter, amend or withdraw any of the provisions made here in above in this Scheme and such modifications, variations, alterations, amendments and withdrawal shall be effective from the date specified in the order so made in this behalf.

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

(iii) may issue instructions and guidelines to facilitate implementation, to remove anomalies and to clarify the interpretations of the provisions of this Scheme.”

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“2. Object

The object of the Scheme is to extend fiscal incentives to encourage entrepreneurs to set up Micro, Small and Medium Enterprises with a view to focusing on development of MSMEs in the backward region of the State and creating a sustainable ecosystem in the MSME sector which can maximize the utilization of resource and widen the area of operation to make the State emerge as the MSME leader in the country."

- 30)** According to the respondent, it is a own financed project of the petitioners, implemented much before approval of the project report and disbursement of loan to the petitioners for the project. This way, there is violation of Clause-7 of the Scheme and following the principle of strict interpretation, the petitioners are not eligible for the "Interest Subsidy" as prayed for, due to such violation.
- 31)** The respondent has further contended that the petitioner's project is not dependent on the term loan sanctioned by the SIDBI as the same has been implemented even prior to disbursement of loan. Hence, the respondent has considered the petitioner as an '*own financed unit*' and ineligible for any "Interest Subsidy" under the Scheme.
- 32)** The chronology of events is required to be carefully considered, to understand if really and if at all the project of the petitioner can be considered as an '*own financed*' one.
- 33)** It appears that from the very inception, the petitioners have been making endeavor to secure loan for their new venture. Firstly, they applied before the Central Bank of India on March 01, 2014. Though sanctioned, the petitioners forego the same at a later stage. They again applied to SIDBI on January 19, 2015. During pendency of their application before SIDBI, the petitioners contacted the vendors for supply of machine. They obtained the machine on credit, on an understanding and necessary instruction

to bank that the purchase amount of the machine to the tune of Rs. 98 lakhs should be disbursed by the bank to the vendor company directly, from the total amount disbursable by the bank as loan. Admittedly, the bank has done according to the instructions and disbursed Rs. 2,02,00,000/- as loan to the petitioners after deducting the amount already released by the same to the vendor company. These facts being not in dispute in the instant case, there is hardly scope of doubt that the project implemented by the petitioners, has never been an '*own financed*' one. The credit liability undertaken by the petitioners at the time of implementation of the project was ultimately reimbursed with the aid of term loan issued to the petitioners by the SIDBI. Therefore, the respondent's finding that the petitioner's project has been an '*own financed*' one and thus ineligible for "Interest Subsidy", is erroneous and unfounded. Such finding is a result of non-application of mind and is arbitrary in nature.

- 34)** There is clear verdict of the respondent authority, as regards eligibility of the petitioners under the said Scheme of 2013. This appears in the letter dated April 12, 2017 and also from the fact that the petitioners have been granted "Power Subsidy", under the said Scheme. Once it is eligible, the substantive requirements under the Scheme are fulfilled. The Supreme Court says that the scope or procedural conditions of the Scheme are subject to liberal interpretation to secure the same from defeating the purpose of legislation (as discussed above).
- 35)** The rule of strict construction is not of universal or inflexible application. The scheme of 2013, admittedly is beneficial incentive scheme framed for promotion of micro, small and medium enterprises. Such Schemes are intended to encourage industrial growth and financial viability of emerging projects. Therefore, the provisions thereof, improving the conditions and exceptions,

cannot be interpreted in a manner that defeats the very objective of the Scheme. In this regard, the principle laid down in **Mangalore Chemicals & Fertilizers Ltd. (supra)** assumes significance, where the Hon'ble Supreme Court held that procedural or technical requirements should not be construed so rigidly as to deny substantive benefits, particularly when the essential conditions stand fulfilled. In the present case, it is not in dispute that the petitioners did ultimately avail a term loan from SIDBI; that such loan was integrally connected with the project in question and the petitioner company has incurred interest liability on such loan. Hence, the substantive condition, namely existence of a term loan for the project, stands satisfied.

36) Further, by its own communication dated April 12, 2017, the respondent authority has relaxed the eligibility conditions and declared the petitioners to be eligible under the Scheme. Once such relaxation has been granted, the respondent cannot, in a fragmented manner, extend the benefit of eligibility under the Scheme and simultaneously deny a core component thereof, unless expressly prohibited. The interpretation adopted by the respondent results in rendering the relaxation illusory and ineffective, which cannot be sustained in law. In **Wood Papers Limited (supra)** the Supreme Court has held that once eligibility is established, the provision should receive a liberal construction. Once the petitioners have been held eligible under the Scheme, the scope and extent of benefits flowing therefrom must be interpreted liberally, unless there exists a clear and express exclusion.

37) Doctrine of harmonious construction is defeated by the interpretation applied by the respondent that the petitioners would be eligible for the "Power Subsidy" but not the "Interest Subsidy" due to non-fulfilment of necessary criteria for the particular incentive. The Scheme contemplates grant of multiple incentives,

including “Interest Subsidy”, to units which obtain financial assistance for their projects. A construction which excludes a unit merely because part of the project was initially self-financed [though the machinery was obtained on credit] though subsequently supported by institutional finance, would defeat the commercial realities acknowledged in the pleadings, namely that initial self-financing is often a prerequisite to secure institutional funding. The Supreme Court in ***J.K. Cotton Spinning & Weaving Mills Co. Ltd (supra)*** has held that statutory provisions must be interpreted so as to make them workable and effective, and not in a manner that leads to impractical or unjust results.

- 38)** The respondent’s argument that loan must precede commencement of production, amounts to elevating a procedural sequence into a substantive disqualification, which is neither expressly mandated nor consistent with the object of the Scheme. In ***State of Bombay v. F.N. Balsara*** reported in **1951 SCC 860**, the Hon’ble Supreme Court recognized that provisions, including exceptions, may be construed liberally to avoid unreasonable or disproportionate consequences. Similarly, in the present case, denial of interest subsidy despite actual borrowing and utilization of institutional finance would amount to an unduly harsh and inequitable outcome, not intended by the Scheme.
- 39)** The impugned order dated February 22, 2019 amounts to reinterpretation of the respondent’s earlier order dated April 12, 2017, practically reinterpreting and explaining further, to nullify the effect of the earlier order, whereas on the other hand, it has been given effect to by allowing the petitioner “Power Subsidy”, which depends on fulfillment of the same criteria, as that of the “Interest Subsidy”, as per the Scheme. An authority cannot reinterpret its own earlier order in a way that effectively nullifies or defeats its original intent or else the same would amount to

arbitrariness, as it is in this case. The respondent authority is not permitted under the law to add or subtract meaning to its order at a later stage, but only the plain language thereof would matter. The Supreme Court in ***Mohinder Singh Gill's Case (Mohinder Singh Gill Vs. Chief Election Commissioner)*** reported at ***AIR 1978 Supreme Court 851***) restrains reinterpretation or reconstruction of an earlier order by the authority and reinforces the plain reading rule. In ***State of Bombay Vs. Gordhan Das Bhanji*** reported in ***AIR 1952 SC 16***, the Court holds that public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

- 40)** The petitioners' other grievance is that before issuance of the impugned order dated February 22, 2019, it should have been afforded a reasonable opportunity of hearing. It is not denied that no hearing of the petitioner, preceded issuance of the said impugned order. Therefore, such contention of the petitioner is also sustainable, particularly in view of the fact that the impugned order has an effect to nullify benefit understood to have been granted to the petitioner, vide an earlier order (dated April 12, 2017) of the said authority. The following portion of the judgment of Supreme Court in ***BSNL Vs. BPL Mobile Cellular Limited*** reported in ***(2008) 13 SCC 597*** may be mentioned in this regard: -

"52. If they have committed a mistake, the same could be rectified. Indisputably, mistakes can be rectified. Mistake may occur in entering into a contract. In the latter case, the mistake must be made known. If by reason of a rectification of mistake, except in some exceptional cases, as for example, where it is apparent on the face of the record, mistake cannot be rectified unilaterally. The parties that would suffer civil consequences by reason of such act of rectification of mistake must be given due notice. Principles of natural justice are required to be complied with. The

fact that there was no mistake apparent on the face of the records is borne out by the fact that even the officers wanted clarification from higher officers. The mistake, if any, was sought to be rectified after a long period; at least after a period of three years. When a mistake is not rectified for a long period, the same, in law, may not be treated to be one."

- 41)** In view of the aforesaid discussion, this Court is of the considered opinion that the respondent has adopted an overly strict and technical interpretation of the Scheme. The same defeats the beneficial object of the incentive framework. Once the petitioners are found eligible under the Scheme and have been granted benefits thereunder [that is "Power Subsidy"], its eligibility for being granted the "Interest Subsidy", ought to have been construed liberally and purposively. Accordingly, the impugned decision denying 'Interest Subsidy' to the petitioners cannot be sustained in law.
- 42)** In view of the reasons recorded hereinabove, this Court is of the considered opinion that the impugned action of the respondent authority in denying the benefit of 'Interest Subsidy' to the petitioners under the West Bengal Incentive Scheme, 2013 cannot be sustained in law. Hence, this writ petition is allowed with the following directions: -
- i. The impugned order dated February 22, 2019, issued by the Joint Secretary to the Government of West Bengal, is hereby set aside and quashed;
 - ii. The petitioners, having been held eligible under the West Bengal Incentive Scheme, 2013 pursuant to the relaxation granted by the competent authority, are entitled to be granted the "Interest Subsidy" on the term loan availed and utilised for the project in

question, in accordance with Clause 10 of the said Scheme.

- iii. The respondent authorities are directed to immediately allow and disburse the “Interest Subsidy”, to the writ petitioners on term loan obtained by them from SIDBI and utilised for the concerned project, by issuance of necessary order;
- iv. The entire exercise, as directed above, shall be completed within a period of **eight (8) weeks** from the date of communication of this order.

43) The writ petition No. WPO 398 of 2019 is allowed and disposed of.

44) Urgent certified copy, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)