(2013) 02 RAJ CK 0102

In the Rajasthan High Court

Case No : Civil Writ Petition No. 158 of 2000

Krupali Stones Private Limited APPELLANT

Vs

State of Rajasthan RESPONDENT

Date of Decision : 01-02-2013

Acts Referred:

Citation : (2013) 1 CDR 485 : (2013) 2 WLN 300

Hon'ble Judges : Vijay Bishnoi, J

Bench : Single Bench

Advocate : Anjay Kothari, for the Appellant; Dinesh Godara for Mr. V.K. Mathur, for the Respondent

Judgement

Vijay Bishnoi, J.—The petitioner, a registered private limited Company has preferred this writ petition while praying the following reliefs:--

(i) Quash and set aside the impugned order dated 8.4.1999 (Annexure-6) passed by the respondent No. 2.

(ii) Hold that the petitioner is entitled to claim benefit under the subsidy scheme in question.

(iii) Direct the respondents to sanction, grant and disburse the amount of subsidy alongwith interest to the petitioner forthwith.

(iv) Direct the respondents to decide the representation dated 2-12-1999 filed by the petitioner (Annexure-7).

(v) Quash any other adverse order, notice or communication issued against the petitioner, during the pendency of the writ petition.

(vi) Any other appropriate writ, order or directions which the circumstances of the case may justify.

(vii) The cost of the writ petition may be awarded to the petitioner.

The brief facts of the case, as set up in the writ petition are that the State of Rajasthan has announced State Capital Investment Subsidy Scheme for New Industries, 1990 (hereinafter referred as "the Scheme of 1990") wherein it is provided that benefit of subsidy will be extended to the industrial units on fulfilling certain terms and conditions. The petitioner claimed that it has complied with the requisite conditions for grant of subsidy and entitled to receive the amount of subsidy and, therefore, applied under the Scheme of 1990 for grant of subsidy vide application Annex. 2. It is stated by the petitioner that the scheme was partially amended vide notification dated 3.2.1998 and the benefit of scheme was extended to such unit which made 25% investment upto 31.3.1998 and commenced commercial production within six months thereafter i.e. upto 30.9.1998. It is claimed by the petitioner that though the petitioner-company started commercial production within the said limit, the application filed by the petitioner-company for grant of subsidy was summarily rejected by the respondent No. 2 vide impugned order dated 8.4.1999. It is stated in the petition that the order dated 8.4.1999 is absolutely cryptic, non-speaking, arbitrary, unjustified and contrary to the provisions of law. Though the petitioner is a diversification unit, the respondents have wrongly classified the petitioner company under the expansion category. The petitioner further sated that it has submitted a representations dated 2.12.1999 (Annex. 7) before the respondents but the respondents have failed to consider such legitimate request of the petitioner for grant of subsidy and compelled the petitioner to approach this Court under its extra-ordinary jurisdiction. The petitioner has further claimed that though the Commercial Taxes Department has granted exemption to the petitioner under the Diversification Category, the petitioner was wrongly classified by the respondents under the Expansion Category instead of Diversification Category. It is further claimed by the petitioner that the petitioner unit was earlier found eligible for the benefit of subsidy for its Granite project and in such circumstances, the denial of grant of subsidy to the petitioner-company vide order dated 8.4.1999 is absolutely illegal and the order dated 8.4.1999 is liable to be quashed.

2. A reply to the writ petition is filed on behalf of the respondents and it is contended that the Subsidy Scheme of year 1990 is only applicable to the new units and not to the Diversification Unit and as the petitioner has claimed itself as a Diversification Unit, therefore, the benefit of the Scheme of 1990 cannot be extended to the petitioner.

3. A rejoinder to the reply is filed on behalf of the petitioner and it is claimed that the contention of the respondents that the benefit of the Scheme can only be granted to the new industrial unit and not to the Diversification/Expansion unit, is absolutely incorrect because from the perusal of the Scheme of 1990 itself, it is clear that the benefit of the Subsidy Scheme was also to be given to the diversification or expansion unit. In rejoinder, the petitioner has placed on record the copy of registration certificate issued by the respondent No. 2 to the petitioner under the Scheme of 1990 and the petitioner has also placed

documents on record, from which the fact of granting benefit of subsidy to other similarly situated units is proved.

4. Learned counsel for the petitioner Mr. Anjay Kothari while arguing the matter has reiterated the contentions raised in the writ petition as well as in the rejoinder and has also invited my attention towards the provisions of Clause 3 of the Scheme of 1990 (Annex. 1) and also invited my attention regarding the definition of the Diversification as prescribed in the Scheme of 1990. The learned counsel for the petitioner has also invited my attention towards clause 6 and 9 of the Scheme of 1990 and has claimed that the stand of the respondents is absolutely baseless, that the diversification units are not entitled for the benefit of subsidy under the Scheme of 1990, as from the above provisions of the Scheme of 1990, it is clear that the benefit of Scheme of 1990 can also be extended to the Expansion and Diversification units, obviously on compliance of certain conditions. Learned counsel for the petitioner has claimed that the petitioner is entitled for the benefit of subsidy as per the provisions of the Scheme of 1990 and is also entitled for interest as the subsidy was wrongly refused to the petitioner. The counsel for the petitioner has placed reliance on the judgment rendered in Earnest Industries Gases P. Ltd. vs. Union of India & Ors., RLR 1999 (2) 138.

5. Per contra, Mr. Dinesh Godara for Mr. V.K. Mathur counsel for respondents has argued that from the bare perusal of notification dated 20.2.1998 (Annex. R/1), it is clear that the benefit of subsidy in the Scheme of 1990 can only be extended to the new units and the benefit of Subsidy cannot be extended to the expansion or diversification unit.

6. I have considered the rival submissions of the parties and also carefully examined the material available on record. The relevant provisions of the Subsidy Scheme 1990 (Annex. 1) for the purpose of deciding the present controversy are as under:--

3. Applicability of the Scheme.--This Scheme will 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 and Udaipur and Urban Agglomeration limits of Jaipur and Kota.

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4. Definitions.--

(a) .....

(b) "Diversification" means launching of a new product line under the same company, firm or partnership provided that the total fixed capital investment in such a diversification exceeds at least 25% of the value of the net fixed assets of the original project.

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6. Expansion and diversification of eligible industrial units will be entitled to the subsidy at the rate mentioned in clause 5 of this notification.

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9. Those industrial units which have been sanctioned subsidy under any other capital investment subsidy scheme will not be eligible for subsidy under this scheme. Expansion or diversification as defined in this scheme and undertaken by the existing unit during the operative period of this scheme in the eligible area will be entitled, for subsidy under this scheme.

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7. From the above provisions, it is clear that the benefit under the Subsidy under the Scheme of 1990 can also be granted to Expansion/Diversification Units. It is also to be noted that the petitioner was granted exemption certificate for the sales tax purposes by the Commercial Taxes Department vide Annex. 8 and the petitioner was also granted registration certification under the Scheme of 1990 vide Annex. 10. It is also not out of subject to mention that the other similarly situated units were extended benefit of Subsidy under the Scheme 1990 vide Annex. 11. The respondents have not disputed that the petitioner was registered under the Scheme of 1990 vide order dated 30.4.1998 (Annex. 10) and has also not disputed that the eligibility certificate is also issued to the petitioner-firm by the Commercial Taxes Department. The contention of the respondents that the benefit of Subsidy under the Scheme 1990 was only to be extended to the new units, is not tenable in view of the provisions of the Scheme 1990.

8. The respondents have also not disputed the fact that the requisite investment has been made by the petitioner for availing the benefit of subsidy under the scheme of 1990 and the respondents have also not disputed that the petitioner company has started production within a period of six months from the closure of the scheme of 1990 as provided in the Notification dated 3.2.1998 (Annex. R/1).

9. In the above mentioned circumstances, this writ petition is liable to be accepted and the impugned order dated 8.4.1999 (Annex. 6) passed by the respondents is liable to be quashed and set aside as the same has been passed without application of mind and without taking into consideration the provisions of the Scheme of 1990 (Annex. 1). Accordingly, the writ petition is allowed and the order dated 8.4.1999 (Annex. 6) is quashed and set aside. The respondents

are directed to decide the representation of the petitioner dated 2.12.1999 (Annex. 7), objectively while treating the petitioner eligible to get the benefit of subsidy under the Scheme 1990. While deciding the representation, the respondents will also consider the request of the petitioner for payment of interest on the delayed payment of subsidy. It is expected from the respondents to decide the representation of the petitioner in the light of above observations expeditiously, preferably within a period of six months from the date of receipt of certified copy of this order.

No order as to costs.

