

(2015) 08 SC CK 0034
In the Supreme Court Of India
Case No : C.A. No. 398 of 2007

I.C. Textiles Limited

APPELLANT

Vs

The State of Gujarat and Others

RESPONDENT

Date of Decision : 27-08-2015

Acts Referred:

Citation : (2015) 9 SCALE 580

Hon'ble Judges : H.L. Dattu, C.J.I;N.V. Ramana, J;Arun Mishra, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

1. The Appellant is before us in this appeal against the final judgment and order passed by the High Court of Gujarat at Ahmedabad in Special Civil Application No. 2594 of 2004, dated 26.11.2004, whereby and where under the High Court rejected the Writ Petition filed by the Appellant-herein. The Appellant-Assessee is a company incorporated and registered under the provisions of the Companies Act, 1956, engaged in the manufacture of cotton yarn, blended viscose rayon spun yarn.

2. The issue which arises for consideration in this case is whether the Appellant-Assessee comes under the category of Prestigious Unit under the "Capital Incentives to Premier/Prestigious Unit Scheme 1995-2000" (for short, "the Scheme").

3. For convenience of discussion, we would first notice the Scheme and certain provisions therein and thereafter proceed towards analysis of the facts in the instant case.

4. The Scheme was introduced by the Government of Gujarat by its Resolution No. INC/1095/2000/(3)/1 dated 11.09.1995 with a view to accelerate the development of backward areas of Gujarat and to create employment opportunities. The operative period of the Scheme was from 16.08.1995 upto 15.08.2000.

5. The Scheme envisaged grant of sales tax incentives by way of Sales Tax Exemption or Sales Tax Deferment for Premier/Prestigious Units, according to the location, investment and status of the project.

6. For the purpose of this case it will be relevant to notice the definition of "New Industrial Unit", "Prestigious Unit", "Project Cost", "Eligible Fixed Capital Investment" and procedure for registration as Prestigious Unit under the Scheme.

7. Clause 5(iv) of the Scheme defines "Prestigious Unit" to mean a new industrial unit wherein the following criteria are fulfilled:

(a) the minimum project cost has to be Rs. 100 crores or more;

(b) the unit shall employ atleast 100 workers on permanent basis and shall follow the employment policy of the State Government;

8. The definition of Prestigious Unit is divided into three criteria which are required to be satisfied for a unit to be identified as a Prestigious Unit. Firstly, it speaks of a unit being a New Industrial Unit which has been defined under Clause 5(ii) of the Scheme to mean a New Industrial Complex/Project set up by a new undertaking during the operative period of the Scheme, provided it satisfies all the following conditions:

"(a) The, new project should have obtained a separate letter of intent/letter of approval or registration or obtained receipt against filing of Industrial Entrepreneurs" Memorandum (IEM) or registered for the product(s) or modification in the existing license as may be required. The creation of additional capacity of the existing product in the same taluka set up by the existing industrial unit shall be considered as an expansion of the project, (b) The new project should have separately identifiable capital investment. "Separately Identifiable Capital Investment" means it should not have any production linkage with the existing manufacturing process, and should be a separate product in itself with independent marketability. The new unit should be in a separate building, should maintain separate books of accounts and the project should be appraised independently by financial institutions as a viable project. However, the new project will not lose its eligibility, if the utilities of existing units for water, electricity, steam and pollution control facilities are extended to the new project".

9. Secondly, the Scheme requires a minimum project cost of atleast Rs. 100 crores or more and thirdly, it requires for employment of atleast 100 workers on permanent basis and adherence to the employment policy of the State Government.

10. Clause 5(vii) defines the term "Project Cost" to mean the projected investment excluding the margin for working capital.

11. Clause 5(ix) defines Eligible Fixed Capital Investment to mean investment under four broad heads:

(A) Fixed Capital Investment - Investment under this head is further sub -

divided into investment for the purpose of land, new building, other construction and plant and machinery; (B) Project Related Infrastructural Investment; (C) Social Infrastructural Investment and; (D) Common and Public Purpose infrastructural Investment.

12. Clause 6(i)(A) of the Scheme stipulates the rate of incentives for Units qualifying as Prestigious Units, it provides incentives by way of sales tax deferment or sales tax exemption on the basis of the location, investment and status of the Prestigious Unit. In the present case, the Appellant-Assessee is claiming sales tax exemption to the extent of 80 per cent of the Eligible Fixed Capital Investment on account of being a Prestigious Unit established in a backward area.

13. Explanation 1 under the Scheme provides for the time period which would be considered for the purpose of calculating the value of the Fixed Capital Investment. The explanation stipulates that Fixed Capital Investment made within 18 months from the date of going into commercial production or upto the date of completion of the project, whichever is earlier, alone will be considered for the purpose of the Scheme.

14. Explanation 3 of the Scheme provides that investment made, in fixed capital project related infrastructure, social infrastructure or common infrastructure after the operative period of the scheme shall not be considered eligible for incentives under the Scheme.

15. Clause 7 of the Scheme stipulates the procedure for registration as Prestigious Unit, it provides that an industrial unit eligible for prestigious status under the Scheme will apply to the Industries Commissioner before the expiry of the Scheme. The Industries Commissioner shall give provisional registration to the eligible prestigious/premier unit after approval of committee where applicable. The eligible unit after completion of project will apply to Industries Commissioner for permanent prestigious/premier registration, Industries Commissioner will carry out the assets verification and submit a verification report to the High Power State Level Committee for the purpose of granting permanent prestigious registration.

16. Reverting to state the facts, the Appellant-Assessee had applied to the Industries Commissioner for a provisional prestigious registration under the Scheme and obtained the same by registration dated 01.03.1997. The provisional registration was valid till 15.08.2000 and the provisional registration was subject to fulfillment of the conditions envisaged in the Scheme. According to the conditions appended to the provisional registration certificate, the Appellant Assessee had to go into commercial production before 15.08.2000. The Appellant-Assessee commenced commercial production on 27.12.1996. Pursuant to commencement of production and grant of provisional prestigious registration the Appellant-Assessee had applied to the Industries Commissioner for permanent prestigious registration.

17. Meanwhile, the Appellant Assessee was issued eligibility certificate for sales tax incentives by the Additional Industries Commissioner, dated 06.05.1997 which was followed by an exemption certificate issued by the Assistant Sales Tax Commissioner, dated 22.05.1997. The exemption certificate entitled the Appellants - Assessee for an exemption to the extent of 25 percent of the eligible fixed capital investment. The Appellant-Assessee continued to avail the exemption under the said certificate.

18. Pursuant to the procedure of granting a permanent prestigious registration under the Scheme, a team of senior officers visited the Appellant-Assessee's unit on 26.04.2001 and 27.04.2001 for the purpose of "Asset verification of Prestigious Unit". The Respondent thereafter demanded certain financial documents and clarifications from the Appellants Assessee which were forwarded by the Appellant-Assessee by letter dated 30.05.2001. As per the asset verification carried out, the value of the eligible Fixed Capital Investment was assessed at Rs. 86.19 crores.

19. In the meantime, while the application for permanent registration as a Prestigious Unit was still pending, the Appellant-Assessee net-worth got eroded and liabilities exceeded assets. The Appellant-Assessee approached the Board for Industrial and Financial Reconstruction (for short, "BIFR") under the provisions of the Sick Industrial Companies (Special Provisions), Act, 1985. The Respondents started coercive action against the Appellant-Assessee for recovery of sales tax and accordingly served attachment orders upon the Appellant-Assessee in February 2004. Further, the Appellant-Assessee's application for permanent registration was rejected by the Joint Industries Commissioner by letter dated 1-02/3-2004.

20. The Appellant-Assessee preferred a Writ Petition before the Gujarat High Court praying that it is eligible for grant of status of Prestigious Unit under the Scheme and the action of the Respondent in refusing to grant the said status is bad in law. The counsel for the Appellant-Assessee would submit before the High Court that Eligible Fixed Capital Investment under the Scheme was only for the purpose of calculating the extent of the incentive and not the status of the unit itself. He would further submit that in order to determine the status, only projected investment has to be considered, which exceeded 100 crores in the case of the Appellant-Assessee. Further, as per the interpretation of the Scheme an investment of 100 crores within the operative period of the Scheme is not required.

21. Per contra, the counsel for the Respondent would submit that, as per Explanation 1 of the Scheme, the Fixed Capital Investment made within 18 months from the date of going into commercial production or upto the date of completion of the project, whichever is earlier, alone will be considered. The Appellant-Assessee had gone into production on 27.12.1996 and the period of 18 months ended on 26.06.1998 and the Fixed Capital Investment of 100 crores was not made by that time.

22. After hearing both the parties to the lis, the Division Bench of the High Court has rejected the writ petition by its order dated 26.11.2004. The High Court has observed that the interpretation that Eligible Fixed Capital Investment can only be considered for the purpose of calculating the incentives is not tenable. Further, the time period within which the Eligible Fixed Capital Investment is to be made is 18 months from the date of going into commercial production or upto the date of completion of the project, whichever is earlier as provided in Explanation 1. The High Court has come to the conclusion that the investment in the case of the Appellant-Assessee has failed to satisfy the aforesaid requirement under the Scheme and therefore the Appellant-Assessee cannot be granted the status of Prestigious Unit under the Scheme.

23. Aggrieved by the order so passed by the High Court, the Appellant-Assessee is before us in this appeal.

24. The counsel for the Appellant-Assessee would submit that for the purpose of calculating the eligible investment in order to meet the requirement of Rs. 100 crores for the status of Prestigious Unit under the Scheme, the Projected Cost and not the actual cost shall be taken into account. Further, he would submit that the scheme suggests two different yardsticks, one for the purpose of determination of the status and the other for the purpose of the extent of entitlement of the incentives under the Scheme. The counsel would submit that for the purpose of status, the unit has to merely show that its projected cost as appraised by a financial institution is greater than Rs. 100 crores. In so far as the extent of entitlement of incentives under the Scheme is concerned, the unit has to show the actual investment made confined to the Eligible Fixed Capital Investment.

25. Per contra, the counsel for the Respondent would dispute the averments made by the counsel for the Appellant - Assessee.

26. We have heard the learned Counsel for the parties to the lis. The Scheme in the present case has to be read as a whole, it is not permissible for a party to pick up one provision or one part of the Scheme and claim relief on that basis alone. In our view, a holistic reading of the Scheme does not permit the acceptance of the contentions raised by the learned Counsel for the Appellant-Assessee. If the contention raised by the counsel for the Appellant-Assessee that Eligible Fixed Capital Investment is only for the purpose of determining the extent of entitlement under the Scheme, is taken to be true, that approach shall result in an absurd situation wherein the amount on which the incentive is to be calculated keeps on fluctuating depending on the amount of investment made from time to time. This would result in utter uncertainty which is not the objective of the Scheme. Further, the aforementioned definition of the New Industrial Unit under the Scheme, inter alia, specifies that new project should have "Separately Identifiable Capital Investment", this stipulation under the Scheme further bolsters the position that the new unit should have actual capital investment which is atleast to the extent of Rs. 100 crores for the unit to be

eligible for grant of status of Prestigious Unit under the Scheme. It follows that for a unit to be considered for grant of status of a Prestigious Unit under the Scheme, firstly, the financial threshold of actual investment of atleast 100 crores within the prescribed period under the Scheme has to be met.

27. The Scheme under Explanation 1, categorically provides that the eligible Fixed Capital Investment has to be made within 18 months from the date of going into commercial production or upto the date of completion of the project, whichever is earlier. It is an admitted fact in the present case that the Appellant-Assessee has commenced the commercial production on 27.12.1996, therefore, by application of the requirement under Explanation 1 of the Scheme, the Appellant-Assessee was required to have made the eligible Fixed Capital Investment of atleast 100 crores by 26.06.1998. However, as per the asset verification carried out in 2001, the Appellant Assessee has made the eligible Fixed Capital Investment of only 86.19 crores.

28. In our considered opinion, the Appellant-Assessee has failed to satisfy the financial threshold required to be met for a unit to be considered for the status of Prestigious Unit under the Scheme. In view of the aforesaid, the contentions raised by the learned Counsel for the Appellant-Assessee are rejected. We find no infirmity in the impugned judgment and order of the High Court. The appeal, being devoid of any merit, is liable to be dismissed and is dismissed accordingly.

Ordered accordingly.