(2004) 08 RAJ CK 0028

In the Rajasthan High Court

Case No : Civil Writ Petition No. 6788 of 1997

Genus Overseas Electronics Ltd. APPELLANT

Vs

State of Rajasthan and Another RESPONDENT

Date of Decision : 03-08-2004

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2005) 1 BC 340 : (2005) 1 RLW 753

Hon'ble Judges : K.S. Rathore, J

Bench : Single Bench

Advocate : U.N. Bhandari, for the Appellant; B.S. Chhaba, for the Respondent

Judgement

K.S. Rathore, J.—The petitioner company is a private company registered under the provisions of the Companies Act, 1956. The Government of Rajasthan as also the Bureau of Industrial Promotion took a decision to give incentives to such industries who are interested in setting up a new industrial unit in Rajasthan and they were assured that a number of fiscal incentives would be made available for new industries such as capital investment subsidy, sales tax exemption/ deferment, octroi exemption, subsidy on D.G. Set and testing equipment, etc.

2. The petitioner company set up an electronic unit for manufacturing Hybrid Micro Circuits and SMT Board Assembly. The memorandum of understanding was also signed for manufacturing the aforesaid articles with RIICO on 12.3.1993. In MOU also, the petitioner company was assured to provide a facility upto the extent of Rs. 45 lacs which included the state subsidy as provided under the State Capital Investment Subsidy Scheme for New Industries, 1990.

3. That State Capital Investment Subsidy Scheme for New Industries, 1990 (hereinafter to be referred as Scheme of 1990) was notified to be operative w.e.f. 1.4.1990 and the same was remained in force upto 31.3.1997. The Capital Investment Subsidy Scheme was notified by the Government with a view to accelerate the pace of the industrial development in the State of Rajasthan.

4. The petitioner company set up a plant of electronic unit in Sitapura Industrial Area, Jaipur. As per the project submitted by the petitioner company, the amount of Rs. IS lacs as subsidy in accordance with the Scheme was sanctioned. The petitioner also took a loan from the Bank of Baroda of a sum of Rs. 30 lacs for land site development, Rs. 75 lacs for building and Rs. 841 lacs for plant and machinery. The petitioner company upto 31st March, 1995 invested total Rs. 749.54 lacs, but the subsidy amount was not disbursed to the petitioner as assured by the respondents under the Subsidy Scheme of 1990.

5. Since 1995 to 1997, the petitioner company represented before the respondents with regard to release of subsidy amount, but the respondent State declined to grant the subsidy under the provisions of subsidy Scheme of 1990 vide letter dated 14.8.1997 on the ground that the petitioner company is not the first large scale industrial unit set up in the Panchayat Samiti and is not eligible for subsidy. In this writ petition, the petitioner has challenged the letter dated 14.8.1997 by which subsidy was refused.

6. The main contention of the petitioner is that as per Subsidy Scheme of 1990, the petitioner company is eligible to get Rs. 15 lacs of subsidy immediately after creation of fixed assets to the extent of 50% and the second instalment, therefore, the amount of subsidy should be disbursed immediately after creation of 75% assets and balance amount of 25% of subsidy can be disbursed after commencement of production.

7. Learned Counsel for the petitioner referred Clauses 3, 4(d) and 12 of the Subsidy Scheme of 1990 which deals with applicability of Scheme and the same reads as under:

"Clause 3. Applicability of the Scheme-

This Scheme will be applicable in (a) the whole of the State of Rajasthan for the new and eligible industrial units in Electronics, and Telecommunication and (b) the whole of the State of Rajasthan except in the areas falling under Municipal limits or Urban Improvement limits of the cities of Ajmer, Alwar, Bhilwara, Jodhpur and Udaipur and urban agglomeration limits of Jaipur and Kota for other new and eligible industrial units:

Provided that such other new and eligible industrial units and the existing units carrying out expansion or diversification, located in the industrial areas developed by the State Government or its Corporations shall be eligible for Capital Investment Subsidy irrespective of the fact that the industrial area is located within the municipal limits or urban improvement limits of the cities of Ajmer, Alwar, Bhilwara, Jodhpur Udaipur and Urban Agglomeration limits of Jaipur and Kota.

Clause 4(d) ''Eligible Industrial Unit'' means an undertaking engaged or proposed to be engaged in the manufacture of items/articles listed in Annexure A to this notification, except those which are declared ineligible under Annexure 8 to this notification. Provided that electronics software production units, tissue culture and floriculture units would also be eligible.

Clause 12. The subsidy may be sanctioned as per the approved project report but disbursement will be in proportion to the assets created. The disbursement of subsidy will commence after fixed assets to the extent of at least 50% have been created. First advance subsidy instalment can be claimed after creation of 50% assets and second instalment after creation of 75% assets. In this manner advance subsidy upto 75% of the sanctioned amount may be disbursed. The remaining 25% may be disbursed only after the unit commences production. If the unit fails to commence commercial production within two years after receiving 75% of the subsidy, the amount of subsidy will be liable to be recovered as arrears of land revenue. The disbursement of subsidy will be made by the RIICO or RFC, as the case may be, to the units assisted by them. In case of self-financed units or the unit financed by the Banks or Central Financial Institutions, disbursement of subsidy will be made by the Director of Industries/ District Industries Centres, as the case may be."

Learned Counsel submits that vide notification dated 7.6.1994, amendment was made in Subsidy Scheme of 1990 which came into force w.e.f. 1.4.1995. The amendment so made is reproduced hereunder:

1. The following additional proviso shall be inserted after Clause 4(d) of the Scheme-

''Provided further that large scale industrial units except the first unit set up in a Development Block (Panchayat Samiti) shall not be eligible''.

2. The following proviso shall be inserted in Clause 6 of the Scheme:

''Provided that expansion and diversification of large and medium scale industrial units will not be eligible.''

3. Clause 3 of the Scheme shall be substituted by the following:

''This Scheme will be applicable in (a) the whole of the State of Rajasthan for the new and eligible industrial units in electronics and telecommunication, and (b) the whole of the State of Rajasthan except in the towns/municipal/urban areas having population above one lac as per 1991 Census, for other new and eligible industrial units.''

The above amendments shall come into force with effect from 1.4.1995."

After referring the aforesaid clause, learned Counsel for the petitioner submits that as per Subsidy Scheme which remained operative and effective till 31.3.1995, there was no clause for denying the subsidy to a large scale industrial unit except the first unit set up in the Development Block (Panchayat Samiti). The State Government is denying subsidy on the basis of amendment vide notification dated 7.6.1994 became operative and effective from 1.4.1995 and this notification is not having the retrospective effect.

8. The term of new industrial unit has been defined under Clause 4(h) of the definition given in the notification. New industrial unit means, an industrial unit set up during the operative period of the scheme i.e. from 1.4.19990 to 31.7.1997. The industrial unit will be deemed to have been set up during the operative period of this Scheme, if it commences commercial production on or after 1.4.1990 and is found eligible under this Scheme. Date of commencement of the commercial production will be 61st day after the day on which the raw material is, for the first time, put in the process of production including trial production.

9. The petitioner company started commercial production within a period of three years after closing date of the scheme i.e. 31.3.1997 would also be a new industrial unit for the purpose of this Scheme and would be entitled for capital investment subsidy as per the provisions of the Scheme. The respondents had admitted in their reply that the commercial production of the petitioners started in the month of August, 1994. In view of the aforesaid submissions, both the mandatory provisions as given in Clause 4(h), the petitioner company is entitled to the Capital Investment Subsidy amounting to Rs. 15 lacs.

10. The main argument advanced on behalf of the petitioner is that the amendment policy was made effective w.e.f. 1.4.1995 and it was not made effective with retrospective effect, therefore, in view of the amended policy, subsidy cannot be denied to the petitioner.

11. In support of his submissions, he placed reliance on the judgments reported in JT 1999 (5) SC 170, State of Rajasthan and Anr. v. Khemka Cement Ltd.; 2000 (1) WLC 416, Kesri Vanaspati Products Ltd. v. The State of Rajasthan and Ors.; RLW 1991 (1) 352 , Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , Motilal Padmapat Sugar Mills Co. Ltd. v. The State of Uttar Pradesh and Ors.; and M/s. Jagdish Rai and Brothers Vs. Union of India, , Jagdish Rai and Brothers v. Union of India.

12. Per contra learned Government Advocate Mr. B.S. Chabba admits to the extent that the subsidy scheme is lodged by the State to give incentives to certain industrial units. The Scheme which is introduced by the State for giving fiscal incentives for new and eligible industrial units does not mean that the Scheme applies to every industrial unit, but some restrictions have also been stipulated in the Scheme. In reply, there is denial on behalf of the State that they have promised to provide the subsidy to the petitioner and as per the amended policy, the petitioner is not eligible to get the subsidy as claimed by the petitioner company. The subsidy can only be disbursed to those industrial units which are covered under the Subsidy Scheme of 1990. The State Government is fully empowered to amend, alter, change and close the subsidy to the industrial units under the Subsidy Scheme of 1990

13. It is also given out by the learned Counsel for the State that the petitioner applied for grant of subsidy under the Subsidy Scheme of 1990 vide letter dated

7.9.1994. The application of the petitioner was not complete. Certain information was desired by the Director of Industries vide its letter dated 9.12.1994. Although the petitioner unit had been informed by the Director that it will start production in the month of August, 1995, but as per the certificate issued by the General Manager, District Industries Centre, the petitioner unit commenced its production from 17.1.1996 meaning, thereby, the petitioner company commenced its production after 31.3.1995.

14. It is further submitted on behalf of the respondents that only the first large scale industrial unit in the concerned Panchayat Samiti and who started its commercial production upto 31.3.1995 is entitled to get the fiscal incentive. Since the petitioner company is not the first large scale industrial unit in the Panchayat Samiti and started production after 31.3.1995, therefore, subsidy was rightly denied to the petitioner.

15. Heard learned Counsel for the respective parties and carefully perused the material available on record as well as relevant provisions of the Subsidy Scheme.

16. First, I would like to deal with Clause 3 of the Scheme. As per Clause 3, the Scheme of Subsidy which is applicable in whole of the State of Rajasthan for the new and eligible industrial units in Electronics and Telecommunication provided that such other new and eligible industrial units and the existing units carrying out expansion or diversification, located in the Industrial Areas developed by the State Government or its Corporations shall be eligible for Capital Investment Subsidy irrespective of the fact that the Industrial Area is located within the Municipal limits or Urban Improvement limits of the cities of Ajmer, Alwar, Bhilwara, Jodhpur and Udaipur and Urban Agglomeration limits of Jaipur and Kota.

17. The eligibility criteria is also laid down in Clause 4(d) of the Subsidy Scheme. As per Clause 4(d), eligible industrial unit means an undertaking engaged or proposed to be engaged in the manufacture of items/articles listed in Annexure A to this notification, except those which are declared ineligible under Annexure B to this notification. It is not disputed that the petitioner company is manufacturing the items and articles mentioned in Annexure-A appended along with the notification.

18. Here in the instant case, the petitioner company admittedly created its assets to the extent of 15% before 31.3.1995 and, thus, it was eligible to get first instalment of subsidy immediately after creation of 15% assets, but despite the repeated request, first instalment of subsidy has not been released in favour of the petitioner and by that time the petitioner company created assets upto 75%.

19. Refusal of the subsidy was first time communicated to the petitioner vide letter dated 14th August, 1997 by which it was informed that the petitioner company is not the first large scale industry set up in Panchayat Samiti. But this letter does not disclose the name of other first large scale unit which was already

in existence in a Development Block.

20. The subsidy was refused on two grounds, (1) applicability of Subsidy Scheme of 1990 as the petitioner company is not a first large scale industrial unit in Development Block (2) the application form of the petitioner company was not complete. Learned Counsel for the State has failed to show the application so moved by the petitioner company as to how and in what manner it was found incomplete.

21. I have also gone through the amendment made in the notification. The amendment made in Subsidy Scheme of 1990 came into force w.e.f. 1.4.1995 and by way of amendment, Clause 4(d) was added. At the relevant point of time, Subsidy Scheme of 1990 was in force and there was no stipulation rider that the subsidy can only be extended only to the first large scale industrial unit in a Block Development. As already discussed hereinabove, that the petitioner company has created 75% assets prior to 31.3.1995, therefore, the provisions of {(mended policy are not applicable to the instant case.

22. I have also perused the judgment rendered in case of State of Rajasthan and Anr. v. Khemka Cement Pvt. Ltd. wherein the Hon''ble Supreme Court has held that subsidy could not be refused as it could have been granted only after purchase and on the date of purchase in decision had been taken to withdraw the scheme. It was further observed that the scheme which was promulgated on 3.2.1982 was withdrawn by the decision of the State Government which was taken on 25.7.1985. Retrospective effect was sought to be given to this decision and it was made applicable with effect from 1.4.1985.

23. Following the aforesaid case, this Court in case of Kesri Vanaspati Products Ltd. (supra) has held as under:

"The Government had framed the Scheme in the year 1990, which was to commence from 1.4.1990 and was to end on 31.3.1997. Industries were earmarked for grant of subsidy. Even a decision was taken that any industry which had invested 25% of capital investment and before closing of the Scheme, started production within three years of closing of the Scheme, would be entitled to such subsidy. The petitioner had fulfilled both the conditions. It did fall under the provisions of the Scheme for grant of subsidy. Even though all those industries which was falling under 1990 Scheme and fulfilling the conditions were entitled to such subsidy but further clause was added in the year 1994 to the effect that so far as large industries are concerned only that unit would be entitled to the subsidy which is the first unit in the area. Any industry established before the Scheme of 1990 could not and did not fall in the new industrial unit as defined under the Scheme of 1990. It was the petitioner unit which did fall under the definition of the ''New Industrial Unit'' and, therefore, could not be debarred from receiving the incentives or subsidy on the Scheme on the ground as mentioned in the impugned order."

The same view has been expressed by this Court in case of Venkateshwara Wires

(P) Ltd. v. District Level Committee.

24. I am fully convinced by the ratio decided by the Hon''ble Supreme Court and this Court in the judgments referred hereinabove and also agree with the submission of the petitioner that the petitioner is eligible to get subsidy.

25. In view of the observations made hereinabove, I am of the firm opinion that the petitioner company is entitled to get the subsidy amount. The respondents are directed to release the subsidy amount within a period of three months, failing which the petitioner is entitled to receive the interest on the principal sum of subsidy amount at the rate of 12% per annum.

26. With the aforesaid observations, the writ petition stand disposed of.