**(2004) 07 GUJ CK 0031**

**In the Gujarat High Court**

**Case No :** Special Civil Application No. 5496 of 2004

Mehta Oxygen Pvt. Ltd. APPELLANT

Vs

State of Gujarat RESPONDENT

**Date of Decision :** 19-07-2004

**Acts Referred:**

**Citation :** (2004) 07 GUJ CK 0031

**Hon'ble Judges :** M.S. Shah, J;D.A. Mehta, J

**Bench :** Division Bench

**Advocate :** R.S. Sanjanwala, for Petitioner Nos. 1-2, for the Appellant; Siraj Gori, AGP for Respondent Nos. 1-5, for the Respondent

**Final Decision :** Allowed

# Judgement

M.S. Shah, J.—Rule. Mr.Siraj Gori, learned Assistant Government Pleader waives service of Rule for the respondents.

With the consent of the parties, the matter is taken up for final hearing today.

2. Petitioner No.1 - Company - MEHTA OXYGEN PVT.LTD. (hereinafter referred to as ''the petitioner'') has set up an Oxygen plant for manufacturing Oxygen gas at Plot No.69, GIDC, Vartej, District Bhavnagar. The commercial production commenced on 31/1/1997.

The Government of Gujarat framed a Scheme called "Capital Investment Subsidy Scheme 1990-95" for providing exemption from payment of sales tax to new industrial units. Such benefits were to be granted to the industrial units set up during the operative period of the said scheme which was from 16/8/1990 to 15/8/1995. The second scheme commenced from 16/8/1995 and was operative till 15/8/2000. It appears that the petitioner had acquired some of the assets during the operative period of the 1990-1995 Scheme (hereinafter referred to as the "first scheme") and also applied for registration under the said scheme. However, since the other assets could be acquired and taken delivery of, only after commencement of the second scheme, the petitioner applied for registration under the second scheme i.e. 1995-2000. There were a large number of plant and machineries which the petitioner acquired after 15/8/1995 but the petitioner had made advance payments for purchasing such plant and machineries before 15/8/1995. The respondent authorities while considering the petitioners'' application for exemption under the second scheme did not take into account the plant and machineries actually acquired after 15/8/1995 but paid for prior to 15/8/1995 on the ground that the payments of plant and machineries acquired were not made after commencement of the second scheme. According to the petitioner, plant and machineries worth are Rs.64 lakhs. The respondent authorities assessed the exemption benefit only by taking into account assets worth Rs.8 lacs which prompted the petitioner to request the authorities to switch over its option from the second scheme to the first scheme which came to be rejected on the ground that the petitioner unit had commenced commercial production in January 1997 and, therefore, the petitioner was not entitled to get any benefit under the first scheme.

3. The petitioner has, therefore, filed the present petition -

(A) firstly praying that the petitioner may be granted benefit under the first scheme (1990-1995 scheme) and alternatively

(B) that the petitioner may be granted benefit under the second scheme (1995-2000 scheme) on the basis that all the assets which were acquired for the project in question shall be treated as eligible investment even if the payments were made prior to the commencement of the second scheme.

At the hearing of the petition today, Mr.R.S.Sanjanwala, learned counsel for the petitioners has submitted that the petitioner is now interested in opting for the second scheme only and, therefore, does not press for relief "A" for the benefit under the first scheme.

4. The issues which arise for our consideration revolve around the interpretation of the following clauses of the CAPITAL INVESTMENT INCENTIVE (GENERAL) SCHEME 1995-2000 as contained in Government of Gujarat Resolution dated 11/9/1995 (Annexure "E") :-

"Operative period :

4.(ii) This scheme shall come into operation with effect from 16th August,1995 and shall remain in force for a period of five years upto 15th August,2000.

xxx xxx xxx xxx

5.(ii) New Industrial Unit : A "New Industrial Unit" means a new industrial project set up by an industrial undertaking during the operative period of this scheme, provided it satisfied all the following conditions :-

xxx xxx xxx xxx

(iii) Existing Industrial Unit :

 

An ''Existing Industrial Unit'' means the project of industrial undertaking which has started commercial production before the commencement of the scheme.

xxx xxx xxx xxx

(xii) Project Cost :

The ''Project Cost'' means the projected investment excluding the margin for working capital.

(xiii) Eligible Fixed Capital Investment : ''Eligible Fixed Capital Investment'' means investment in -

(A) Fixed Capital Investment

(1) to (3) .... ... ... ...

4) Plant & Machinery : New Plant and machinery and imported second hand machinery, including equipments for utilities, dies and moulds. The cost of transportation, foundation, erection, installation and electrification capitalised under the head of plant and machinery. The electrification cost includes the cost of sub station and transformer constructed by the industrial unit.

xxx xxx xxx

(vi) Option between Previous Scheme and New Scheme :

The industrial unit which is registered for incentives under previous scheme 1990-95 will be allowed to opt for the new Scheme, provided it fulfills the following criteria :

(1) The industrial unit is eligible for incentive under both the schemes.

(2) No amount of incentive (subsidy or sales tax) has been availed by the unit under the previous scheme 1990-95.

(3) The assets created (acquired & paid) after 15.8.1995 only will be eligible under new scheme.

(4) The unit shall have to exercise its option in writing, if it has obtained registration under previous scheme 1990-95. The option shall be exercised before 31st December,1995."

5. Upon perusal of the aforesaid relevant clauses of the Scheme, it is clear that the New Industrial Undertaking which is covered by the second scheme is a new industrial project set up by an industrial undertaking during the operative period of the scheme i.e. between 16/8/1995 to 15/8/2000. If the unit had started commercial production before 16/8/1995, it would be an existing industrial unit and not a new industrial unit.

There is no dispute about the fact that the petitioner-unit is not an existing industrial unit and satisfies the definition of "New Industrial Unit" because it had not started commercial production before 16/8/1995.

6. The clause which has generated the present controversy is sub-caluse (3) of Clause (vi) :-

"(vi) Option between Previous Scheme and New Scheme :

The industrial unit which is registered for incentives under previous scheme 1990-95 will be allowed to opt for the new scheme, provided it fulfills the following criteria :

(1) The industrial unit is eligible for incentive under both the schemes.

(2) No amount of incentive (subsidy or sales tax) has been availed by the unit under the previous scheme1990-95.

(3) The assets created (acquired & paid) after 15.8.95 only will be eligible under new scheme.

(4) The unit shall have to exercise its option in writing, if it has obtained registration under previous scheme 1990-95. The option shall be exercised before 31st December,1995."

7. According to the respondents, only those assets will qualify for computation of eligible investment which were acquired after 15/8/1995 and for which the payments were also made after 15/8/1995. On the other hand, according to the petitioner, the assets referred to in the above clause are the assets which are acquired for New Industrial Unit after 15/8/1995 and they are not disqualified from being included in the list of eligible investment merely because payments for such new assets acquired after 15/8/1995 were made before 15/8/1995.

8. Having heard Mr.R.S.Sanjanwala, learned Advocate for the petitioners and Mr.Siraj Gori, learned Assistant Government Pleader for the respondents, we are of the view that there is considerable substance in the submission made on behalf of the petitioners that the Capital Investment Incentive Scheme 1995-2000 has been framed for giving incentives for setting up new industrial units in backward areas to create large-scale employment opportunities and to attract investments to generate greater employment in less industrially developed areas. Once this basic object of the scheme is realised, the aforesaid clause in the scheme has to be seen as clause in aid of the object of the scheme. If the assets are acquired and installed after 15/8/1995, the production would obviously commence after 15/8/1995, and such plant and machineries have to be treated as assets created after 15/8/1995. Merely because substantial payments might have been made before 15/8/1995 for acquisition of such assets for the purpose of setting up the new industrial unit, it cannot be said that the assets were created before 15/8/1995.

9. In view of the above discussion, the petition, deserves to be allowed. The impugned communication No.UK/PRO/T-3 dated Nil at Annexure "O" and the communication dated 19/1/2004 at Annexure "P" are accordingly quashed and

 

set aside.

In view of the aforesaid interpretation of the above clause and the scheme, the entire matter is required to be reconsidered by the concerned respondent authorities and for this purpose, the petitioner shall make an application to the concerned respondent authorities within 15 days from today along with all the relevant materials and respondent nos.2 and 3 shall consider the entire matter afresh in light of the principles laid down in this judgment, within two months from the date of the receipt of the application.

10. Rule is made absolute with no order as to costs.

 