

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

274

CWP-10749-2020

Reserved on : January 23, 2025

Pronounced on : January 31, 2025

GUPTA STEEL UDYOG

-PETITIONER

V/S

STATE OF PUNJAB AND OTHERS

-RESPONDENTS

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Sunil Chadha, Sr. Advocate with
Mr. Lakshay Bector, Advocate
Ms. Taanvi Dhull, Advocate and
Mr. Raghav Chadha, Advocate
for the petitioner.

Ms./Mrs. Arundhati Kulshreshta, A.A.G, Punjab.

KULDEEP TIWARI, J. (ORAL)

1. Through the instant writ petition, as cast under Articles 226/227 of the Constitution of India, the petitioner, which is a partnership firm, has besought quashing of the letter dated 15.05.2020 (Annexure P-10), whereby, the respondent concerned has, in view of the guidelines adopted by the department concerned on 13.11.2019, refused to release the sanctioned investment incentive in its favour. Moreover, the petitioner has prayed for issuance of directions upon the respondent concerned to release the sanctioned investment incentive/subsidy amount of ₹ 9,82,000/-, along with interest, in favour of the petitioner.
2. Before gauging the validity of the impugned refusal letter, it is deemed apposite to make a compendious study of the factual background of the case at hand.

FACTUAL MATRIX

3. The State of Punjab, with a view to attracting fresh industrial investment and boosting the growth of industry, came up with the policy namely “Package of Incentives- 1992” (hereinafter referred to as the “Incentive Policy”) for new industrial units set up in the State on or before 01.10.1992. The Incentive Policy was issued vide Notification dated 28.09.1992.

4. On account of the assurance purveyed through the Incentive Policy for grant of various incentives, the petitioner also set up a Small Scale Industrial (S.S.I.) Unit of Steel Rolling Mill after obtaining registration thereof from the department concerned. The production of the petitioner’s unit commenced on 08.06.1995, and thereupon, vide application dated 28.11.1995, the petitioner applied for release of capital incentive to the respondent concerned. Accordingly, after assessing the total expenditure incurred by the petitioner in setting up its unit and starting production thereof, the respondent concerned drew the report dated 08.12.1995, thereby recommending that the petitioner is entitled to receive an amount of ₹ 9,84,093.80, i.e. equivalent to 20% of the total invested amount. Resultantly, vide letter dated 15.07.1996, a sum of ₹ 9,82,000/- was sanctioned as investment incentive in favour of the petitioner. However, despite valid sanction, the investment incentive was not released.

5. The petitioner continued the operations of its unit till June, 1996, but it was thereafter shut down owing to various reasons. Although the petitioner’s unit of Steel Rolling Unit was shut down, however, the petitioner firm continued to operate. On 21.10.2015, the petitioner firm

received a letter from the office of respondent No.3, which embodied instructions that, in order to implement the directions of this Court issued in the case of “*M/s Balak Gases Oxygen Gas Plant and another Vs. State of Punjab and others*”, CWP-19007-2002, Decided on: 20.05.2011, the petitioner firm was required to submit certain relevant documents for release of the sanctioned investment incentive. Accordingly, the petitioner firm submitted all the relevant documents as spoken to in the letter dated 21.10.2015, however, neither the sanctioned investment incentive was released, nor any intimation in this regard was received from the respondent concerned. This inaction led to making of various representations by the petitioner to the respondent concerned. Ultimately, vide the impugned letter dated 15.05.2020 (Annexure P-10), the petitioner’s request for release of the sanctioned investment incentive was declined by the respondent concerned, on the ground that, owing to change in constitution of the petitioner firm, the investment incentive cannot be released in view of the guidelines dated 13.11.2019.

6. In this way, fetching grievance from the impugned letter dated 15.05.2020, the petitioner has accessed this Court for redressal of its grievance.

SUBMISSIONS OF THE LEARNED SENIOR COUNSEL FOR THE PETITIONER

7. Opening his arguments, the learned senior counsel for the petitioner submitted that, the decision of the respondent concerned, as encapsulated in the impugned refusal letter, is in fact contrary to the directions issued by this Court in *M/s Balak Gases Oxygen Gas Plant’s case (supra)*. He further submitted that, the respondent concerned has,

while drawing the impugned refusal letter, failed to be mindful of the fact that, the partnership status of the petitioner firm has to be considered as it was existing on the date of sanction of the investment incentive, i.e. on 15.07.1996, and not when the same was considered to be released, i.e. on 21.10.2015 (almost two decades later).

8. The learned senior counsel also placed reliance upon the judgment rendered by the Co-ordinate Bench of this Court in “*M/s Medi Gas Corporation Vs. State of Punjab and others*”, CWP-5575-2023, *Decided on: 13.03.2024*, wherein, it has been observed that, the restrictions brought into effect by way of the guidelines dated 13.11.2019 cannot be applied retrospectively even when the subsidy fell due prior thereto. Therefore, he submitted that, the guidelines dated 13.11.2019, which were banked on while lending vigor to the impugned refusal letter, cannot be given retrospective effect especially to deny the rightful claim of the petitioner, which generated in the year 1996. He submitted that, even as per the guidelines (supra), the petitioner firm is entitled for the sanctioned investment incentive. By drawing attention of this Court towards Clause 1.2 of the guidelines (supra), which deals with “Partnership Firm”, he submitted that, if the petitioner firm is still in existence, then it is not a case of deemed dissolution, based whereon the rightful claim of the petitioner firm has been declined.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

9. The learned State counsel vociferously opposed the submissions made by the learned senior counsel for the petitioner. She drew attention of this Court towards the sanction letter dated 15.07.1996 to submit that, it was in fact a conditional sanction and the disbursement

of the investment incentive was subject to availability of funds and strictly as per seniority. She submitted that, the respondent concerned had sanctioned capital subsidy to the industrial units under the Industrial Policy, 1978, 1989, 1992, 1996 and 2003 subject to the condition(s) mentioned in the sanction letter(s) but the sanctioned subsidy was not disbursed to the closed units.

10. The learned State counsel further submitted that, although the verdict rendered in *M/s Balak Gases Oxygen Gas Plant's case (supra)*, wherethrough, this Court ordered the release of sanctioned investment incentive along with other benefits, was assailed by the State of Punjab, however, the desired fruits were not yielded and consequently, the judgment (*supra*) attained finality. Therefore, in order to implement the directions enclosed in the judgment (*supra*), the State of Punjab constituted a High Level Committee on 21.01.2016, under the chairmanship of the Chief Secretary, to frame guidelines for disbursement of the sanctioned capital subsidy to the closed units along with other benefits. Finally, the guidelines (*supra*) were prepared and were adopted by the department concerned.

11. Continuing her arguments, the learned State counsel submitted that, the sanctioned capital subsidy is purely in the nature of privilege/concession extended by the State of Punjab, therefore, it cannot be claimed as a matter of right. Moreover, the guidelines (*supra*), which yet hold legal sanctity, set out specific circumstances under which the department concerned shall have to release the sanctioned capital subsidy/investment incentive under the Industrial Policy, 1978, 1987, 1989, 1992, 1996 and 2003 to the entity(ies), which were not released

such subsidies. In the instant case, after various changes in the constitution of the petitioner firm, it has now become a sole proprietorship with proprietor Mr. Brij Lal. Therefore, upon its becoming a sole proprietorship, the petitioner is, in view of the guidelines (supra), not entitled for receiving the sanctioned investment incentive/subsidy.

12. Concluding her arguments, the learned State counsel submitted that, the petitioner firm has, by incorporating new partners, got a new firm registered on 29.02.2012 under the name and style of M/s Gupta Steel Udyog, Khanna, and, after lapse of almost a decade, instituted the instant petition for release of the sanctioned investment incentive by concealing this material fact.

PROCEEDINGS BEFORE THIS COURT

13. During pendency of the instant writ petition, the Co-ordinate Bench of this Court drew the hereinafter extracted order:-

“Learned senior counsel for the petitioner submits that entitlement of the petitioner is to be seen at the time of issuance of notification dated 28.09.1992. Petitioner fulfilled all the necessary criteria and subsidy amount of Rs.9,82,000/- was sanctioned on 15.07.1996. The aforesaid amount could not be disbursed to the petitioner as the petitioner itself showed its unit to be closed. Similarly situated units ventured to file CWP No. 19007 of 2002 and other connected petitions in the High Court. A bunch of 44 cases was ultimately allowed by the co-ordinate bench vide order dated 20.05.2011. The co-ordinate bench has taken cognizance of grounds of closure of the units and non availability of funds etc. while deciding those cases in favour of the manufacturing units. At one point of time, even the respondent State sought to implement the decision taken in the case of M/s Balak Gasses Oxygen Plant, Mandi Gobindgarh in respect of the petitioner also and sought necessary information to be furnished

vide letter dated 21.10.2015. In compliance of the said letter, the petitioner has furnished all the requisite information viz. name of the bank account, IFSC Code, affidavit and other necessary documents regarding change or no change in the Constitution. Change in the Constitution of the partnership firm cannot be relied upon against the petitioner on the strength of notification dated 13.11.2019 as the said notification has no retrospective effect. The entitlement of the petitioner is to be seen at the time of issuance of notification dated 28.09.1992. Similarly situated units have been granted benefit of subsidy on that count on the date of notification or at the time of sanctioning of subsidy i.e. on 15.07.1996.

At this stage, learned State counsel seeks time to respond to the aforesaid submissions made by learned senior counsel for the petitioner.

List again on 30.05.2022.

A photocopy of this order be placed on the file of connected case.”

14. Post making of the hereinabove extract order, the Co-ordinate Bench of this Court, vide order dated 14.12.2022, directed the respondent concerned to file a specific affidavit disclosing therein the reasons for not releasing the sanctioned investment incentive to the petitioner and in pursuance thereto, the affidavit of Rakesh Kumar Kansal, General Manager, District Industries Centre, Ludhiana, was furnished. This affidavit merely reiterating in nature inasmuch as the contents of the previously furnished reply on behalf of the respondents were voiced therein.

REASONS FOR RENDERING AN AFFIRMATIVE ORDER UPON THE INSTANT WRIT PETITION

15. Before authoring the reasons for penning down an affirmative order upon the instant writ petition, it is deemed imperative to

record some undisputed facts:-

(a) *Consequent upon the petitioner firm, upon its making request/application, found eligible and entitled for grant of investment incentive under the Incentive Policy, a sum of ₹ 9,82,000/- was sanctioned, on 15.07.1996, as investment incentive in its favour.*

(b) *The sanctioned investment incentive/capital subsidy was never disbursed to the petitioner and the delay in disbursement thereof is attributable to the State of Punjab.*

(c) *The petitioner's Unit of Steel Rolling Mill was shut down in the year 1996, however, the petitioner firm continued to operate.*

16. Proceeding further; the issue(s) inhering the case at hand has already been thoroughly examined by the Co-ordinate Bench of this Court in *M/s Balak Gases Oxygen Gas Plant's case (supra)* and it has been held therein that, the respondent-State of Punjab cannot retract from its promise made in the Incentive Policy. Hence, applying the doctrine of promissory estoppel, the State of Punjab was directed to make release of the sanctioned sums. The relevant paragraphs of the said verdict are reproduced hereunder:-

“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.

40. Now adverting to the next celebrated contention of the State counsel the respondents have issued administrative instructions/guidelines, altering the original Industrial Policies (Annexure P1) and the relevant rules framed thereunder, so, the petitioner-Industries, as such, are not entitled to the subsidies/incentives contrary to the guidelines, is not only devoid of merit but misplaced as well. Once the Governor has issued the notifications publishing the Industrial Policies (Annexure P1) in Government Gazette and State Govt. notified the relevant rules (Annexure P2) to implement the indicated Policies, then, to my mind, the administrative/executive instructions/guidelines cannot legally be issued, unilaterally to alter the eligibility criteria and imposing such restrictions on the payment of amount of incentives detrimental to already accrued valuable rights of the petitioner-Industries, that too, without issuing any notice and providing adequate opportunity of hearing to them. Such substantive rights of the petitioner-Industries cannot be taken away by issuing the executive instructions/guidelines, which have no sanctity of law and did not contain any legal force. It cannot possibly be denied that only the State Government (not its officers) has the power to amend the rules in a legal manner that too prospectively and even State cannot take away any such rights already accrued to a party by way of subsequent amendment. In the present cases, as the impugned guidelines are based on recommendations of the officers' committees, therefore, the administrative

instructions/guidelines will not in any way override the effect and operation of Industrial Policies and relevant rules framed thereunder in this regard by the State.

41. Moreover, the respondents cannot be permitted to keep on changing the eligibility criteria for the benefit emitting from the scheme, which was primarily intended to promote the industrial growth in the specified category of area and industry in general and production and employment in border area in particular. As indicated earlier, the entitlement of petitioner-Industries to claim the incentives and subsidies under the scheme has not been denied and was sanctioned, but the respondents did not release the amount for one or the other untenable grounds in the garb of impugned orders, which are entirely beyond the scope and jurisdiction of the original Industrial Policies and relevant rules framed thereunder. In the same manner, a welfare State cannot possibly be heard to say that the amount was not released on account of paucity of funds with it.

42. In this manner, to my mind, any subsequent administrative instructions/guidelines issued by the State or any orders passed by its officers, impugned in the present writ petitions, which have no sanctity of law and legal force, are illegal, contrary to the Industrial Policies and indicated relevant rules, without jurisdiction and in operative on the rights of the petitioner-Industries. The State cannot deny the release of the amount of incentive/subsidies to them (petitioner-Industries) in this relevant connection.

43. Therefore, there cannot be any gainsaying that the petitioner-Industries did act on the assurance of the State. If the crux of the pleadings, materials placed on the records and admission of the respondents, as discussed hereinabove, is put together and the case is construed in its totality, then the only possible conclusion, that can be drawn, is that the petitioner-Industries were given an assurance by the respondents-State and they actually acted in pursuance of the assurance in this behalf. That by itself would be sufficient to attract the doctrine of promissory estoppel.

44. In this view of the matter, it is held that the State and its

instrumentality/officers are legally duty bound to fulfill their promises and are liable to release the indicated benefits to the petitioner-Industries on the principle of promissory estoppel, which is deeply applicable to the facts and in the special circumstances of the present cases. Therefore, the contrary arguments of State counsel "stricto sensu" deserve to be and are hereby repelled under the present set of circumstances as the law laid down in the aforesaid judgment "mutatis mutandis" is applicable to the present controversy and is the complete answer to the problem in hand in this context.

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46. In the light of aforesaid reasons, all the writ petitions are accepted. Consequently, the impugned guidelines and the impugned orders, in all the cases, having the effect of denying the incentives/subsidies and other benefits to petitioner-Industries, emanating from the Industrial Policies and relevant rules framed thereunder, are hereby set aside in the obtaining circumstances of the case. The respondents are directed to release the amount of incentive/subsidies and other benefits, to the petitioner-Industries, (if they are otherwise eligible and entitled to it), within a period of six months from the date of receipt of certified copy of this judgment, failing which, thereafter six months, they (petitioner-Industries) would also be entitled to interest at the rate of 6% per annum on the accrued benefits till the realization of the amount in this context."

17. Consequent upon the verdict (supra) becoming unsuccessfully challenged before the Hon'ble Supreme Court, and, consequent upon its attaining a conclusive and binding effect, the State of Punjab, instead of implementing the directions embodied therein and resultantly granting the sums of sanctioned investment incentive to the beneficiaries having right claims, adopted the new guidelines dated 13.11.2019 for the purpose of releasing the sanctioned investment incentive. These guidelines set out specific instances and circumstances

under which the Department of Industries and Commerce, Punjab, has to release and disburse the sanctioned investment incentive/capital subsidy under the Industrial Policy, 1978, 1987, 1989, 1992, 1996 and 2003 to the entities, which were not released such subsidies/incentives. Not only this, certain restrictive conditions were also carved out in these guidelines and with the aid of such restrictive conditions, the rightful claim of the petitioner was denied on the ground that, its partnership has now been dissolved.

18. The learned State counsel, in her endeavour to defend the impugned refusal letter, although laid emphasis on the hereinafter extracted Clauses 1.2.1 and 1.2.3 of the guidelines dated 13.11.2019, however, the same is in fact a misplaced emphasis.

“1.2.1. Dissolution of a Partnership Firm

A dissolved partnership ceases to be a legal person/juristic entity and is thus not entitled to be released/disbursed the sanctioned capital subsidy/investment incentive upon/after its dissolution. A Partnership Firm is governed by a Partnership Deed/Contract if any and the provisions of the Partnership Act, 1932.

A Partnership Firm which dissolves for the reasons set out in the Partnership Act, 1932 or the Partnership Contract/Deed ceasing to be a juristic entity would not be entitled to the sanctioned capital subsidy/incentive. Needless to say, the provisions of the Partnership Act, 1932 would be taken into account while deciding not to release/disburse sanctioned capital subsidy/incentive under this category. In addition to any events/type of dissolution contemplated in the Partnership Deed/Contract rendering the Entity/Industrial Unit disentitled to release/disbursal of capital subsidy/investment incentive, the following types and/or events of dissolution would also render the Industrial Unit disentitled to release/disbursal of sanctioned capital subsidy/investment incentive:-

(1) Dissolution by agreement/consent of all Partners or in accordance with a contract/deed between Partners under Section 40 of the Partnership Act, 1932

(2) Compulsory Dissolution as contemplated under Section 41 of the Partnership Act, 1932 upon either of the following two events happening:

(a) by the adjudication of all the partners or of all the partners but one as insolvent, or

(b) by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership.

Provided that where more than one separate adventure or undertaking is carried on by the firm, the illegality of one or more shall not of itself cause the dissolution of the firm in respect of its lawful adventures and undertakings.

(3) Dissolution upon happening of certain contingencies/events as contemplated under Section 42 of the Partnership Act, 1932 which is subject to contract between the partners/Partnership Deed:

(a) if constituted for a fixed term, by the expiry of that term;

(b) if constituted to carry out one or more adventures or undertakings, by the completion thereof;

(c) by the death of a partner; and

(d) by the adjudication of a partner as an insolvent.

(4) Dissolution by Notice of Partnership at Will as contemplated under Section 43 of the Partnership Act, 1932:

(a) Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.

(b) The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice.

(5) Dissolution of the Partnership Firm by Court for the grounds mentioned in Section 44 of the Partnership Act 1932.

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1.2.3 Other cases

(1) Deemed Dissolution- *A Partnership Firm contemplates/ presupposes at least/minimum two persons as Partners. Therefore, where there are only two Partners constituting the Partnership Firm, upon the death of one of them, the Partnership Firm is deemed to be dissolved irrespective of the Partnership Deed if any, and is legally non-existent. Hence, sanctioned capital subsidy/incentive is not payable in such event.*

(2) Resignation/Retirement of all Partners except one- *Where all the partners of the Partnership Firm retired or resigned except one partnership leaving the Partnership Firm to be run only by one partner would be sufficient to conclude that the Partnership Firm stands dissolved. This is because a legally subsisting Partnership Firm presupposes a minimum of two persons as Partners. Thus, in this event, the capital subsidy/investment incentive which was originally sanctioned to the Partnership can not be disbursed to the Industrial Unit which has now been/stands reduced to a sole proprietorship.*

(3) Partnership run by family members -*A Partnership of family members where all the family members decide to quit the Partnership Firm except one family member, is no longer a legally subsisting Partnership Firm. Upon the resignation/exit/retirement of all family members except one, such an Industrial Unit stands reduced to a sole proprietorship which is legally not the same entity as the Partnership Firm in whose favour the capital subsidy/investment incentive stood sanctioned. Thus, in such an event, the Industrial Unit is not entitled to release/disbursal of the sanctioned capital subsidy/investment incentive.*

(4) Exit of Partners with simultaneous induction of New Partners- *Where the Entity/Industrial Unit being a Partnership Firm had inducted new partners upon exit of old partners then the Partnership Deed/Contract may be adverted to understand whether a new Partnership comes into existence or the old Partnership survives:*

a. If a new Partnership Firm comes into existence, then the Entity/Industrial Unit is not entitled to the release/disbursal of the sanctioned capital subsidy/investment incentive (originally in favour of the old Partnership Firm)

b. If the Partnership Firm (old) continues despite induction of new partners and exit of old partners, then the entity/Industrial Unit is entitled to the release/disbursal of the sanctioned capital subsidy/investment incentive.

If there is no Partnership Deed/Contract in place, there being no impediment in the relevant policy/scheme of the time to release/disbursal of sanctioned capital subsidy/investment incentive upon such Reconstitution/Change in Constitution, the Entity/Industrial Unit may be released such sanctioned capital subsidy/investment incentive.

(5) A Partnership Firm that has reconstituted/reincorporated as a Limited Company- *An Entity/Industrial Unit that was a Partnership Firm at the time of sanction of capital subsidy/investment incentive but has post such sanction become/reincorporated/changed into a Limited Company, would not be entitled to release/disbursal of such sanctioned capital subsidy/investment incentive. This is because a Partnership Firm is fundamentally and legally distinct from a Limited Company and once a new entity has emerged as a Limited Company its legal identity as Partnership Firm is no longer in existence.”*

19. The reason for drawing the above inference stems from the factum that, the issue “*whether the petitioner firm has been dissolved or it is a case of deemed dissolution*” needs to be examined as per the apt provisions of law. The fact, which is not under dispute is that, originally the petitioner firm was constituted on 04.07.1994 with four partners, namely, Brij Lal, Rajiv Kumar, Ramesh Chander and Kuldeep Rai. Soon thereafter, one Satyapal Sharma was inducted as the fifth partner in the petitioner firm on 16.09.1994. In June, 1996, the petitioner firm shut

down its unit of Steel Rolling Mill, and thereafter, three out of the five partners retired from the petitioner firm w.e.f. 31.12.1996, whereupon, the petitioner firm continued with only two partners, namely, Brij Lal and Rajiv Kumar. However, vide retirement deed dated 31.03.2000, Rajiv Kumar also retired from the petitioner firm, which resulted in the petitioner firm continuing with only one Brij Lal. Thereafter, w.e.f. 01.04.2010, Rajiv Kumar (one of the erstwhile partners) along with his son Vinod Kumar joined as partners with Brij Lal in the petitioner firm. On 26.06.2018, the demise of Brij Lal occurred, whereupon, his grandsons Chirag Gupta and Sarthak Gupta joined as partners with Rajiv Kumar and Vinod Kumar in the petitioner firm. In this way, as on date, Rajiv Kumar, Vinod Kumar, Chirag Gupta and Sarthak Gupta are partners in the petitioner firm.

20. Moreover, as per Section 25 of the Partnership Act, 1932, every partner has an unlimited obligation/liability against the partnership firm and has all rights to operate the accounts. Therefore, each partner, who has an obligation towards all other partners, can act and/or operate account and receive payments for and on behalf of other partners. Gainful reference in this regard can be made to *M/s Medi Gas Corporation's case (supra)*, wherein, this issue has been examined by the Co-ordinate Bench.

The relevant paragraphs of this verdict are reproduced hereunder:-

“16. That even otherwise, as per the law, every partner has an unlimited obligation/liability against the partnership firm and has all rights to operate the accounts as per Section 25 of the Partnership Act, 1932. Therefore, each partner has an obligation towards all other partners and that he can act and/or operate account and receive payments for and on behalf of other partners.

Such a distinction, which has been referred to by the respondents to portray that the earlier identity of the petitioner firm having undergone material change, it would be deemed to have been dissolved (notwithstanding reconstitution of the partnership) even though new partnership is admitted by the respondents in their own communication dated 18.11.2022 bearing Memo No. INC/Sub/Ludhiana/M-259/5420-A.

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18. A perusal of the Notification shows that the same was intended to ensure release of capital subsidy and attempts to streamline the process in light of the judgment in Balak Gases (supra).

19. Surprisingly, the said guidelines permit change in constitution or reconstitution of a partnership firm but disentitle the petitioner for an event of change of event and does not recognize the petitioner regaining the same status.

20. The respondent cannot be allowed to read a change merely to the prejudice of the petitioner and discard a change which fulfills the requirement. The exercise of power to determine eligibility cannot be selective and even a change which favours the petitioner too need to be considered by the respondent especially when the petitioner regained its status before the release of subsidy. It is required to be kept in mind that all these restrictions are being apprised only by way of notification dated 13.11.2019 and cannot be applied retrospectively even when the subsidy fell due in 2011.

21. The respondents cannot be permitted to take a stand at their convenience. Vide the aforesaid communication, they have acknowledged that the status of the petitioner is that of a partnership unit, while declining the case of the petitioner unit for release of the capital subsidy. The stand of the respondents is nothing more than a self serving statement to cover up their lapse and to find a justification for their acts before this Court. The provisions as contained in the operational guidelines notified in the year 2019 need to be reconciled and harmoniously constructed. A brief status of a partnership firm, as a sole

proprietor on account of resignation of one of the partners, and before execution of fresh partnership deed, inducting new partners cannot be construed as conferring the status of a sole proprietorship so as to attract Clause 1.2.3 (2) of the Operational Guidelines and to hold a partnership firm disentitled from the benefits that have already enured in its favour. This would not have been the intent even of the appropriate government since any such clause would easily be avoided by mere induction of an additional partner before resignation of an existing partner. Thus, a mere logistic lapse cannot be construed as depriving a person of a right that has accrued in his favour.”

21. This Court concurs with the hereinabove extracted view taken by the Co-ordinate Bench. The Incentive Policy entitled the petitioner firm to investment incentive, which was duly sanctioned in its favour on 15.07.1996. Therefore, the subsequent guidelines dated 13.11.2019, which were framed only for the purpose of setting out circumstances for disbursement of investment incentive/capital subsidy, cannot snatch the preexisting rights of the petitioner firm. The respondent-State of Punjab cannot be expected to act arbitrarily by taking shelter of the guidelines dated 13.11.2019 and thus declining the rightful claim of the petitioner firm. Moreover, the petitioner firm has a legitimate expectation, inasmuch as, on account of the promise made by the respondent-State of Punjab, it established its unit of Steel Rolling Mill and brought capital in the State of Punjab. Therefore, the doctrine of estoppel restrains the respondent-State from denying the rightful claim of the petitioner firm.

FINAL ORDER

22. In summa, this Court is of the firm opinion that, the impugned letter dated 15.05.2020 (Annexure P-10) does not pass the test

of legality and requires interference. Consequently, the **instant writ petition is allowed** and the **impugned letter is set aside**. The respondent(s) concerned is directed to forthwith release the sanctioned investment incentive/subsidy amount of ₹ 9,82,000/-, along with 6% interest from the date of its sanction, in favour of the petitioner firm.

January 31, 2025
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(KULDEEP TIWARI)
JUDGE

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