

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

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Civil Writ Petition No.23529 of 2019

Reserved on :-05.12.2023

Pronounced on :-04.1.2024

M/s Nufab Technical Textiles Pvt. Ltd.

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM:- HON'BLE MS. JUSTICE RITU BAHRI, ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Vishal Aggarwal, Advocate
for the petitioner.

Mr. Deepak Balyan, Addl. A.G., Haryana.

Mr. Manuj Kaushik, Advocate
for respondent No.3-UBHVNL.

RITU BAHRI, ACJ.

Petition is seeking issuance of a writ of certiorari for setting aside the order dated 28.05.2019 (Annexure P-21) passed by respondent No.3-Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL) declining the grant of subsidy to the petitioner. Further direction for setting aside the Notification dated 21.12.2018 (Annexure P-14) and Notification dated 09.01.2019 (Annexure P-18) seeking to amend the policy for grant of subsidy being against the law and contrary to the Enterprises Promotion Policy, 2015.

The petitioner-company is engaged in manufacturing of non-woven fabrics and is a small scale unit employing the latest technical knowhow for the manufacturing of fabrics. Respondent No.2 made an effort to promote the industries, framed an industrial

policy providing incentives to the industry and for its upliftment known in the name of 'Enterprises Promotion Policy-2015' (Annexure P-1). The object of the policy was to encourage set-up the industry in the State to create large scale employment. Special emphasis has been laid on MSMEs (Micro, Small and Medium Enterprises) and also SMEs (Small Medium Enterprises). The criteria for granting the subsidy was discussed in terms of geographical division wherein the State was divided into four categories of development blocks i.e. A,B,C and D. Blocks B, C and D needs special incentives and micro and small enterprises in category C and D requires special attention in terms of subsidies. Further a medium enterprises had been defined as an enterprise wherein the investment in Plant and Machinery is more than five crores but does not exceed 10 crores. A small enterprise, where the investment is more than 25 lacs but does not exceeding 05 crores is amended under MSMED Act, 2006. A copy of the Notification dated 17.10.2017 showing the categorization of blocks notified on 02.06.2016 is Annexure P-2.

Chapter 10 of the policy discusses with types of industries mentioning regarding textile/apparel industry. In Clause 10.3 it is stated that Haryana is the fourth largest cotton producer in the country and inspite of large number of textile industries further thrust is required. As per Clause 4 there are various incentives as in Investment Subsidy on VAT, Employment Generation Subsidy, Interest Subsidy, Stamp Duty Refund, Exemption of EDC Charges, Power Tarrif Subsidy, Electricity Duty exemption. VAT exemption on Cotton Yarn and exemption from Transfer Property Tax. The

grievance of the petitioner is qua number of incentives/subsidies which finds mention in the policy and subsequent Annexure 10.

Keeping in view the abovesaid policy, the petitioner decided to set up a small-scale technical textile unit in Village Khera Gani, Tehsil Shahzadpur, District Ambala, which falls in Block-C and was duly covered under the policy.

As per the Certificate dated 20.06.2018 (Annexure P-3) issued by the Chartered Accountant, the Unit of the petitioner was having an investment of more than Rs.25 lakhs and less than Rs.05 crores and was qualified to be termed as small-scale Unit.

The Unit of the petitioner came into commercial production on 03.5.2017 and the power connection was energized on 18th March, 2017 as per the first commercial invoice (Annexure P-4). The commercial production started on 3rd of May, 2017 and the first power bill was received by the petitioner in June 2017 as per the Electricity bill (Annexure P-6). The bill was of Rs.1,07,100/-.

Annexure P-5 (colly.) is the Udyog Aadhar Registration Certificate alongwith the Certificate of Incorporation given to the petitioner.

The petitioner has placed on record the Certificate of the Chartered Accountant containing the complete details of electricity consumption alongwith Annexure P-7. The petitioner made an application claiming subsidy (Annexure P-8) in June 2017. A huge amount of Rs.31.91 lakhs became due and payable upto 31st of March, 2018 by the respondents.

The Government of Haryana issued a policy dated 12.6.2018 (Annexure P-9), which was pursuant to the Enterprises Promotion Policy, 2015, where a power tariff subsidy of Rs.2/- per unit for Micro and Small Enterprises in 'C' and 'D' category blocks was provided for a period of three years from the date of release of power connection.

The case of the petitioner, finally, is that from the date of setting up the Unit till financial year 2018-2019 and consolidated sum of Rs.82 lakhs was payable by respondents upto March 2019 as Power Tariff Subsidy. The petitioner thereafter has placed on record the Notification dated 09.1.2019 (Annexure P-12), whereby the Government repealed a notification dated 12.6.2018 and provided for deducting the subsidy amount at the source of UHBVN directly. A letter dated 04.2.2019 (Annexure P-13) was sent to various authorities seeking early action in the matter. The petitioner was thereafter handed over notifications (Annexure P-14) and subsequent sale circulars (Annexure P-15) by the authorities of UHBVN.

As per the abovesaid documents (Annexures P-14 and P-15) the benefit of Power Subsidy Scheme was to be granted only to units having a connected load of 20KWA or less. Pursuant to Filing CWP-8601-2019, decided on 01.4.2019 (Annexure P-16) the writ petition was disposed of giving directions to the respondents to decide the representation of the petitioner claiming benefit of the subsidy. The respondents did not release the subsidy and pass an order dated 28.05.2019 (Annexure P-21) declining the claim of the petitioner taking the plea of Notification dated 21.12.2018 (Annexure P-14)

where only the units having a power load of 20KWA or less as per eligible for the subsidy.

After the aforesaid, the present writ petition has been filed by the petitioner.

In the present case, learned counsel for the petitioner has referred to the judgment passed by the High Court of Himachal Pradesh at Shimla in **CWP No.4599 of 2013** alongwith connected matters, case titled as '**M/s Jaiprakash Associates Ltd. vs. State of H.P. and others**', decided on **04.12.2023**; **M/s Pawan Alloys and Casting Pvt. Ltd. Meerut etc. vs. U.P. State Electricity Board and others 1997 AIR (Supreme Court) 3910**; and **Pournami Oil Mills vs. State of Kerala and another 1987 AIR (Supreme Court) 590** on the preposition that once an incentive has been granted and acted upon by the petitioner, the incentive cannot be withdrawn with retrospective effect. The rule of estoppels will operate against the authorities on the ground that there is legitimate expectation from the Government Departments to grant the benefit.

In the case of **Pournami Oil Mills** (supra) it was a case where the State Government has granted package of concessions to new Small Scale Industries, thereafter the units were set up in response to the first order passed granting concessions. The order granting concessions was subsequently withdrawn by the Government. The Supreme Court held that all the units which have been set up in response to the first announcement made were entitled to claim all concessions on the plea of estoppels. In paragraph 8, the Supreme Court has observed as under :-

“8. It is not disputed that the first Order namely, the one dated 11-4-1979 gave more of tax exemption than the second one. The second notification withdrew the exemption relating to purchase tax and confined the exemption from sales tax to the limit specified in the proviso of the Notification. All parties before us who in response to the Order of April 11, 1979 set up their industries prior to 21-10-1980 within the State of Kerala would thus be entitled to the exemption extended and/or promised under that Order. Such exemption would continue for the full period of five years from the date they started production. New industries set up after 21-10-1980 obviously would not be entitled to that benefit as they had notice of the curtailment in the exemption before they came to set up their industries.

Thereafter, a similar question came up for consideration before the Supreme Court in the case **M/s Pawan Alloys and Casting Pvt. Ltd.** (supra). The Supreme Court was examining a case where the U.P. State Electricity Board had granted incentives to set up new industries for a particular period. Subsequently, this benefit was withdrawn by the Board. The Supreme Court examined and held that the withdrawal was made on account of any public interest and hence it was held that it was barred by promissory estoppels and the Board had granted the benefit for a period of three years and the benefit could not be withdrawn before three years. The units had already been set up. Relevant paragraph 38 of the said judgment reads as under :-

“38. We fail to appreciate how the aforesaid decision can advance the case of respondent-

Board in the peculiar facts of this group of matters. As we have noted earlier here is a converse position where the Board presumably appears to have accepted the guidelines and the directions given by the State of U.P. under Section 78A of the Act and it adopted the scheme of incentive rebates for new industries by promulgating its own tariffs in exercise of its powers under Section 49 read with Section 78A of the Act and it was the Board itself which had given such a promise and held out such representations to the newcomer industries by the first three notifications as seen above. Once that was so the question of compelling the Board to promulgate such policy would not survive for consideration in the present cases. It is obvious that if the Board had not promulgated such policy the Court could not have compelled the Board to give such concessions. Here the question is having itself promulgated such a policy whether the Board can go back upon it prematurely. The aforesaid decision of this Court had no occasion to consider this aspect of the matter.”

In a recent judgment given by the Himachal Pradesh High Court on 4th of December, 2023 in CWP No.4599 of 2013 (supra), the Court was examining the industrial policy of 2004 and which was aimed to attract the entrepreneurs to set up the projects in the backward areas of the State and in return, promised off-setting to some extent capital cost for setting up the units in remote and difficult areas due to locational disadvantages in form of tax concessions. The units acted upon the promise extended to them by the State for investing in the backward panchayats of the State categorized as Tax

Free Zones. The promise exempted from payment of VAT/CST for a period of ten years from the date of commencement of production. The State Government cannot be permitted to assert that it was entitled to withdraw the tax concessions and direct the industrial units to pay VAT/CST merely because in the subsequent years, the Panchayats where the petitioner's units were set up and de-notified and no longer carried the backward status. The doctrine estoppels was applicable and the State was bound to follow the Industrial Policy, 2004 and the Rules framed thereunder. The action of the respondent in withdrawing the tax concessions granted to the petitioner units held to be not in consonance with law. It was held that the notification withdrawing the backward area status of the concerned Panchayat has only prospective effect. It will be applicable to industries being set-up after the date of withdrawal of notifications. They cannot be applied retrospectively to the petitioner units which had already come into production by the time the backward areas status was withdrawn from such Panchayats. The writ petition was allowed and the notices asking the petitioner to deposit the tax were quashed and set aside. The petitioners were held entitled to tax exemptions in terms of the Industrial Policy, 2004, Incentives Rules 2004 and the statutory exemptions notifications dated 30th of March 2005 (GST and CST) and 19.01.2006 (VAT) till coming into force of GST regime in the year 2017.

The ratio of all three abovesaid judgments is directly applicable to the facts to the present case.

The petitioner had set up a small-scale technical textile unit in Village Khera Gani, Tehsil Shahzadpur, District Ambala, which falls in Block 'C'. The industrial unit was covered as per the Notification dated 17.10.2017 showing categorization of blocks, notified on 02.06.2016 (Annexure P-2). The Haryana Government had issued a policy dated 12.06.2018 (Annexure P-9) pursuant to the Enterprises Promotion Policy-2015, where power tariff subsidy upto Rs.2/- per unit for micro and small enterprises, category 'C' and 'D' blocks was to be provided for a period of three years from the date of release of power connection.

Pursuant to the Policy of 2015, unit of the petitioner came into commercial production on 03.05.2017 and power connection was energized on 18.03.2017 as per the first commercial invoice (Annexure P-4). In this backdrop, once the unit had been set up as per the 2015 policy (Annexure P-1), the subsequent notification dated 21.12.2018 (Annexure P-14) and sale circular dated 06.02.2019 could not be made basis to grant benefit of the power tariff subsidy upto Rs.2/- per unit as per the Enterprises Promotion Policy-2015 (Annexure P-1).

The respondents cannot decline the benefit of subsidy in view of the Notification dated 21.12.2018 (Annexure P-14) as per the rule of estoppels they cannot deny this benefit as the industries have already been set up pursuant to the 2015 Policy and they have complied with all the conditions of the Enterprises Promotion Policy-2015 (Annexure P-1), Notification dated 17.10.2017 (Annexure P-2) and the Policy dated 12.06.2018 (Annexure P-9).

This aspect has been considered by the Himachal High Court and by the Hon'ble Supreme Court in the cases of **M/s Jaiprakash Associates Ltd. (supra)**, **M/s Pawan Alloys and Casting Pvt. Ltd. Meerut etc. (supra)** and **Pournami Oil Mills (supra)**.

In view of the above, the present writ petition is allowed and the order dated 28.05.2019 (Annexure P-21) passed by respondent No.3-Uttar Haryaba Bijli Vitran Nigam Limited (UHBVNL) declining the grant of subsidy to the petitioner, is set aside and direction is being given to the respondents to pay the power subsidy as claimed by the petitioner as per the bills submitted without insisting on the policy decision notification dated 21.12.2018 (Annexure P-14). It is further being observed that the Notification dated 21.12.2018 (P-14) and 09.01.2019 (Annexure P-18) whereby the policy for grant of subsidy has been amended, will be applicable prospectively and not retrospectively pertaining to the units which were set up after the Notification of the Enterprises Promotion Policy-2015 (Annexure P-1), Notification dated 17.10.2017 (Annexure P-2) and the Policy dated 12.06.2018 (Annexure P-9).

(RITU BAHRI)
ACTING CHIEF JUSTICE

04.1.2024
Vijay Asija

(NIDHI GUPTA)
JUDGE

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

