

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 8054 of 2015(O&M)

Date of decision: 11.10.2017

Competent Cams Pvt. Ltd.

.. Petitioner

vs.

State of Haryana and others

.. Respondents

Coram: **HON'BLE MR.JUSTICE S.J.VAZIFDAR,CHIEF JUSTICE
HON'BLE MR.JUSTICE HARINDER SINGH SIDHU**

Present:- Mr. Tushar Sharma, Advocate
for the petitioner.

Mr. R.K.S. Brar, Addl. A.G., Haryana

Mr. Deepak Balyan, Advocate
for HSIIDC.

S.J. VAZIFDAR, CHIEF JUSTICE (ORAL)

CM-14537-CWP-2017

Miscellaneous application is allowed as prayed for subject to all just exceptions.

CWP-8054-2015

This writ petition is similar to a number of petitions, of which the case of *M/s Challen International (India) Pvt. Ltd. vs. State of Haryana and others in CWP No. 9859 of 2010* is the first. Those petitions were disposed of by our order and judgment dated 10.08.2017.

2. The Industrial Policy 1999 and EMP-2005 are relevant in this petition as well. The Letter of Allotment (LOA) and other documents in this writ petition are similar to those in the other writ petitions. It is not necessary therefore to refer to the fact in detail.

3. Suffice it to note that HSIIDC issued a LOA to the petitioners.

The said LOA made the EMP-1999 applicable which provided a rebate of 20%. The payment terms in the EMP-1999 provided a rebate equivalent to

20% of the land cost if the industrial unit starts commercial production within three years of the offer of the industrial plot. The petitioner's unit admittedly commenced commercial production within the stipulated period. The respondents can reject the rebate inter-alia on the ground that there were zoning violations and that there was a gap between the start of production and issuance of the occupation certificate. So far as the alleged violations are concerned, the result in this petition follows the result of our judgment dated 10.08.2017 in CWP No. 9859 of 2010 .

4. There is an additional violation as alleged in the present petition. The respondents allege that the petitioner had illegally leased the premises to a third party for a non permissible activity. So far as the grant of the lease itself is concerned, there is no objection as ultimately on 04.08.2014 the respondents permitted the petitioner to lease the property subject to certain conditions. The compounding in this respect is also with retrospective effect. Thus, in any event, rebate could not have been denied merely on the ground that the petitioner leased the property.

5. The respondents, however, contend that the lease was for an unauthorized activity namely warehousing. This can never be a valid ground for refusing the rebate for more than one reason. Firstly the unit has not ceased commercial production and its activities continue even as on date. Secondly, the petitioner was not at fault. The lease deed was entered into between the petitioner and a third party, vide which the third party was required to use the property only for the purposes mentioned in the conveyance. The lease deed contains the following clause:-

“That the tenant shall use the premises for running its factory purpose only and tenant shall not sublet the said premises in part or in full to anybody else. The premises shall be occupied

by M/s New Swan Enterprises, only. The tenant has perused by Conveyance Deed dated 28.02.2003 executed by HSIDC in favour of the owner and agrees and undertakes to use the demised premises only for the purposes mentioned therein.

Failure to do so will entail termination of this lease deed, at option of the owner on one month's notice to tenant. The tenant shall not part with possession of any portion or whole of demised premises to anyone else under any arrangement.”

6. Unfortunately the tenant illegally used the premises contrary to the terms and conditions of the lease by running a warehouse and not a factory. The petitioner's bona-fides in this respect is established by the fact that it terminated the lease on the ground of illegal use. Ultimately, the tenant vacated the premises and handed over the possession to the petitioner. Thereafter, the petitioner again with the respondents' approval leased the property to another party who has used the same in accordance with the terms and conditions of the lease deed.

7. The purpose of the rebate has not been affected except for a short duration when the industrial activity did not go on. The petitioner, however, was not at fault for the same. The lessee was at fault. The purpose for which the plot was sold was, therefore not affected in any significant manners.

8. In these circumstances, the impugned order dated 06.02.2012 is set aside. The petition is disposed of in terms of our order/judgment dated 10.08.2017 passed in CWP No. 9859 of 2010. The petitioner shall be entitled to the rebate if all other terms and conditions have been fulfilled.

(S.J. VAZIFDAR)
CHIEF JUSTICE

11.10.2017
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(HARINDER SINGH SIDHU)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No