2023:PHHC:151934

IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

211 **CWP-29513-2018**
Date of Decision: 20.11.2023

M/S RAMSONS INTERNATIONAL

... Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

****

Present: Mr. Sourabh Goel, Mr. Tej Bahadur,
Ms. Gitika Sharma and Ms. Shivani Sahni
Advocates for the petitioner.

Ms. Niharika Sharma, AAG, Punjab.

*****

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the Order dated 31.01.2012 (Annexure P-12) vide which the investment incentive (Capital Subsidy) under the Industrial Policy, 1996 sanctioned in favour of the petitioner vide letter dated 05.03.2003 (Annexure P-3), has been wrongly cancelled notwithstanding that the petitioner fulfills the terms and conditions of the letter of sanction and for reasons that are alien to the terms & conditions for grant of capital subsidy. Challenge is also raised to the order dated 11.12.2017 (Annexure P-16) vide which the claim of the petitioner for release of subsidy has been rejected for undue consideration and without appreciating the terms and conditions of the Industrial Policy, 1996

Counsel for the petitioner submits that the respondent-State of Punjab had announced an Industrial Policy and Investments in the year 1996 to promote setting up of the industries in the State of Punjab. The abovesaid Industrial Policy envisaged attracting fresh investment as well as avoiding multiplicity of incentives and also creating more job opportunities for the youth in the border districts through increased investments in the industrial sector. The respondent-State of Punjab also notified the Rules called as "Punjab Industrial Incentive Code under the Industrial Policy, 1996". Clause 13 of the abovesaid Code defined the incentives to be offered to the "Export Oriented Units". Clause 13 of the same is extracted as under:

> ***"(i) Eligibility***
>
> *(a) Export Oriented units as defined under rule 2.22 shall be entitled to the incentives mentioned below.*
>
> ***ii) Incentives***
>
> *a) Investment incentive @30% of fixed capital investment subject to maximum of Rs. 50 lacs, in case of Export oriented units in small scale sector, which would be sanctioned as prescribed under rule 6.1. However, in case of Export Oriented units in Large & Medium Sector the quantum of investment incentive shall be as per rule 6.1(b).*
>
> *b) Sales Tax exemption or deferment for 10 years subject to maximum of 300% of fixed capital investment in case of export oriented units in small scale sector, which would be sanctioned as prescribed under rule 6.3(II). However, in case of Export oriented units in Large & Medium Sector the quantum of incentive shall be as per rule 6.3 II(b).*
>
> *c) Such units shall execute an agreement in form I (vi) at the time of disbursement of investment incentive and shall also furnish annual production return in form I(vii).*

> *di) Export oriented units set up for items mentioned in Annexure-II and III (negative list) shall also be entitled to above incentives."*

It is further averred that induced by the abovesaid incentives announced by the State of Punjab in its Industrial Policy, the petitioner set up an industrial unit for production of cycle tubes at the Industrial Estate, Ludhiana, after getting itself registered as Small Scale Industry, on 27.06.2001. The petitioner installed machinery worth Rs.32,57,977/- and misc. fixed assets worth Rs.1,81,077/- during the period from 01.04.2001 to 29.09.2001. Being an Export Oriented Unit, the petitioner applied for grant of investment incentive on fixed capital as per the Industrial Policy of 1996. Sanction for the Investment Incentive for Small Scale Unit is governed by Clause 6.1 of the Punjab Industrial Incentive Code. The petitioner being export oriented unit and having been registered as a Small Scale Industry was entitled to investment incentive (capital subsidy) to the tune of 30% of total capital investment. The claim of the petitioner for grant of the said subsidy was hence considered by the Committee and vide letter dated 05.03.2003, the petitioner was informed that the Committee has considered the claim of the petitioner in its meeting held on 10.09.2002 under the Chairmanship of Director of Industries and Commerce, Punjab and has sanctioned an amount of Rs.9,98,000/- as investment incentive (Capital Subsidy). As per the terms and conditions of the aforesaid communication dated 05.03.2003 sanctioning the capital subsidy, the following conditions were prescribed for release of the capital subsidy:

> *" XXX XXX XXX*

> *2. Meeting of the Committee to consider Investment Incentive Claim was held on 10.9.2002 under the chairmanship of Director of Industries & Commerce Punjab. The committee has sanctioned an amount of Rs. 9.98 Lacs (Nine Lac Ninety Eight Thousand Only) as Investment Incentive subject to the following conditions:*
>
> > *1) That the disbursement will be made on the availability of funds strictly as per seniority except priority categories declared by the Govt. from time to time provided the unit is found in working condition/operation at the time of disbursement.*
> >
> > *2) That the party will submit Annual Production Returns for five years from the date of production to the General Manager, District Industries Centre concerned by due date in form-I(vii), alongwith Bank Realization Certificate if exports are made directly alongwith copies of L.C. Form H & Bills of lading in the case, if exports are made indirectly. The party will also execute an agreement in Form I(vi) at the time of disbursement of investment incentive.*
>
> *Sd/-*
> *Deputy Director*
> *For Director of Industries & Commerce, Punjab*
>
> *Endst: No.Inc/Sub/Ldh/R-253/1997-C Date 5.3.2003"*

In compliance to the aforesaid conditions prescribed in the Sanction Letter, the petitioner fulfilled all the conditions and furnished the requisite information in the prescribed proforma alongwith the necessary certificate issued by the Chartered Accountant for the years pertaining to 2001-02; 2002-03; 2003-04; 2004-05 and 2005-06. It is further averred that the Unit of the petitioner remained in production even after the abovesaid period i.e. upto 2010-2011. The entire production report even for the said period had been submitted by the petitioner. A communication bearing memo No.5440 dated 21.07.2008 was thereafter received by the petitioner from the respondents, which reads thus:

> *"From:*
>
> *General Manager*
> *District Industrial Centre*
> *Ludhiana*
>
> *To*
>
> *M/s Ramsons International*
> *B - XXX- 1862(P)/B-24(P)*
> *Focal Point, Phase III, Dhandari Kalan*
> *Ludhiana*
>
> *Memo No. 5440*
>
> *Dated: 21.7.2008*
>
> *Subject: Case of Investment Incentive.*
>
> *Reference your letter dated 18.7.2008 on the aforementioned subject.*
>
> *Annual production report for the year 2007-2008 submitted by you vide the aforementioned letter has been filed by this office. Because 5 years from the date of production are completed in year 2006-07. You are also informed that since alongwith the earlier submitted production reports, documents as per condition no.2 of the sanction letter have not been supplied, therefore it has been written to the head office to consider your case in (general category)."*

It is thus submitted that the respondents do not dispute the fact that the Annual Production Reports were duly submitted by the petitioner in the prescribed proforma and the period of five years, from the date of production, was completed in the year 2006-07. However, as the requisite form of an Export Oriented Unit was not supported, hence, the unit of the petitioner was ordered to be considered under the General Category. He contends that the same would have no bearing insofar as the assessed investment incentive (Capital Subsidy) to be released to the petitioner is concerned. It is submitted that notwithstanding that the petitioner fulfilled the terms and conditions prescribed in the Industrial Policy of 1996, the respondents declined the claim for subsidy vide communication dated 31.01.2012 on the ground that the Government had taken a decision that the subsidy would not be disbursed to those units that have been closed/shifted/sold and that the General Manager of the District Industrial Central, Ludhiana had informed vide letter No.5313 dated 10.10.2011 that the unit of the petitioner was closed. The relevant extract of the aforesaid communication bearing No.IN/SUB/ LDS/P-154-128-A dated 31.01.2012 reads thus:

> *"FROM:*
>
> *Director Industries and Commerce, Punjab*
> *Chandigarh*
>
> *To*
>
> *M/s Ramsons International*
> *B - 3 - 1862(P) / B - 24(P)*
> *Focal Point, Phase III*
> *Ludhiana*
>
> *Memo No. In/Sub/Ldh/P-154/128-A*
>
> *Dated 31.1.2012*
>
> *Subject:* ***Regarding cancellation of subsidy.***
>
> *In regard to the above mentioned subject.*
>
> *Government has taken a decision that the subsidy will not be disbursed to those units which have been closed/ shifted/sold. General Manager, District Industrial Centre,*

Ludhiana vide its letter No.5313 dated 10.10.2011 has informed that your unit is closed. In view of the decision taken by the Govt., subsidy of Rs.9,98,000/- granted to you is hereby cancelled.

Sd/-
Joint Director(I)
For Director Industries and Commerce, Punjab"

It is submitted that the aforesaid decision of the respondents to decline the release the capital subsidy to the petitioner was subject matter of challenge in CWP No.18301 of 2012 titled as "Ramsons International Vs. State of Punjab and others." The said writ petition was disposed by this Court vide order dated 19.05.2014, wherein the respondents were directed to consider the case of the petitioner for releasing the sanctioned capital subsidy to the petitioner within a period of six months of the receipt of certified copy of the aforesaid order, failing which they were liable to pay interest @ 6% per annum till the realization of the amount in view of the guidelines/ directions issued by this Court in the matter of ***'M/s Balak Gases Oxygen Gas Plant and another Versus State of Punjab and other'*** reported as (***2012) 4 RCR (Civil) 413.***

In compliance of the abovesaid order, the respondents sought for the bank details of the petitioner for implementation of the above order vide memo dated 15.07.2015, which such information was also furnished by the petitioner on 03.08.2015. However, notwithstanding the same, vide order dated 11.12.2017, the respondents declined the claim of the petitioner again on the basis of legal advice rendered by the office of Advocate General Punjab and on the ground that Ramsons International, Ludhiana is not entitled to the subsidy as it did not fulfill the conditions of Rule 2.22 of the Industrial

Policy of 1996 and that it was not working in the said premises and rather M/s Midnapur Tyres Re-Trade Pvt. Ltd. was found to be working from the said premises, as per the report of the General Manager, DIC, Ludhiana vide memo No.817 dated 18.01.2013. Rule 2.22 of the Notification dated 01.06.1996, however, reads thus:

> ***"XXX XXX XXX***
>
> *2.22 'Export Oriented Unit' means an industrial unit exporting atleast 25% of its products in markets outside India with minimum value addition of 33% 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.*
>
> ***XXX XXX XXX"***

Referring to the above, it is contended that the said Clause was not applicable in the present case, since Clause 2.22 defined an Exported Oriented Unit and it did not mandate that the capital subsidy could not be released in the event any other unit was found running at the said premises. He further refers to the Clause 6 dealing with incentive to small scale industrial units and Sub Clause 6(i) thereof dealing with the cases for grant of investment incentive to be referred to the Director for sanction as well as Clause 13 which defines eligibility, which has already been extracted above.

It is contended by the learned counsel for the petitioner that the respondents have sanctioned the grant of capital subsidy to the petitioner vide communication dated 05.03.2023 subject to the condition prescribed thereunder. The petitioner duly furnished the details to the respondents. They acknowledged that the documents established the petitioner to have remained in commercial production for a period of more than five years from the date of commencing production. The only deficiency pointed out was about the non-submission of the requisite forms to establish that the petitioner was an Export Oriented Unit. Nonetheless, the respondents approved the grant of capital subsidy as a 'general unit' instead of as an Export Oriented Unit, which has no bearing on the entitlement of the petitioner to the Capital Subsidy as sanctioned.

It is further argued that the order of rejecting the claim of the petitioner was on account of the report submitted by General Manager, District Industries Centre, Ludhiana to the effect that the unit in question was not functional as on the date of his spot inspection. It is argued that the said basis could not be relied upon by the respondents to deny the benefit of investment incentive to the petitioner since no such ineligibility is prescribed in the Industrial Policy of 1996 or as a part of the terms and conditions attached to the sanction granted by the respondent-State of Punjab. The reference made to Rule 2.22 of Industrial Policy of 1996 is misplaced since the same does not stipulate that an Industrial Unit must be functional till the time capital subsidy is disbursed to the Industrial Unit. Once the time period prescribed was for a period of five years of commercial production to be eligible to stake a claim for release of capital subsidy, incorporation of any condition later in point of time, which is not a part of the policy document itself, would amount to changing the conditions after the petitioner had altered its position and made investment relying upon an assurance made by the respondents, more so when a right had already crystallized in favour of the petitioner. Hence, the respondents would be estopped from denying the benefit for which all requisite essential compliances had already been made by the petitioner. The entitlement of the petitioner and the compliance of the conditions of eligibility/sanction are to be seen as on the date when the petitioner became eligible for grant of capital subsidy and not after the same has already been sanctioned. Once there is nothing on record as would establish that the petitioner did not fulfill the eligibility conditions prescribed for release of capital subsidy as on the date when such capital subsidy fell due, they cannot deny the benefit on account of delay in releasing the capital subsidy to the petitioner-rightful claimant. Further, the respondents relied on the advice received from the office of Advocate General, Punjab, the extract whereof rather suggests that "if a unit is otherwise eligible and entitled to release of the capital subsidy, the same ought to be released." The question of eligibility and entitlement should relate back to the date when the entitlement fell due in favour of a claimant and not when the respondents process the case for release, especially when the respondents are processing the release after a period of more than a decade since the petitioner became entitled to the capital subsidy.

Controverting the said submission, counsel for the respondent-State has placed reliance on the counter affidavit filed by the General Manager, District Industries Centre, Ludhiana on behalf of all the respondents, wherein it had been averred that the claim of the petitioner for investment incentive (capital subsidy) was rejected for the reason that the petitioner unit did not fulfill the terms and conditions of Sanction Letter dated 05.03.2003 as well as the eligibility conditions of Industrial Policy of 1996 for the release of the capital subsidy. It was also submitted that the disbursement of the capital subsidy was to be made subject to the availability of funds and strictly as per seniority and the petitioner unit failed to submit the required Annual Production Returns (APRs) and Banking Realization Certificates regarding its exports as specified at Sr. No.2(i) of Sanction Letter. The General Manager, District Industries Centre, Ludhiana also reported that some other entity known as M/s Midnapur Tyre Re-Traders Pvt. Ltd. was currently operating from the said premises and hence, the petitioner unit did not fulfill the requirement of Rule 2.22 of the Industrial Policy of 1996 and as incorporated in the sanction letter dated 05.03.2003. Since the petitioner was not eligible for grant of subsidy, the writ petition is not maintainable and is liable to be dismissed.

It is also averred that the APRs submitted by the petitioner for the year 2001-02 were not in the prescribed form under the applicable Rules and that the APRs for the yeas 2001-02, submitted alongwith the writ petition, were never submitted in the office of General Manager, District Industries Centre, Ludhiana. It was further submitted that the petitioner did not submit the APR in the year 2006 alongwith letter dated 27.05.2006, in the prescribed form, and deleted the column No.VII i.e. production during the said year of the prescribed form. The claim of the petitioner for disbursement of sanctioned capital subsidy was taken up in the year 2007-08 as the petitioner, however, as the petitioner failed to comply with the condition No.2(i) of the sanction letter and the petitioner unit was lying closed since 01.02.2011, it is not entitled to the release of capital subsidy. Pursuant to the orders passed by this Court in CWP-18301 of 2012, decision has been taken by the respondents assigning specific reasons as to why the petitioner unit is not eligible for grant of capital subsidy. The claim of the petitioner has thus been rightly declined.

Learned counsel for the petitioner rebutted and submitted that the respondents are attempting to mislead the Court. The intimation regarding submission of document in Form-H, as stipulated in the sanctioned letter dated 05.03.2003, pertaining to the units where exports were made indirectly, had been duly complied with. The petitioner had submitted the Form –H alongwith the letter dated 14.01.2010 with the respondents. In response thereto, the respondents, vide letter bearing No.965 dated 24.02.2010 called upon the petitioner to submit attested copies of Form-H alongwith signed audited balance sheets for the period of 2001-02 to 2006-07 for the case to be processed further. In compliance thereto, the petitioner submitted the documents with the respondents and that vide letter bearing memo No.GOK/LDH/1328 dated 16.02.2011, the respondents forwarded to the same to the Assistant Commissioner, Excise and Taxation Department, however, no response was received thereupon. A reminder dated 10.06.2011 was sent again to the Assistant Commissioner, Excise and Taxation Department. There is no denial that the requisite Form-H submitted by the petitioner alongwith the attested copies of audited balance sheets were deficient in any manner whatsoever. Hence, the fault lies with the respondents themselves. He submits that averments in this regard have been pleaded in paragraphs no.15 to 18 of the writ petition, which read thus:

> *"15. That despite fulfilling all the requirements and being in continuous production for a period of more than 05 years from the date of commencement of production, the Investment Incentive which was sanctioned vide letter*

dated 05.03.2003, Annexure P-3, was not disbursed by the respondents. The respondents unnecessarily kept delaying the disbursal of Investment Incentive for undue consideration.

It is also pertinent to mention here that the Punjab Govt. vide Notification dated 30.11.1999, even announced that the priority will be given to the Export Oriented Units in disbursement of Investment Incentive. Copy of notification is Annexure P-8.

The petitioner vide letter dated 14.01.2010, while submitting the copies of form 'H' (Form for indirect exports) along with yearly detail of form 'H' requested the respondent No.2 to release the Investment Incentive sanctioned vide letter dated 05.03.2003, Annexure P-4. Copy of letter dated 14.01.2010 and detail of form 'H' submitted by the petitioner is Annexure P-9 (Colly).

16. *That the respondent vide its letter dated 24.02.2010 asked the petitioner to submit the attested/signed copies of Form 'H' and also asked the petitioner to submit the copies of audited balance sheets for the period 2001-2002 to 2006-2007 (period of 05 years from the date of sanction and commencement of production). Copy of letter dated 24.02.2010 is Annexure P-10.*

17. *That the petitioner in pursuance to the letter dated 24.2.2010, Annexure P-10, submitted all the documents along with balance sheets duly audited by the chartered accountant.*

18. *That the respondent No.2 vide letter dated 10.6.2011 forwarded the copies of form 'H' submitted by the petitioner for the period from 2002-2003 to 2006-2007 and asked the Assistant Commissioner, Excise and Taxation Department, Ludhiana to verify the documents and submit*

the report. Copy of the letter dated 10.6.2011 is Annexure P-11."

In reply thereto, the respondents have averred as under:

"15. That the contents of Para No.15 of the petition are denied being wrong. Whereas submission in detail along with facts has already been submitted in detail in preceding paras of preliminary objections and not being replied again for sake of brevity.

16. That the contents of Para No.16 of the petition are admitted as a matter of record.

17. That in contents of Para No.17 of the petition are denied being incorrect.

18. That in reply to this para the letter dated 10.06.2011 was written by the General Manager, District Industries Centre, Ludhiana i.e. Respondent No.3 and not by the respondent No.2 to the Excise and Taxation Department but no reply was received from them."

It is contended that the respondents are contradicting themselves in their reply. While the respondents submit that they had not received the documents, they do not dispute the communication generated at the end of the District Industries Centre to the Assistant Commissioner, Excise and Taxation seeking verification of the Form-H submitted by the petitioner. Thus, the denial to paragraph No.15 is specifically contradicted in the reply of the respondents in paragraph No.18 itself. The abovesaid communication dated 10.06.2011 is generated from the office of General Manager, District Industries Centre, Ludhiana and the present reply has been furnished by the said officer itself. Hence, the respondents are deliberately giving false facts before this Court instead of examining the claim of the petitioner on merits. It is contended that the matter has remained pending with the respondents for verification of Form-H for the last more than a decade and no satisfactory explanation has come forth as to whether any report had been received from the Department of Excise and Taxation or not with regard to the validity and verification of Form-H submitted by the petitioner, for the relevant period.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

A specific query was posed to the counsel for the State as to whether the communication dated 10.06.2011 is admitted or not. The said letter is not denied by the learned State Counsel. A specific reference has been made in the abovesaid communication by the General Manager, District Industries Centre, Ludhiana that the copies of Form-H for the years 2002-03 to 2006-07 on Page No.1216 had been forwarded by his office to the Assistant Commissioner, Excise and Taxation Department alongwith the office letter dated 16.03.2011 for comparison and verification of the documents with the export done by the unit and for submission of a report to his office. Surprisingly, the respondents have, in their impugned decision dated 11.12.2017, conveniently chosen not to make a reference to the said documents and have rather taken a plea of non-submission of Form-H which stands contradicted by their own reply.

Still further, the above stand of respondents is unfair also for the reasons that the capital subsidy was sanctioned to the petitioner on 05.03.2003 subject to the conditions mentioned therein and extracted earlier, the non-submission of documents in support whereof is not established. The condition of submission of APRs in Form-I(vii) alongwith Bank Realization Certificate was to be submitted for direct exports and Form-H and Bill of Lading if indirect export was made. The undisputed communication dated 21.07.2008 establishes that the APRs had been received and that the case of petitioner was recommended as a "general category" case. The submission of Form-H to the respondents stands established from the letter dated 24.02.2010 which acknowledges receipt of 'Form-H', but is objected to for want of attestation. The petitioner claimed to have submitted attested copies, which were evidently processed and forwarded on 16.03.2011 to the Department of Excise and Taxation for verification. The reminder dated 10.06.2011 established that as many as 116 pages had been submitted by the petitioner and that the verification was not done by the Department of Excise and Taxation. Hence, it is wrong on the part of the respondents to contend that 'Form-H' for indirect export was not submitted.

Once the submission of 'Form-H' is established by the petitioner, the onus lies on the respondents to establish to the contrary.

Considering it from another angle, once the respondents had recommended to consider the case of the petitioner for release of subsidy under general category, there was no reason even to await for 'Form-H', especially when petitioner claimed that it had no consequence on its eligibility and entitlement. The respondents chose to maintain a silence on the same and withhold its decision either to consider and process the claim of the petitioner under 'general category' or even about the verification received from the Department of Excise and Taxation. The said decision and information was to be furnished by respondents and would have been best evidence against the petitioner but no such detail or information has been divulged. An inference thus flows against the respondents.

Besides, even though much emphasis was laid on non-submission of 'Form-H' as a principal reason for declining the claim but the first decision of 31.01.2012 did not cite the same as a reason for denial of subsidy. It is thus evident that the above reason is an afterthought and was not a reason for rejection of the claim. The argument of the respondent thus deserves to be rejected.

The abovesaid decision was under challenge on CWP-18301 of 2012 (supra), which was decided on 19.05.20145. The objection of the respondent about not releasing the subsidy since Unit was closed was amongst the objections prescribed in the modalities and guidelines recommended by a Committee of the Government. The abovesaid guidelines and modalities were set aside by this Court in the Judgment of ***"M/s Balak Gases Oxygen Gas Plant and antoher Versus State of Punjab and others"*** reported as ***2012(4) RCR (Civil) 413.*** Paragraph 39 thereof reads as under:

> *"39. In the present cases, the offer of subsidy is a manner of providing incentives for such investment and an entrepreneur that assumes a business risk in investment, is entitled to believe that the scheme is not an empty promise but rooted on a sound government policy and is squarely covered under the regime of promissory estoppel of the industrial units. The State could not legally be permitted to completely defeat the rights of petitioner Industries by constant reappraisal of the scheme retrospectively, that too by issuing administrative instructions of any kind and by its officers by passing the impugned orders. Even in case of those industries, which after several years of operation has perforce to close its business by the only reason that assured subsidy did not*

reach him or any other valid ground beyond their control. A businessman, who makes investment and obtains loans from the market or financial institution for establishment of the industry, is at least entitled to assume that a portion of debt could be redressed from the amount of subsidy/incentive and benefits as promised by the State emanating from the Industrial Policies and relevant rules framed thereunder."

The above judgment was upheld by Division Bench and even the plea of lack of funds was rejected. The said judgment attained finality. The Civil Writ Petition No.18301 of 2012 was disposed of and order dated 31.1.2012 declining subsidy was set aside. Direction was given to the respondents to consider case of the petitioner for release of subsidy and for releasing the subsidy within six months failing which interest @ 6% per annum was to be given. The claim of the petitioner was thereafter processed for release but was rejected for reason that had already been rejected and by misreading the legal opinion wherein it was clearly stated that the reason already rejected in the judgment in CWP-19007 of 2002 could not be relied upon. The fresh reason cited was about non-compliance of Rule 2.22 of the Industrial Policy, 1996. The said Rule only defines an "Export Oriented Unit". The eligibility of Export Oriented Unit is governed by Clause -13. The said clause determines the entitled incentives and procedure and not a prohibition. It does not provide any disqualification. The documents required thereunder were only the agreement in Form-I(vi) and APR in Form-I(vii) and no other document. The receipt of both these things is well established and is beyond doubt. The recommendations, guidelines and procedure beyond the same was rejected by this Court and the judgment attained finality.

A reason of violation of Rule 2.22 was thus mentioned in the order rejecting claim of the petitioner without even bothering to consider as to how the said Rule was applicable against the petitioner. It would be incomprehensible to give any premium of ignorance or bonafide mistake to the respondents and clearly the order is reflective of ministerial bureaucratic mindset designed to harass and destined to force litigation on a citizen and propelled solely by lack of ability and courage to take right decision as the law and object of law. While the object is to promote industry, the decisions are to the contrary and thereby forcing multiple litigations on the industry.

Insofar as the contention of the respondent that the unit was not working as on the date when the inspection of the same was conducted in 2013 and the unit being closed since 01.04.2011 is concerned, the said objection is declined being not maintainable since no such eligibility condition had been prescribed for the release of capital subsidy. Perusal of the Industrial Policy of 1996, notified by the State of Punjab, specifically enumerates that the condition for the unit was to be functional for a period of five years and the requisite documents required to be submitted were the APRs as per Rule 2.22 read with Clause 13 of the Policy. The same were duly furnished and supporting Form-H was also submitted. The communication generated by the respondents itself showed that they were in receipt of the said documents and verification of the said documents including Form-H is and/or was pending at their own end. Even though the above reason does not find a place in the order of rejection, however, the said reason is also falsified from the admitted and undisputed documents. They cannot seek to capitalize their own delay and to not release the due capital subsidy in favour of the industrialist i.e. the petitioner. Further, it was not mandated in the Industrial Policy of 1996 that an industrial unit has to be functional also as on the date when the claim for release of capital subsidy is being considered or that the capital subsidy is being released. By interpreting the scheme document in such a manner, the respondents are introducing certain conditions as were not contained in the Industrial Policy of 1996 itself. The respondents would be estopped from introducing any other condition for release of capital subsidy especially when an industrialist has made investment on an assurance given by the respondent-State itself. Having altered the position on such an assurance extended by the Govt., the withdrawal of such benefit by the respondents in a unilateral and arbitrary manner by prescribing conditions not originally incorporated in the policy document would be unsustainable in law. Besides, the above objection of a non-running unit at the time of inspection in 2011 and later in 2013 had already been struck aside in the judgment of ***M/s Balak Gases (supra).*** Reliance on the same objection is thus an evident violation of the judgment of this Court in the case above and would attract contempt. This Court, however, refrains at this stage from venturing in the said area. It is also evident that despite lapse of more than 15 years, the respondents are still sitting over the matter and citing reasons that have been rejected or are not born out of Rules or the Policy. The benefits that have accrued in favour of an industrialist cannot be denied for perpetuity. I find that the conduct of the respondents is unbecoming of a welfare State and the State cannot defraud the aspirations of the people who made investments on the assurance made by it.

In view of the above, while allowing the instant writ petition and directing the respondents to release the sanctioned capital subsidy forthwith and without any further delay alongwith interest @ 6% per annum as originally directed by this Court in its order dated 19.05.2014 in CWP No.18301 of 2012 (surpa), the respondents are further burdened with a costs of Rs.50,000/- for their misconduct. The abovesaid amount of costs of Rs.50,000/- be deposited with High Court Legal Services Committee, Chandigarh. The State shall, however, be at liberty to effect recovery of the interest burden and costs from the defaulting official(s) as per law.

The petition stands allowed accordingly.

(VINOD S. BHARDWAJ)

NOVEMBER 20, 2023 **JUDGE**

rajender

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No