IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

226 **CWP-28386-2018**
Date of Decision: 10.01.2024

M/S MITTAL SPINNERS ..... Petitioner

VERSUS

STATE OF HARYANA AND OTHERS .... Respondents

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

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Present: Mr. Hardeep Singh Kasan, Advocate for
Mr. Satbir Singh Malik, Advocate
for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana.

Mr. Vivek Saini, Advocate
for the respondents No.2 to 4.

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VINOD S. BHARDWAJ, J. (ORAL)

Prayer made in the present writ petition was for setting aside the action of respondents No.3 and 4 vide which they have rejected the claim of the petitioner-firm for exemption from electricity duty and entitlement to power tariff subsidy for which the petitioner claims itself to be eligible as per the State Government policies i.e. the Enterprise Promotion Policy, 2015 and the Textile Policy, 2017. A further direction has been sought to the respondents to release the above benefits w.e.f 29.06.2017 onwards as per the said policies.

2. Counsel for the petitioner contends that the petitioner-firm is a small business of processing and trading of all types of waste under the name and style of M/s Mittal Spinners since 19.11.2011. A deed of partnership was

executed amongst the partners on 01.04.2016 for extending and carrying out the new business of manufacturing and trading of cotton yarn and cotton waste in its prime addition to the earlier business of processing and trading of all types of waste under the name and style of M/s Mittal Spinners.

3. Consequent upon execution of the partnership deed, the petitioner-firm started its diversification and also applied for credit facilities from the Bank of Baroda to the tune of Rs. 477.90 lacs for construction of building, purchase of plant machinery and working capital etc. The construction was raised after sanction of the credit facilities and different textile machineries for spinning were got installed by the petitioner for doing the said work. An application for grant of new electricity connection was submitted by the petitioner on 20.01.2017 in the office of respondent No.3 which was registered as P-15-117-3. The required application fee and advance consumption fee of Rs. 18250/- and Rs. 7,30,000/- respectively was also deposited. Inspection of the premises was conducted and all requisite formalities were completed by the petitioner whereupon the electricity connection of 1000 kw was released in favour of the petitioner on 27.06.2017.

4. Upon completion of the requisite formalities and after obtaining the necessary NOCs from the concerned departments and authorities, the petitioner started manufacturing of the products of various types w.e.f. 29.06.2017. The petitioner firm also got itself registered with the Ministry of Micro Small and Medium Enterprises of Government of Indian and obtained an Udyog Aadhar Registration Certificate bearing No. HR14C0006747 under the category of small type of enterprise.

5. The State of Haryana in order to attract the investment for the industrial growth and to generate new jobs in private sector had formulated the Enterprise Promotion Policy 2015 and Textile Policy of 2017. As per these policies, a number of incentives had been provided to entrepreneurs based on their investment in the projects, in the shape of subsidy and exemption from various taxes, duties and tariffs as per their respective category. The petitioner being engaged in the Textile sector, comes in the category of Small Enterprise and category 'C' as per the Enterprise Promotion Policy, 2015 and the Textile Policy of 2017. There is a provision for the power tarrif subsidy as well as the Electricity duty exemption under Clause 4.7 and 4.8 of the aforesaid Promotion Policy. The same are extracted as under:-

> ***"4.7 Power Tarrif Subsidy***
>
> ***Rs.2 per unit*** *only for Micro and Small Enterprises in C and D category blocks for 3 years from the date of release of electricity connection and exemption from open excess charge of 93 paisa per unit in case of Medium and Large units.*
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> ***"4.8 Electricity Duty Exemption***
>
> ***100% exemption*** *for 10 years only for new enterprises in B, C and d category blocks from the date of release of electricity connection. The same Electricity Duty exemption in the same manner is also provided as per the Textile Policy 2017 to the Medium, Small and Micro Entrepreneurs.*

6. Counsel contends that as per the above said scheme, the petitioner is entitled to grant of 100% exemption from electricity duty for a

period of 10 years from the date of release of electricity connection which is also evident from a perusal of the notification dated 18.04.2016 issued in pursuance of provision 12 of the Enterprise Promotion Policy, 2015 pertaining to electricity duty and open access charges. He also refers to the Notification dated 12.06.2018 (Annexure P-13) in pursuance of Chapter 12 of Enterprise Promotion Policy, 2015 notifying the Power Tariff Subsidy Scheme for a period of 05 years.

7. Counsel contends that the petitioner had applied for the grant of the said benefits under the Enterprise Promotion Policy and as per the notifications issued by the Government, being fully eligible for the subsidy and exemptions towards the power tariff and electricity duty w.e.f. 29.06.2017, being a new connection and enterprise as per the Industrial policy and enterprise as per the industrial policy.

8. It is argued that instead of granting subsidy and exemption from the policy, the respondent No. 4 rejected the claim of the petitioner only on the ground that the petitioner-firm is running since 19.11.2011 as per the partnership deed and the electric connection was released to the petitioner originally on 19.06.2011 and that exemption of electricity duty was to be extended to projects established after 06.10.2015. It is contended that the respondents, while rejecting the said application, have failed to take into consideration that a new partnership had been formed for diversification and expansion of business and into the area of textiles and their industry and application was treated as new application by the respondents themselves. Hence, the earlier business pertaining to waste management, as was being undertaken by the petitioner, should not be interchanged with the setting up of a new plant by the petitioner company for which a separate connection had

been released and which such plant had been undisputedly established as a new unit although under the same name but as a different entity i.e. as a partnership firm.

9. Counsel appearing on behalf of respondents No.2 to 4, however, informs that cost in terms of the order passed by this Court has been deposited with the High Court Lawyers Welfare Fund vide Receipt No. 3975 dated 09.01.2024. He further submits that the petitioner has already given an affidavit to the respondents that he would not press any claim against respondents No. 2 to 4 and would confine the claim only to respondent No.1 i.e. the State Government.

10. Learned State counsel refers to the written statement filed by the Special Secretary to the Government of Haryana and Director of Industries and Commerce as per which the Government of Haryana had issued a notification dated 09.01.2019 (Annexure R-2) in relation to the withdrawal/repeal of the Power Tariff Subsidy. It is contended that since the order of repeal had already been notified and the same is not a subject matter of challenge in the present writ petition, the relief in relation to Power Tarrif subsidy cannot be claimed.

11. On a pointed query raised to the counsel as to the entitlement of the petitioner to the exemption from electricity duty in terms of the notification dated 18.04.2016, learned State counsel contends that the benefit of the electricity duty exemption has been granted to the petitioner as per the order dated 28.12.2018 (Annexure R-1).

12. Counsel for the petitioner, however, contends that the benefit of exemption from payment of electricity duty was to enure in favour of the petitioner for a period of 10 years w.e.f release of electricity connection

which in the present case happens to be from 27.06.2017 and as such, a period of 10 years is come to an end on 26.06.2027. He further contends that the above said order dated 28.12.2018 grants exemption from levy of electricity duty for the period from 05.12.2018 to 26.06.2024 on power load only as per the Enterprise Promotion Policy, 2015 of the State Government. The order cannot over-ride the notification issued by the respondent and benefits must be released in terms of the notification.

13. Having heard learned counsel for the parties and having gone through the documents/Enterprise Promotion Policy and the notification dated 18.04.2016 appended alongwith the present petition, it is evident that the textile Sector unit falling in category 'C' was entitled to an exemption for a period of 10 years from the date of release of electric connection from levy of the electricity duty. The respondent-State, in its reply specifically admits that the petitioner is eligible to the exemption from electricity duty on the power load being used for the production purposes, as per Clause 4 of the Notification dated 18.04.2016, and not on the available light load. However, despite the duration of the electricity duty exemption being for a period of 10 years as per the above said policy and notification, the response of the respondents is silent and does not answer as to why the benefit has been confined to the above period from 05.12.2018 to 26.06.2024 only. The order does not refer to the State policy and is silent on the said aspect rendering the order non-speaking.

14. Counsel for respondent No.1-Government is also not in a position to advance submissions on the same and as to how the date of 05.12.2018 has been arrived at and as to why the benefits have been restricted or confined upto 26.06.2024 i.e. for a period of nearly 5 ½ years

only as against the tenure of 10 years of exemption from payment of electricity duty provided under the Enterprise Promotion Policy.

15. Insofar as the benefit of power Tariff/power subsidy is concerned, since the respondents have already repealed the notification dated 12.06.2018 and there is no challenge to such notification repealing the above said notification, the said issue cannot be gone into at this juncture or be commented upon.

16. The present writ petition is accordingly disposed of with a direction to the Additional Chief Secretary to the Government of Haryana in the Department of Industries and Commerce to re-examine the claim of the petitioner for grant of benefits under the Enterprise Promotion Policy, 2015 with respect to the exemption from electricity duty in terms of the policy, 2015.

17. Let the parties appear before the Additional Chief Secretary to the Government of Haryana in the Department of Industries and Commerce on 15.02.2024 whereupon the Additional Chief Secretary, Govt. of Haryana shall proceed further to adjudicate on the claim of the petitioner and to pass a reasoned and speaking order on the claim of the petitioner within a period of 04 months after granting an opportunity of hearing to the respective parties.

The writ petition is accordingly disposed of.

(VINOD S. BHARDWAJ)
JUDGE

JANUARY 10, 2024
Vishal sharma

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No