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

204

CWP-5431-2018 (O&M)
Date of decision: 12.02.2024

M/S AJMER SINGH COTTON AND GENERAL MILLS
......Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS ....Respondents

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

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Present: - Mr. Arvind Kashyap Advocate
for the petitioner.

Mr. Saurav Verma, Addl. A.G. Punjab.

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VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present writ petition is to order dated 27.01.2018 passed by the respondents whereby the claim of the petitioner for grant of investment Incentive was declined for the reason that the petitioner unit did not fulfill the terms and conditions of sanction letter dated 22.11.2010.

2. Briefly, the factual matrix of the case is that the petitioner partnership firm had set up a small scale industry which is an Export Oriented Unit (EOU). The said unit commenced production as EOU on 15.09.1999 and started expansion and increased its capacity on 23.09.2000.

The commercial production of the expanded unit commenced w.e.f. 13.03.2002. The Government of Punjab had announced its industrial policy and incentives to be given to the industries, in the year 1996, for promoting setting up of the industry. Fresh incentives for development of industry were notified and even the rules called the Punjab Industrial Incentive Code under the Industrial policy, 1996 were also notified on 01.06.1996.

3. The petitioner decided to set up an industrial unit at Harino Road, Near Water Works, Kotkapura (Punjab) and submitted a project report alongwith necessary documents, to claim subsidy. Loan was availed by the petitioner from the financial institutions and a huge investment was made towards building and machinery before commencing commercial production. The petitioner unit thereafter applied for the investment incentive under the EOU in the year 2002. The Committee for consideration of the investment incentive verified the documents and was satisfied as to entitlement of the petitioner for grant of capital subsidy. It sanctioned an amount of Rs. 7,14,000/- to be disbursed to the petitioner as incentive vide their sanctioned letter dated 22.11.2010 (Annexure P-3).

4. Consequent to the sanction of the capital subsidy, the petitioner submitted its claim, however, the disbursement of the capital subsidy remained pending with the respondent-Government. He submits that various writ petitions were filed by the other similarly aggrieved industrial units, for seeking release of capital subsidy under the policy of year 1996. The said batch of writ petition was taken up for hearing together and the same were decided vide judgment dated 20.05.2011 in the case of ***"M/s Balak Gases Oxygen Gas Plant and another versus State of Punjab and others".***

5. It was held in the above said judgment that the State was legally duty bound to fulfill the promise made by it and was liable to release the incentive to the beneficiary industrial units on the principles of promissory estoppel. The SLP filed against the said judgment was also dismissed. The judgment has already attained finality. The petitioner submitted a representation with the respondents in the year 2010 and repeatedly sent reminders even thereafter. However, as no action was taken, CWP-18044-2015 was filed by the petitioner on 19.08.2015.

6. A written statement was filed by the respondents in the above said writ petitions taking up various objections including the failure of the petitioner to fulfill the terms and conditions of the sanctioned letter dated 22.11.2010 (Annexure P-3). Upon consideration of the respective contentions and also the objections raised by the respondents-State, the above said writ petition was disposed of by this Court vide its order dated 04.08.2017 directing the respondents to consider the representation of the petitioner. In compliance to the said order, the impugned order dated 27.01.2018 (Annexure P-14) has been passed by the respondents pointing out that the petitioner unit does not fulfill the conditions of the sanctioned letter, which is challenged in the present writ petition.

7. A reply has been filed by the respondents by way of an counter affidavit of Sushma Kumari, General Manager, District Industries Centre, Faridkot dated 09.05.2019. The factual aspect as regards the sanction letters, the industrial policy as well as the filing of the earlier writ petition is not disputed. The respondents have taken a specific stand that as per the order dated 27.01.2018, the petitioner unit was found to be not fulfilling the requisite conditions of Rule 2.22 of the Industrial policy, 1996 which had

been incorporated in the sanction letter dated 22.11.2010. Hence, the petitioner was not eligible for grant of capital subsidy and the claim has been rightly declined.

8. The respondents further aver that the judgment in the matter of ***"M/s Balak Gases and Oxygen Plant (supra),*** relied upon by the petitioner, is not applicable as the said petition largely envisaged the release of sanctioned capital subsidy to closed industrial units which were eligible and entitled for the grant of capital subsidy but the same was being declined since as on the date when the capital subsidy was being released, the industrial units were found closed. It is stated that there was no issue as regards Rule 2.22 of the Industrial Policy, 1996 and the condition as incorporated in the capital subsidy.

9. Further, the respondent-State have elucidated the condition as incorporated in the sanction letter in Para 16 of its reply. The relevant paragraphs of the written statement filed on behalf of the respondents are extracted as under:-

> *3. That the petitioner M/s Ajmer Singh Cotton and General Mills was sanctioned subsidy amounting to Rs 7.14 Lakhs (Rs. Seven lakh Fourteen thousand only)vide sanction letter dated 22.11.2010 (Annexure P-3) subject to the conditions which are reproduced as under:-*
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> *i) That FI will supply the fresh FCI Certificate.*
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> *ii) The unit will submit Balance sheets for the last five years.*
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> *iii) The unit will also submit APR's for five years from the DOP and execute agreement deed in from-1(VI) at the time of disbursement to GM DIC, Faridkot as required under Industrial Policy-1996.*

iv) That the highest exports made by the existing unit during the last 3 years will be taken as the minimum limit for the existing unit & export made in addition there to by the unit would be counted in the account of expansion component to reckon the fulfillment of condition of Rule 2.22.

V) The disbursement will be made on the availability of funds and strictly as per seniority provided that the unit is found to be working condition/operation at the time of disbursement.

vi) The unit should not be defaulter of any State Food procurement agency at the time of disbursal of subsidy.

4. That the decision of the Department not to pay subsidy to units which does not fulfill the conditions laid down in sanction letter, which is applicable to the petitioner industrial unit as well, is a decision which is fair, just and appropriate and has been taken keeping in view the desired objectives of the policy and goals.

5. That the petitioner industrial unit is misleading this Hon'ble Court by referring in supra judgment dated 20.05.2011 in CWP No. 19007 of 2002 titled as M/s Balak Gases & Oxygen Plant and others Vs State of Punjab and others, as to prove its case is identical and covered under the judgment. The judgment referred by the petitioner industrial unit envisages the release of sanctioned capital subsidy to closed industrial units which are ELIGIBLE AND ENTITLED for the grant of subsidy, whereas the petitioner unit doesn't fulfills the condition of rule 2.22 of Industrial Policy 1996 as clearly conveyed to it via sanction letter dated 22.11.2010 (Annexure P-3). Therefore, the present writ petition is no where covered under the Supra Judgment dated 20.05.2011, hence, the same is liable to be dismissed with costs.

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16. The Contents of Para no. 16 are denied as mentioned in forgoing paras. The petitioner unit does not fulfill the condition of 2.22 of the sanctioned letter. As per conditions laid down in the sanction letter it was clearly mentioned that the highest exports made by the existing unit in the last 3 years will be taken as the minimum limit for the existing unit and export made in addition thereto by the unit would be counted in the account of expansion component to reckon the fulfillment of condition no. 2.22 of Industrial Policy 1996. After expansion the petitioner industrial unit came into production in year 2002 and the highest production in three years was in the year of 2001- 2002 i.e. 12817.25 quintals. As the unit had undergone expansion of its existing unit, its production was also to be increased and as per the production quantity of the year 2001-02 the minimum limit for export was set. This condition was also clearly laid down in the sanction letter issued to the unit. Also the unit neither opposed the condition nor did it challenge the said conditions, meaning thereby it had accepted the conditions laid down in the sanction letter. The unit had not to produce less than 12875.25 qntls. for next five consecutive years which was the minimum limit before undergoing into expansion. But in the year 2002-2003 the export was 3510 qntls and in the year 2006-2007 and 2007-2008 was 10764 qntls, and 10715 qntls., respectively, which was against the condition No. 4 laid down in the sanction letter. The detail of the production of the industrial unit is annexed as Annexure R-1, showing that the petitioner industrial unit didn't fulfill the mandatory conditions for the entitlement of grant of subsidy. Hence, the petitioner unit had undergone expansion for increase in production but it didn't, therefore, the unit was not found eligible for subsidy on the Fixed Capital Investment made for expansion.

10. Replication to the written statement has been filed wherein a general denial was made.

11. Counsel for the petitioner has argued that the respondents have wrongly declined the claim of the petitioner by referring to the condition No.4 of the sanction letter dated 22.11.2010 to decline the release of capital subsidy to the petitioner. He submits that the respondents have added an additional condition in the sanctioned letter of 2010 which is conflict with Rule 2.22 of the Industrial Policy, 1996. The respondents thus could not have added conditions, while granting sanction for the release of capital subsidy and that any such condition cannot travel beyond the provisions/conditions prescribed in Rule 2.22 of the Industrial Policy, 1996. He further contends that the respondents never raised such an objection in the reply filed by them in the earlier writ petition bearing CWP-18044 of 2015 filed by the respondents. Hence, they are estopped from denying the claim to the petitioner on the said count.

12. Responding to the above, learned Additional Advocate General, Punjab appearing on behalf of respondent-State has vehemently argued that the claim of the petitioner is misplaced and the present writ petition deserves to be dismissed on the following ground:-

i) That Clause 2.22 of the Industrial policy is only a definition clause as regards Export Oriented Unit and that the letter of sanction specifically incorporated the procedure by which an Export Oriented Unit (EOU) and its minimum limit is to be determined. Hence, the incorporation of the said condition was not prescribing any condition, beyond the conditions stipulated in the Industrial Policy of 1996. The said Clause was only defining and clarified the mode and manner in which Export Oriented Unit (EOU) was to be determined in Rule 2.2. of the Industrial Policy, 1996.

ii) It is contended that the petitioner never raised a challenge to the said condition No.4 as incorporated in the letter of sanction dated 22.11.2010. Even though the petitioner had come before this Court in CWP-18044-2015 and had raised a challenge to certain other conditions incorporated in the sanction letter dated 22.11.2010 (wrongly mentioned as 01.12.2010) in the head note of the said writ petition. He submits that the petitioner cannot now be permitted to raise a challenge to the said condition and would be barred by Order 2 Rule 2 Code of Civil Procedure from raising a challenge to the said condition after having accepted the same.

iii) It is further contended by the counsel for the respondent that the petitioner unit did not fulfill the requirement as prescribed in Rule 2.22 and as such, it was found ineligible by the competent authority for release of capital subsidy.

13. I have heard learned counsel appearing on behalf of the respective parties and have gone through the documents appended alongwith the present writ petition as well as the judgment of ***"M/s Balak Gases and Oxygen Plant (supra)*** relied upon by the counsel for the petitioner for claiming the said benefits.

14. Before proceeding further into the matter, it is necessary to refer to the relevant clause which is the bone of contention in the present case. Rule 2.22 of the Industrial Policy, 1996 as notified on 01.06.1996 reads thus:-

> ***2.22*** *Export Oriented Unit means an industrial unit exporting atleast 25% of its products in markets outside India with minimum value addition of 31/ against direct*

receipt of foreign exchange or thro merchant exporters including Punjab small Industries and Export Corporation or any other Trading house and registered as such with the Department of Industries, Punjab.

15. Further, the relevant clause of the sanction letter bearing memo No. INC-1/Sub/Fard/A-20 dated 22.11.2010 is extracted as under:-

> *iv) That the highest exports made by the existing unit during the last 3 years will be taken as the minimum limit for the existing unit & export made in addition there to by the unit would be counted in the account of expansion component to reckon the fulfillment of condition of Rule 2.22.*

16. It is evident on a plain reading of the aforesaid clause that Rule 2.22 defines how an export oriented unit is to be determined for the purposes of being covered under the Punjab Industrial Incentive Code under the Industrial Policy, 1996 and the same to mean an industrial unit exporting at least 25% of its product in markets outside India with minimum value addition of 33% against direct receipt of foreign exchange or through merchant exporter. Condition No.4 in the sanction letter dated 22.11.2010 is explanatory in nature and determines the mode in which the minimum limit for an existing unit and export made is to be computed and the highest export made by the existing unit for the last three years was taken as the minimum limit for being counted (in the account of expansion component) for fulfillment of the condition of Rule 2.22. The above said condition does not in any manner amount to prescribing a new condition and is only a means of determining the expansion component for fulfilling the conditions set out in Rule 2.22 and taking a base for ascertaining the minimum limit of

an existing unit before benefit admissible as Export Oriented Unit could be released.

17. The above said clause was fully known to the petitioner at the time when he instituted CWP-18044 of 2015 before this Court. Notwithstanding the said clarificatory clause being incorporated as a condition for release of capital incentive, the petitioner chose not to raise a challenge to the said clause in the above writ petition and a challenge was raised to the sanctioned letter to a limit/extent regarding continuous running of unit, seniority and "subject to availability of fund". Hence, the petitioner was never aggrieved of the incorporation of the said clause. It is only after the respondents specifically pointed out the above deficiency, in their impugned order dated 27.01.2018 that the petitioner has now raised a challenge to the instant clause. The provision of Order 2 Rule 2 of Code of Civil Procedure, 1908 may not be strictly applicable to proceedings under the Constitution of India, however, the said principles may be made applicable in civil proceedings. The petitioner having challenged the terms and conditions of the letter of sanction and having availed his remedy of agitating/disputing the conditions that the petitioner was aggrieved of, in the earlier round of writ petition, it cannot be said that the petitioner has now discovered his grievance against the said condition as well. It is thus evident that the petitioner was comfortable with the above said condition of sanction for a period of nearly 08 years before approaching this Court by way of institution of the present writ petition and never raised a challenge to the same despite opportunity.

18. Still further, even in the present writ petition, counsel for the petitioner does not allege or aver that similar conditions were not

incorporated in the sanction letters issued to the other export oriented units. The silence of the petitioner and failure to make any such allegation rather leads to an inference that such condition was incorporated universally and with respect to all other EOUs. Hence, every unit which was claiming benefit in terms of Rule 2.22, had a similar condition in the letter of sanction and they were all universally tested with respect to their eligibility on the said clauses of consideration. Any breach thereof, cannot be permitted for the petitioner alone.

19. Still further, insofar as reference to the judgment in the matter of ***"M/s Balak Gases and Oxygen Plant (supra)*** is concerned, the said judgment had been passed in the context where the benefits of the industrial incentive were declined to the petitioners therein for the reason that the industrial unit was found closed on the date when the capital subsidy was to be released. The persons aggrieved had approached this Court contending that the said requirement was not prescribed as a condition of the industrial policy and once the petitioner fulfills the pre-requisite of the industrial policy for seeking release of the capital incentive, its subsequent status could not be determinant for release of the capital subsidy especially when the respondent-State was itself in lapse in substantially delaying release of the entitled capital subsidy.

20. The incorporation of such condition was held to be clearly re-determining the eligibility and entitlement of the said units for being beneficiaries under the industrial policy. The same is not the case in the present case. Since the State has not back tracked from its promise on account of its any subsequent act or conduct. The State is placing reliance upon the conditions that were already incorporated as an integral part of the

letter of sanction. The said conditions being fully known to the petitioner at the time of issuance of letter of sanction and there being no change of the stance, it cannot be said to be a back tracking by the Government in seeking enforcement of the said clause. The petitioner has failed to place on record any document to substantiate that he has fulfilled the terms and conditions of the Industrial policy as clarified in the letter of sanction dated 22.11.2010 and has also not placed any document on record for determination of the minimum limit for an existing unit, for assessing its expansion component as compliant of the conditions of Rule 2.22.

21. For the foregoing reasons, I find myself in agreement with the counsel for the respondent. The arguments of the petitioner are thus rejected and the decision of respondent No.2-Director, Department of Industries and Commerce, Chandigarh is upheld. The present writ petition is dismissed.

22. All the pending miscellaneous application(s), if any, are also disposed of.

(VINOD S. BHARDWAJ)
JUDGE

FEBRUARY 12, 2024
Vishal Sharma

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