IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP No.27706 of 2013 (O&M)
Date of Decision: 04.07.2018

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Leisure Wear Exports Ltd.

. . . . . Petitioner

Vs.

State of Punjab and others

. . . . . Respondents

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CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

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Present: - Mr.J.S. Toor, Advocate, for the petitioner.

Mr.H.S. Sitta, AAG, Punjab.

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RAKESH KUMAR JAIN, J.

The petitioner has prayed for the issuance of a writ in the nature of certiorari for quashing the order dated 4.11.2011 by which the prayer made by the petitioner for grant of industrial incentive of an amount of ₹32,61,000/- purported to have been sanctioned on 23.11.1997 in terms of the Industrial Policy, 1996 has been declined.

In brief, the petitioner has averred that the Department of Industries and Commerce, Government of Punjab, had issued a notification on 20.3.1996 introducing the New Industrial Policy, 1996 [for short 'the Policy'] offering fresh incentives for the development of industry in the State of Punjab. It was decided therein to promote 'Export Oriented Industry', which was defined in Clause 2.22 of another notification issued by the Department of Industries and Commerce, Government of Punjab on 1.6.1996, which means an industrial unit exporting at least 25% of its products in markets outside India with minimum value addition of 33%

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against direct receipt of foreign exchange or through merchant exporters including Punjab Small Industries and Export Corporation or any other Trading house and registered as such with the Department of Industries, Punjab”. The petitioner allegedly set up its manufacturing unit at two places in Ludhiana and its Corporate Office at Leisure House, 268, Industrial Area-A, Ludhiana and Registered Office at X-22/2, Loha Mandi, Naraina, New Delhi. It came into production on 22.11.1997 and submitted an application for releasing the industrial incentive on 21.5.1998. According to the petitioner its application for release of industrial incentive was considered by the department in its meeting held on 31.10.2000 and a sum of ₹32,61,000/- as industrial incentive was sanctioned subject to the following conditions: -

> *“1. The disbursement will be made on the availability of funds strictly as per seniority (Except units set up by S.C.’s) provided the unit found in working condition/in operation at the time of disbursement.*
>
> *2. The party will submit annual production return in Forum-1 (vii) to General Manager, for five years from the date of production, along with Bank realization certificate, if exports are made directly along with copies of L.C. Form-B and bills of lading in the case of exports are made indirectly. The party will also execute agreement deed in Form-I (vi) at the time of disbursement of Investment Incentive.”*

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The petitioner has averred that after the industrial incentive was sanctioned to the tune of ₹32,61,000/-, the State Bank of Bikaner and Jaipur sanctioned the working capital limit of ₹98,79,920/- on 14.5.1998. The petitioner became the member of the Federation of Indian Export Organization and its demand for industrial incentive was verified from the Project Manager, District Industrial Centre, Ludhiana, who had made a detailed report on 5.6.2008. However, it is not denied that the Project Manager, District Industrial Centre, Ludhiana in his report dated 5.6.2008 has solely relied upon the export sale of the petitioner which was verified from the bank and certificate of the Chartered Accountant.

Be that as it may, since the industrial incentive was not released, therefore, the petitioner filed CWP No.14452 of 2011 which was disposed of on 9.8.2011 with a direction to respondents No.2 & 3 to consider the application of the petitioner and to pass an appropriate order within a specified time. Apropos, a representation was made by the petitioner on 2.9.2011 which was disposed of by the Additional Secretary-cum-Director, Department of Industries & Commerce, Chandigarh vide his impugned order dated 4.11.2011 with the following reasons:-

> *"a) The unit did not fulfill the condition imposed in the sanction letter issued to the unit on dated 23.11.2000 that the unit will submit annual production return on Form-I(VII) to General Manager, for five years from the date of production along with Bank realization certificate.*

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> *b) The machinery component of fixed capital investment on which subsidy was sanctioned is not intact in the unit and the unit is not manufacturing the same product for which subsidy was sanctioned."*

Aggrieved against the said decision dated 4.11.2011, the present petition has been preferred in which at the time preliminary hearing, the petitioner had alleged that he fulfills both the conditions enumerated in the impugned order and has claimed that the respondents have erred in rejecting its claim.

It is averred in the reply filed on behalf of respondents No.1 to 3 that the petitioner had failed to submit the required documents as required in condition No.2 of the sanctioned letter to ascertain its eligibility in terms of Clause 2.22 and that the fixed capital investment on which the industrial incentive was sanctioned to the petitioner unit was not found intact and the unit was found working at two places. It is also averred that the report of the Project Manager, District Industrial Centre, Ludhiana is just a recommendation but he is not the competent authority to pass the order because the jurisdiction vests with the General Manager, District Industrial Centre, Ludhiana. As a matter of fact, the respondents did not deny that the industrial incentive was sanctioned in the meeting held on 31.10.2000 but their agitation is that the petitioner has not satisfy the conditions enumerated in the sanctioned letter and also the fact that it had been manufacturing its products for the purpose of export to fall within the definition of Clause 2.22. In this regard, the respondents further filed an affidavit dated 23.12.2016 of the General Manager, District Industries Centre, Ludhiana in

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which it is averred that the petitioner is not fulfilling the basic requirements, stipulated in condition No.2 of the sanctioned letter dated 23.11.2000. In this regard, para Nos.5 to 10 of the affidavit needs to be specifically mentioned, which read as under: -

> *"5. That it is reiterated that as per Industrial Policy, the investment incentive in shape of capital subsidy is being provided to the manufacturing units only and not to the trading enterprises. In the present case the petitioner unit himself apprised to the respondent department that unit is doing trading work of readymade garments w.e.f. 1.4.2000. This fact was discloed by mode of application submitted in the office of respondent department by the petitioner unit himself bearing memo No.L WEL/DIC/2001-02/156 dated 10.8.2001.*
>
> *6. That there is mismatching of figures of Export of products in the documents submitted by the petitioner unit, as the export figures as per BRC certificates of the year 1997-98, 19998-99, 1999-2000 & 2000-2001 are not in consonance and mismatching with the figures of CA certificate, the comparison chart for ready reference of this Hon'ble Court is submitted in toto as below: -*

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Year	*Total production in lack*	*Export as per CA certificate*	*Export as per BRC*
1997-98	*1855.16*	*1813.86*	*475.68*
1998-99	*825.53*	*817.56*	*901.02*
1999-00	*453.52*	*427.86*	*452.72*
2000-01	*405.69*	*394.07*	*553.40*
2001-02	*548.36*	*538.35*	*Nil*

7. That in spite of repeated reminders and regular follow-up by respondent department to explain and to justify its position, letters issued by respondent department in favour of the petitioner unit bearing memo No.4487 dated 10.11.2016, 4532, 4536 dated 15.11.2016 are annexed herewith as Annexures R-3, R-4 & R-5. But in response the petitioner unit neither responded back to the satisfaction of answering respondent department, nor submitted relevant record for the fulfillment of condition 2.22.

8. That it is specifically submitted that the petitioner unit was not entitled for Investment incentive as Export Oriented Unit herein after termed as (EOU) as per provisions of Rule 2.22 of Industrial Policy 1996. The claim of the petitioenr unti for Investment Incentive was already rejected by

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speaking orders of answering respondent Department/Director of Industries and Commerce Punjab vide their Memo No.Inc/sub/Ldh./L-63/17588-589-B dated 09.12.2011 annexed as Annexure R-6.

9. *That it seems that the petitioner unit deliberately didn't provide the required documents during the time of filing of application for investment incentive this ambiguity was specifically mentioned in para 7 & 8 of speaking orders of answering respondent Department/Director of Industries and Commerce Punjab vide their Memo No.Inc/Sub/Ldh/L-63/17588-589-B dated 9.12.2011. On the bases of above speaking order claim of the petitioner unit was rejected by answering respondent department as per the record submitted by the petitioner unit.*

10. *That similarly as per Para 10-b of the speaking orders of answering respondent department/Director of Industries and Commerce Punjab, the claim of the petitioner unit for Investment Incentive was rejected by answering respondent as the petitioner unit was not manufacturing same*

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> *product for which the subsidy was sanctioned. This ambiguities still persists as observed by the answering respondent department as per the record submitted by the petitioner unit, which disentailed the petitioner unit for claim for investment incentive."*

The petitioner thereafter, filed an application bearing CM No.3535 of 2016 to place certain documents on record along with an affidavit of the MD of the company in order to prove that the petitioner has complied with the conditions imposed at the time of sanctioning the industrial incentive. The respondents have also filed reply to the said miscellaneous application denying the averments made therein and specifically averring that as per the record given by the petitioner its unit had produced an exported sanctioned item only for two years seven months and not for the five consecutive years as per the Policy and that the industrial incentive was given in the shape of capital subsidy to the manufacturing unit and not to the trading enterprise or units who do job work on the machinery installed in their premises. It is averred that the petitioner apprised the respondent/department that its unit has been doing job work during the year 2000-2001. Para 6 of the reply to the application needs a specific mention, which read as under: -

> 6. *That there is mismatching of figures of Export of products in the documents submitted by the petitioner unit, as the export figures as per BRC certificates of the year*

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1997-98, 19998-99, 1999-2000 & 2000-2001 are not in consonance and mismatching with the figures of CA certificate, the comparison chart for ready reference of this Hon'ble Court is submitted in toto as below: -

Year	*Total production in lack*	*Export as per CA certificate*	*Export as per BRC*
1997-98	*1855.16*	*1813.86*	*475.68*
1998-99	*825.53*	*817.56*	*901.02*
1999-00	*453.52*	*427.86*	*452.72*
2000-01	*405.69*	*394.07*	*553.40*
2001-02	*548.36*	*538.35*	*Nil*

Learned counsel for the petitioner has vehemently argued that the petitioner is entitled to the subsidy/industrial incentive in view of the sanctioned letter dated 31.10.2000 after which the petitioner had also obtained working capital from the State Bank of Bikaner and Jaipur but the respondents are not fulfilling their promise. It is also submitted that the EOU status of the petitioner was verified by the Project Manager, District Industrial Centre, Ludhiana on 5.6.2008 and the case of the petitioner was covered by a decision of this Court rendered in ***CWP No.19007 of 2002*** titled as ***"M/s Balak Gases Oxygen Gas Plant and another** Vs. **State of Punjab and others"*** decided on 20.5.2011 which has the affirmation of the Division Bench of this Court as in the LPA No.119 of 2012 filed against M/s Balak Gases Oxygen Gas Plant and another decided on 12.8.2013 it has been held that the petitioner has fulfilled both the conditions of the sanctioned letter dated 31.10.2000 and also falls within the definition of Clause 2.22

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being an 'Export Oriented Unit' as it has been registered as an Export Oriented Unit and is a member of the Federation of Indian Export Organization.

On the other hand, learned counsel for the respondents has submitted that the purpose of formulating the Policy was to give a fillip to the industrial sector with a view to reduce the burden upon the agricultural sector which is the back bone of the economy of the State of Punjab and in that process issued notification dated 1.6.1996 to bring into operation the Punjab Investment Incentive Code under the Policy in which the definition of the 'Export Oriented Unit' is provided in Clause 2.22 which means an industrial unit exporting at least 25% of its products in market outside India. It is submitted that the report prepared by the Project Manager, District Industrial Centre, Ludhiana while verifying the EOU status of the petitioner is just a recommendation because it was based upon the certificates of the BRC (Bank Releasing Certificate) and Chartered Accountant whereas, the petitioner has failed to produce the relevant documents before the Industries Department in order to prove that it has complied with both the conditions mentioned in the sanctioned letter and also the provisions of Clause 2.22. It is further submitted that from the documents tendered by the petitioner it has been found that the petitioner is not manufacturing the export items but is trading in it and also doing a job for the export of its machines.

I have heard learned counsel for the parties and after perusal of the record, am of the considered opinion that there is no merit in the present petition because the petitioner has failed to comply with both the conditions of the sanctioned letter mentioned in detail hereinabove and has also failed to prove that it falls within the definition of Clause 2.22 of the notification

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dated 1.6.1996 by which the Government of Punjab has issued the Punjab Industrial Incentives Code under the Industrial Policy, 1996. The petitioner has failed to prove that its industry was exporting at least 25% of its product in the market outside India rather the evidence brought on record by the petitioner, examined by the respondent department, shows that the petitioner had manufactured and exported its product only for two years and seven months and thereafter, it indulged in trading for the purpose of export and also it started job work on its machines for manufacturing items for the purpose of export.

Thus looking from any angle, I do not find any reason to interfere in the well reasoned impugned order passed by the respondents on the representation made by the petitioner by which the same has been rejected.

Dismissed. No cost.

(RAKESH KUMAR JAIN)
JUDGE

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Whether speaking /reasoned : Yes/No
Whether Reportable : Yes/No

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