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

(101)

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Date of decision:- 18.12.2024

The Haryana State through Collector, Hissar and another ...Appellants

Versus

M/s Swadeshi Rubber Industries

...Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Sharad Aggarwal, Deputy Advocate General, Haryana.

None for the respondent.

...

SUVIR SEHGAL, J. (Oral)

1. Appellants-defendants are in second appeal before this Court assailing the judgment and decree dated 01.12.1992, passed by the learned Additional District Judge, Hisar.

2. Pleaded case of respondent-plaintiff, a registered partnership firm, is that it had set up a small-scale industry for manufacturing cycle tubes, etc. and started production in the year 1976. It was extended central investment subsidy of Rs.62,210/-, Rs.76,960/- and Rs.13,325/-, which was disbursed to it on 23.01.1978, 15.09.1980 and 11.06.1982, respectively, as an incentive for upliftment of small-scale industries in Haryana. The subsidy was granted by the Central Government and disbursed through the Industries Department, Haryana. The factory of the plaintiff remained in production for more than five



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years and due to heavy losses, it was shut down in the year 1985. Plaintiff filed a suit for permanent injunction restraining the defendants from recovering the subsidy amount of Rs.1,56,495/-. Upon being served, defendants contested the suit by filing a written statement, wherein various preliminary objections were taken. A stand was taken that plaintiff's factory closed down in December, 1981, and a demand notice dated 27.09.1989, had been issued to the plaintiff for recovery of the subsidy. Plaintiff filed replication re-asserting the claim. Issues were framed on the basis of the pleadings of the parties. The Trial Court dismissed the suit by judgment and decree dated 02.12.1991. Appeal preferred by the plaintiff has been accepted by the learned Additional District Judge, Hisar, vide impugned judgment and decree.

3. State counsel has urged that the first appellate court has erred in relying on Memo No. LNS/CS/Manual-III/28735-A, dated 28.10.1992, as the instructions are prospective in nature. It is his argument that this document could not be read into evidence.

4. I have heard the State counsel and examined the record with his able assistance.

5. It will be apposite to notice the contents of Memo dated 28.10.1992, which are reproduced herein:-

“The Director of Industries, Haryana.

*All the General Managers,
District Industries Centres in the State.*

*Memo No.LNS/CS/Manual-III/28735-A
Dated Chandigarh, the 28 October, 1992.*

*Subject: Counting of five years period under State/Central
Investment Subsidy Scheme.*



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The State Government has been disbursing subsidy under the Central Investment/State Investment Subsidy Scheme to the eligible industrial units coming up in the Centrally/State declared backward areas. It has been stipulated in the agreement deed executed with the industrial unit that the unit should remain in production at least for a period of five years from the date of disbursement. However, it has been observed that Government of India instructions on Central Investment Subsidy as stipulated in para 7(b) of the manual indicates that the subsidy is recoverable from the industrial unit which has gone out of production within five years from the date of commencement of production, except in case where the unit remains out of production for short periods extending to six months due to reasons beyond its control such as shortage of raw material, power etc.

In view of the provisions made in the manual it has been decided that henceforth the period of five years shall be reckoned from the date of commencement of production instead of date of disbursement. Accordingly, you are advised please send your reports to this office for release of document bank guarantee as the case may be.

*Sd/-
Deputy Director (PA)
For Director of Industries, Haryana.”*

6. A perusal of the above reproduced instructions show that the Government has clarified that the period of five years has to be reckoned from the date of commencement of production instead of date of disbursement. The instructions clearly stipulate that they are applicable “henceforth”. In other words, the instructions are prospective in nature. Moreover, these instructions were never produced in evidence before the Courts below and were never exhibited. The learned Additional District Judge, Hisar, therefore, clearly erred in placing reliance upon the instructions while accepting the appeal. The findings of the learned Additional District Judge, Hisar, therefore, cannot be sustained.



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7. For the foregoing reasons, appeal is allowed. Judgment and decree passed by the learned Additional District Judge, Hisar, is set aside. Suit filed by the respondent-plaintiff is dismissed throughout.
8. Pending application, if any, is disposed of.

(SUVIR SEHGAL)
JUDGE

18.12.2024
Pardeep

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes