

IN THE HIGH COURT OF PUNJAB AND HARYANA, CHANDIGARH

CWP-14594-2014(O&M)
Decided on:02.02.2015

Jai Bharat Gum and Chemicals Ltd.Petitioner(s)

vs.

State of Haryana and othersRespondent(s)

CORAM HON'BLE MR. JUSTICE K.KANNAN

Present Mr.Sandeep Goyal, Advocate for petitioner.
Mr. Keshav Gupta, Asstt. A. G. Haryana.

K.KANNAN, J (ORAL)

CM-1340-2015

CM is allowed, as prayed for.

Written statement on behalf of respondents no.1 to 3 is taken on record, subject to all just exceptions.

CWP-14594-2014

The petitioner (export unit) is registered with the Ministry of Commerce and Industry, Government of India as large and medium unit. It has another unit registered as SSI with the District Industries Centre. The petitioner had applied for transport subsidy notified through a scheme dated 21.01.2006. The scheme provides *inter alia* as under:-

“In order to enhance competitiveness of exporting units, freight assistance to the extent of 1% of Free on Board (FOB) value of exports subject to maximum of Rs.10.00 lacs per unit per annum will be provided for export of goods manufactured in the exporting units of State.”

The export in unit itself is defined in clause 2.3 as under:-

“2.3 Exporting Unit” means a unit registered as SSI with District Industries Center or with Ministry of Industry and Commerce, Govt. of India as Large & Medium Unit.”

Admittedly, for the year 2005, the petitioner claimed subsidy at the rates mentioned for each one of the respective units. For 2006-07 the subsidy for one unit was sought to be withdrawn on an interpretation of the scheme that if both units operate under the same management, subsidy will be extended only to one of them. The petitioner brought a challenge in CWP-465-2010, that was disposed of on 21.01.2011 taking note of the submissions made by the petitioner that the practice followed by the State to extend the facility only to one unit if more than one unit is under the same management cannot be applied for the accrual of subsidy for the period earlier to the date of the order. The Court left it to be decided by the State in its discretion without requiring the Court to decide the issue. Against this decision, the petitioner has preferred LPA No. 330 of 2012, by which time a fresh decision had been taken reiterating its earlier decision and referring to the fact that the subsidy would be available only to one of the units under the same management.

The writ petition challenges the decision that it is against the expressed terms of the scheme and on instructions subsequently made restricting it to only one unit cannot be done to whittle the scheme as originally provided.

The counsel appearing for the State supports the decision on the ground that subsidy itself is not a vested right for somebody to claim and it is literally a matter of State policy. If the policy dictated that the benefit will be restricted to one unit under the same management, the same cannot be extended merely referring to some past practice.

I would agree with the contention that subsidy itself cannot create

a vested right in that no person can direct a State to extend a subsidy to a particular unit but if a scheme is floated to encourage exports and in the manner of its application there cannot be a whimsical limitation during its operation. If the benefit of subsidy itself is sought to be restricted, that again cannot be a matter of challenge but that restriction ought to operate from the time when they decide to make such restrictive application on subsidy. If the decision was, therefore, made in the year 2009 restricting its operation only to one unit under the same management, I would find that it should operate only when such decision was taken in the year 2009.

Counsel for the State points out that the untenability of retrospective effect of the decision has not even been pleaded. I would not fetter the Court's jurisdiction to interpret a scheme to be subjected to a mere issue on pleadings. The parties know what they contend for. If the petitioner's contention was that the benefit of scheme could not have been withdrawn, subsequently that pleading must, in my view, support what is tenable, namely, that it cannot be withdrawn for any date when the subsidy had already accrued before the date when an altered interpretation was made.

I quash the action of the respondents, withdrawing the subsidy for the year prior to 2009 to the petitioner and direct the subsidy percentage mentioned in the scheme to be extended to the petitioner and release the same within a period of eight weeks.

The petition is allowed on the above terms.

02.02.2015
mamta

(K.KANNAN)
JUDGE