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UNION OF INDIA
v.
KRIMPEX SYNTHETICS LTD.

AUGUST 24, 2005

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[ASHOK BHAN AND S.B. SINHA, JJ.]

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Government Grants—Central Outright Grant or Subsidy Scheme 1971 and Manual para. 2.3—Claim for Central Investment Subsidy—Eligibility and Procedure—Respondent's claim rejected—Writ petition to High Court dismissed—This Courts direction to make representation to the Joint Secretary—Order that all applications filed up to 30.9.1988 should be considered for grant of Subsidy provided the said applications were complete in terms of the scheme—Respondent was held entitled to subsidy of 25% on the sum of Rs. 50, 72, 258/ by the High Court—Claimed subsidy of Rs. 25 lacs on the basis of material placed for the first time before the High Court—Held, the High Court was right in rejecting the claim.

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Government Grants—Claim for Central Investment Subsidy—The High Court held the respondent entitled to subsidy of 25% on the sum of Rs. 50, 72, 258—Appeal filed by Union of India alleging that premises of respondent company were closed and that the company seems to have gone in liquidation—No evidence on record to reveal that the company had gone into liquidation or had closed down—Held, respondent's claim cannot be rejected.

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With a view to promote growth of industries in certain selected less developed districts and areas, the Government of India introduced the Central Outright Grant or Subsidy Scheme 1971 for the industrial units. Respondent's claim for the subsidy was rejected by the Government. A writ petition filed in the High Court was disposed of. On appeal, this Court directed several industries including respondent to make representations to the Joint Secretary, Ministry of Industry. Joint Secretary took the stand that all applications filed up to 30.9. 1998 should be considered for grant of subsidy provided they were complete in terms of the scheme. Respondent's claim was rejected by the Joint Secretary. Case was remanded to the High court for fresh decision.

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During the course of hearing before the High Court respondent filed

an additional affidavit showing that he had expended more than Rs. 100 lacs in fixed assets before the cut off date and therefore was entitled to the maximum subsidy of Rs. 25 lacs. This contention had been rejected by the High Court by observing that material which had not been placed before Joint Secretary could not be taken into consideration because as per remand order the High Court was to keep in view the order passed by the Joint Secretary, though the High Court could take its own decision on merit of the case. The only material which could be taken into consideration was the material which had been placed before the Joint Secretary. The High Court held that the respondent was entitled to subsidy of 25% on the sum of Rs. 50,72,258.

Hence the present appeal and cross appeal.

Respondent pleaded that he was entitled to the maximum subsidy available under the scheme to the tune of Rs. 25 lacs. Appellant alleged that as premises of the respondent-Company were closed and the company seems to have gone into liquidation, it was not entitled to any subsidy.

Dismissing the appeals, the Court

HELD: 1. The High Court was right in holding that the only material which could be taken into consideration was the one which was produced before the Joint Secretary as this Court had remanded the case to the High Court to take the final decision keeping in view the order passed by the Joint Secretary. From the remand order it can be deciphered that the High Court was not supposed to entertain any fresh material, though the High Court could take its own decision on merit of the case. An opportunity was given to the claimants to file their representation to the Joint Secretary along with the material on the basis of which decision was taken by the Joint Secretary regarding the eligibility of the claimant to get the subsidy. The material which was sought to be produced before the High Court should have been produced before the Joint Secretary and it was for the Joint Secretary to take the decision on it. [893-C, D]

2. As per the scheme a company which went out of production within 5 years of the start of production was not entitled to the subsidy. Apart from the averment that company seems to have gone into liquidation, no other material was placed before the court to show that in fact the

A company had gone into liquidation or had closed down. No order of winding up of the company was passed. No official liquidator had been appointed to take over the assets of the company. Contention raised by the counsel for the Union of India that the company was not entitled to any subsidy thus cannot be accepted. [893-F, H, 894-B]

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2865 of 1998.

From the Judgment and Order dated 26/27.11.96 of the Bombay High Court in W.P. No. 245 of 1991.

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C.A. No. 5272 of 2005.

D Harish Chandra, Ashok Bhan, Ms. Sunita Sharma, V.K. Verma and D.S. Mahra for the Appellant.

Gopal Jain and Mrs. Nandini Gore for Manik Karanjawala for the Respondent.

E The Judgment of the Court was delivered by

BHAN, J. : Leave granted in SLP (C) No. 22036 of 1997.

F This order shall dispose of the two appeals which are in the nature of cross appeals against the same order dated 26/27.11.1996 of the High Court of Bombay in Writ Petition No. 245 of 1991. By the impugned order the High Court has partly allowed the writ petition filed by *M/s. Krimpex Synthetics Ltd.* Respondent in Civil Appeal No. 2865 of 1998 filed by the Union of India and the appellant in the Civil Appeal No. 5272 of 2005 @ SLP (C) No. 22036 of 1997. Parties shall be referred to as per their status in Civil Appeal No. 2865 of 1998.

G With a view to promote the growth of industries in certain selected less developed districts and areas, the Government of India introduced the Central Outright Grant or Subsidy Scheme, 1971 (for short "the Scheme") for the industrial units under notification dated 26th August, 1971 published in the **H** Gazette of India, extra-ordinary, Part I, Section-1. Along with the scheme, a

manual was issued setting out the detailed working of the Scheme. Respondent filed a writ petition in the High Court of Bombay seeking quashing of orders at Exs. E and F of the petition. Exhibit E was a communication to the respondent informing that in view of the Ministry of Industry Government of India's decision under letter No. 45 (2)/89-DBA-II dated 28.6.1990 the claim of the respondent for Central Investment Subsidy was rejected. Exhibit F was a communication from the Government of India to the Administration of Dadra and Nagar Haveli informing that the claim of Rs. 1,63,28,848 under the Central Investment Subsidy Scheme in respect of units which were sanctioned investment subsidy after cut off date, i.e., 30.9.1988 as per the provisions contained in Ministry's letter dated 21.7.1988 is returned.

The case was disposed of by the High Court vide its judgment and order dated 22.10.1992. Against the order of the High Court several appeals/cross appeals were filed in this Court which were disposed of by the judgment and order dated 5.12.1995. The said judgment and order of this Court may for convenience is reproduced as under:

"The grievance of the industries arrayed in these appeals is that they have not been disbursed the subsidy to which they are entitled to, under the Central Outright Grant or Subsidy Scheme, 1971 for industrial units to be set up in the selected backward units/areas. Some of the industries have already received the subsidy consequent upon the impugned order of the High Court. The claims of the industries are of various categories. It is not necessary for us to go into further details. We are of the view that it would be in the interest of justice to direct all the industries concerned to make a representation before Mrs. Pratibha Karan, Joint Secretary, Ministry of Industry under Department of Industrial Development, Udyog Bhavan, either jointly or severally within three weeks from today. (the name has been suggested by learned Additional Solicitor General after consulting Government of India). The representations shall be decided within eight weeks thereafter. The learned Additional Solicitor General states that Mrs. Karan shall have the assistance of officers from the Ministry of Finance and Law. Mrs. Karan may, if so advised, hear the representatives of the industries. She shall decide the representations without taking into consideration the earlier decision/letters issued by the Government of India from time to time. We, however, make it clear that it will be open to her to take into

A consideration the 1971 Scheme, as modified from time to time. Meanwhile we stay the operation of the impugned judgment of the High Court till further orders. Needless to say that the brief reasons shall be given in support of the decision of the representations. The decision shall be placed before this Court within one week of the date it is announced. It will be open to Mrs. Karan to give decision on individual representations or category-wise or a common order.”

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Pursuant to the above quoted order Mrs. Pratibha Karan, Joint Secretary, Ministry of Industry has passed the order dated November 16, 1995. Copy of the order has been placed on the file of this case. WE are of the view that so far as the cut off date is concerned, the Joint Secretary, has taken a fair and just stand. We agree with her that all the applications filed upto September 30, 1988 should be considered for grant of Central Investment Subsidy provided the said applications were complete in terms of the scheme dated August 26, 1971 as modified from time to time. In this view of the matter we set aside the judgment of the High Court and remand the case for fresh decision. All the applications filed before September 30, 1988 may be considered for grant of the Central Investment Subsidy provided the applications were complete under the scheme. The High Court may keep in view the order passed by the Joint Secretary but shall take its own decision on merits of the case.

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The Joint Secretary in her order has found 12 industries mentioned in para 19 of the order to be eligible for grant of subsidy. We direct that subsidy be disbursed to these industries as per the decision of the Joint Secretary if not already disbursed. The appeals and the special leave petitions are disposed of. No costs.”

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It is apparent from the reading of the above quoted order that in pursuance to the directions issued by this Court several concerns including the respondent herein made representations to Mrs. Karan, Joint Secretary, Ministry of Industry and Mrs. Karan gave her decision on individual representation. After perusing the same this Court observed that it agrees with Mrs. Karan that all the applications filed upto September 30, 1988 should be considered for grant of Central Investment Subsidy provided the said applications were complete in terms of the scheme dated 26th August 1971 as modified from time to time. This Court set aside the judgment of the High

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Court and remanded back the matter for fresh decision with the directions that all applications filed before 30.9.1988 may be considered for grant of Central Investment Subsidy provided the applications were complete in all respect under the scheme. It was further observed that the High Court shall take its own decision on merits on each case but may keep in view the order passed by the Joint Secretary.

The decision taken by Mrs. Karan, Joint Secretary, was placed before the High Court. The High Court by the impugned order has disposed of the petition after the remand by this Court. Aggrieved against which the present appeals have been filed by both the Union of India as well as the respondent.

The High Court has come to the conclusion that the respondent made an application for registration of its company on 25.2.1987 and the registration was granted to it on 18.3.1987. Thereafter, Respondent made an application for grant of subsidy on 10.12.1987. By communication dated 23.12.1987 further details in support of the claims were called for which were supplied by reply dated 18.1.1988. Respondent vide its subsequent communication dated 15.3.1988 made a claim for some additional amount. On 28.7.1988 the respondent furnished fresh statement of fixed assets upto 10.6.1988. The respondent furnished the Chartered Accountant's certificate for the plant and machinery affixed upto 30.9.1988 on 24.11.1988.

Along with the form while applying for the grant of subsidy, the units were supposed to file the following documents:

- a. Project report.
- b. Details of scheme including the details the fixed assets to be acquired.
- c. Sanction letter from the financial institutions sanctioning the loan or loans.
- d. If the project is under implementation a certificate from the Chartered Accountants regarding capital expenditure incurred on the project and a certificate from an Engineer certifying the civil work done."

A Mrs. Karan, in para 18 of her order, mentioned that for deciding as to whether an application is complete in material particulars, recourse has to be had to the provisions of the Manual for the Central Investment Subsidy Scheme. The application was required to be made in the prescribed form as per annexure II of the Manual and filed with details/documents mentioned in clauses (a); (b), (c) and (d) of para 2.3 of the Manual which lays down the procedure for claiming subsidy. Ultimately, Mrs. Karan had annexed a statement in respect of individual claimants and the name of the respondent appeared as Srl. No. 4. It was held by Mrs. Karan that the application by the respondent for subsidy was not complete in all respects and the deficiencies pointed out by her are as follows:

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- a. Certificate regarding plant and machinery bank certificate, details of unloading etc. on 18.1.1988;
 - b. Invoices of additional fixed assets on 12.3.1988;
 - D c. C.A. certificate for plant and machinery on 11th April, 1989.”

E After taking into consideration the order passed by Mrs. Karan as was observed by this Court in the order remitting the case back, the High Court came to the conclusion that the only point to be decided by it was as to whether the decision of Mrs. Karan rejecting the claim of the respondent was right on the grounds stated by her.

F During the course of hearing before the High Court respondent filed an additional affidavit showing that respondent had expended more than Rs. 100 lacs in fixed assets before the cut off date and therefore the respondent was entitled to the maximum subsidy of Rs. 25 Lacs. This contention has been rejected by the High Court by observing that material which had not been placed before Mrs. Karan could not be taken into consideration because as per remand order the High Court was to keep in view the order passed by the Joint Secretary, though the High Court could take its own decision on merit of the case. It was observed that since the respondent had not placed the material before the Joint Secretary which was sought to be produced before the High Court the same could not be taken into consideration. The only material which could be taken into consideration was the material which had been placed before Mrs. Karan. After analysing the order of Mrs. Karan the High Court came to the conclusion that Mrs. Karan had erred in rejecting

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the claim of the respondent in its entirety. It was held that the respondent was entitled to subsidy of 25% on the sum of Rs. 50,72,258. A

The respondent has filed the Special Leave Petition No. 22036 of 1997 claiming the maximum subsidy for the sum of Rs. 25 lacs. It was submitted by Shri Gopal Jain, learned counsel appearing for the respondent, that the respondent was entitled to maximum subsidy available under the scheme to the tune of Rs. 25 lacs. Mr. Jain, fairly conceded before us that the material which was placed along with the additional affidavit before the High Court had not been placed before Mrs. Karan, Joint Secretary. We agree with the view taken by the High Court that the only material which could be taken into consideration was the one which was produced before the Joint Secretary as this Court had remanded the case to the High Court to take the final decision keeping in view the order passed by the Joint Secretary. From the remand order it can be deciphered that the High Court was not supposed to entertain any fresh material. An opportunity was given to the claimants to file their representations to the Joint Secretary along with the material on the basis of which decision was taken by the Joint Secretary regarding the eligibility of the claimant to get the subsidy. The material which was sought to be produced before the High Court should have been produced before the Joint Secretary and it was for the Joint Secretary to take the decision on the same. Since the material had not been placed before the Joint Secretary the same could not be taken into consideration by the High Court and the contention raised by the respondent to the contrary has rightly been rejected. B C D E

Union of India has filed the appeal with the averment that premises of the respondent-Company were closed and the Company seems to have gone into liquidation. According to the counsel for the Union of India as per scheme a Company which went out of production within the period of 5 years of the start of production was not entitled to the subsidy under the Scheme. Apart from the averment that Company seems to have gone into liquidation no other material was placed before the High Court to show that in fact the company had gone into liquidation or that the liquidator had been appointed. Counsel appearing for the respondent in the High Court had fairly brought to the notice of the Court that ICICI and other financial institutions on the original side of the Bombay High Court had filed the suit bearing O.S. No. 1595 of 1989 and the Court had appointed Court Receiver in respect of the land, building, plant and machinery etc. The receiver had been appointed under Order 40 Rule 1 CPC. No order of winding up of the Company was passed. No official F G H

- A liquidator had been appointed to take over the assets of the Company. As per Mr. Gopal Jain, learned counsel appearing for the respondent, the receiver had appointed the respondent as its agent. According to him, the Company did not close down and remained in production. From the material which had been placed before the High Court and even before us it cannot be concluded that the Company had gone into liquidation or had closed down. Contention raised by the counsel for the Union of India that the respondent were not entitled to any subsidy thus cannot be accepted.

No other point was raised.

- C Mr. Gopal Jain submitted before us that the respondent had entered into a settlement with the ICICI Ltd. and the Industrial Finance Corporation of India. The consent terms were filed before the Debt Recovery Tribunal II, Mumbai in Recovery Proceeding No. 54 of 2001 [Original Application No. 156 of 2001] and that the respondent had already made the payment to the ICICI Ltd. and IFCI as per consent terms. He prayed that instead of depositing the amount of subsidy in Court as directed by the High Court the Union of India be directed to make the payment to the respondent directly along with interest. It was conceded before us, that the suit referred to by the High Court in its order is still pending. Under the circumstances we direct that the subsidy amount which was supposed to be deposited by the Union of India within three months from the date of the order of the High Court, i.e., 26/27th November, 1996 and which has not been deposited be deposited within three months from this day in the Court along with simple interest @ 9% per annum from the date of the passing of the order by the High Court till deposit of the amount. Respondent would be at liberty to apply to the Court for release of the amount deposited, if it has already settled its dispute with the ICICI and IFCI. The Court shall pass an order on such an application on its own merit in accordance with law.

- G For the reasons stated above, the appeals filed by the Union of India as well as by the respondent are dismissed. There shall be no order as to costs.

K.G.

Appeals dismissed.