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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-18003-2023
Date of Decision : **10.02.2025**

M/S SUNNY TEXTILES .....Petitioner

VERSUS

STATE OF PUNJAB AND ANOTHER .....Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Amish Sharma, Advocate and
Mr. Akhilesh Vyas, Advocate,
for the petitioner.

Mr.Pardeep Bajaj, DAG, Punjab.

KULDEEP TIWARI, J.(Oral)

1. Through the instant writ petition filed under Article 226/227 of the Constitution of India, a prayer is made for issuance of a *mandamus* upon respondents to release the assured and sanctioned capital subsidy as per sanction letter dated 12.07.1999 (Annexure P-1) regarding investment incentive under Industrial Policy and Incentive Code, 1996, to the petitioner-firm in accordance to the policy/guidelines and seniority list prepared by the industrial department concerned.

2. The grievance of the petitioner is that the investment incentive subsidy, which was duly sanctioned vide Annexure P-1, has not been released to the petitioner, which is a partnership firm, only on account of death of one of the partners, that too by taking a shelter of a subsequently notification issued in the year 2019.

3. Succinctly, the petitioner-firm in pursuance of the assurance provided through the incentive policy (*supra*), for grant of various incentives, had set up a small scale industry, and has also made investment therein. The petitioner-firm in order to receive incentive subsidy amount has complied with all the formalities, however, no subsidy was released to the petitioner-firm. Thereafter, on account of a judgment passed a co-ordinate bench of this Court in "***M/s Balak Gases Oxygen Gas Plant and another vs. State of Punjab and others",(CWP-19007-2002, decided on 20.05.2011)***, the Industrial Department concerned, again required the petitioner-firm to submit the claim, and even after doing so, no incentive subsidy was granted.

4. It further reflects from a perusal of the instant petition that one of the partners namely, Hem Raj had died on 19.08.2001, after that Surinder Kumar Vaid, was the sole surviving partner in the petitioner-firm, who was managing its affairs. Since no incentive benefit was granted by the industrial department concerned, as promised, therefore, the surviving partner of the petitioner-firm, closed the unit.

5. Learned counsel for the petitioner-firm while placing reliance upon judgments passed by this Court in **"Gupta Steel Udyog vs. State of Punjab and others**" (CWP-10749-2020, decided on 31.01.2025), as well as ***M/s Medi Gas Corporation vs. State of Punjab and others",*** (CWP-5575-2023, decided on 13.03.2024), submits that the issue is no more *res integra* and the sole surviving partner of the partnership-firm, is held to be entitled for the benefit of the subsidy.

6. The prayer made by learned counsel for the petitioner-firm, was vociferously opposed by the learned State counsel. He submits that the Partnership Deed dated 30.09.1993, speaks that partnership firm was comprised of two partners namely, Surinder Singh Vaid and Hem Raj. On 19.08.2001, one of the partners namely Hem Raj, had died and this fact is duly admitted by the surviving partner-Surinder Singh Vaid, in his affidavit dated 06.02.2016. Therefore, as per the notification dated 13.11.2019 (Annexure R-1) the petitioner-partnership firm on account of death of one of its partners, ceases to be a juristic entity and stands dissolved. A dissolved partnership-firm ceases to be legal entity, and is not entitled for release of incentive subsidy.

7. This Court has considered the rival submissions, as made by learned counsel for the parties concerned, and perused the entire case file.

8. The reason for denial of release of the sanctioned subsidy amount has not found favour by this Court, and this issue has already been dealt with in **Gupta Steel Udyog's** case (*supra*). The relevant extract thereof reads as under:-

> 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:-
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>> "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 petitionerIndustries 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 petitionerIndustries, 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 petitionerIndustries. 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 petitionerIndustries 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.
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> 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 (petitionerIndustries) 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.

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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 respondentState 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.

9. In view of the above *ratio* laid down by this Court, the instant petition is found to be squarely covered by the judgment (*supra*).

10. Therefore, the instant petition is **disposed of,** in view of the judgment passed by this Court in **Gupta Steel Udyog's** case (*supra*).

(KULDEEP TIWARI)
JUDGE

February 10, 2025
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Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No