(2016) 09 P&H CK 0091

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 16168 of 2013 (O&M)

M/s Majestic Metaliks Limited	APPELLANT
Vs	
The State of Punjab	RESPONDENT

Date of Decision : 19-09-2016

Acts Referred:

Citation : (2017) 2 PLR 18

Hon'ble Judges : Rakesh Kumar Jain, J.

Bench : Single Bench

Advocate : Mr. Sudhir Mittal, Advocate, for the Petitioner; Ms. Ritam Aggarwal, Advocate, for the Respondent No. 4; Mr. Anant Kataria, DAG, Punjab, for the Respondent State

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.—The petitioner is a limited company, incorporated under the Indian Companies Act, 1956 [for short ''the Act'']. It was earlier incorporated under the name and style of Himachal Steel Fabricator Private Limited, having its works at Barotiwala, Himachal Pradesh but subsequently vide certificate of incorporation dated 5.12.1994, obtained from the Registrar of Companies (Punjab, Himachal Pradesh and Chandigarh), the petitioner acquired its present name and became a Public Limited Company w.e.f. 1.4.1999. It is alleged that vide notification No.4085-PS/SI/92 dated 28.09.1992, State of Punjab notified "Package of Incentives" for the industrial development in the State of Punjab known as ''Package of Incentives-1992'' [for short ''the Investment Incentives (Subsidy)''] in which provision was made, inter alia, for the grant of Sales Tax exemption and investment incentive (subsidy) to the companies, setting up their industries in the State of Punjab. The petitioner also set up a unit for manufacturing galvanized steel tapes in District Patiala after purchasing land at Village Bhankarpur and established its Unit-I. It was registered as a small scale industry and started production from 5.12.1995. Galvanized steel tapes were used for manufacturing of jelly filled telephone cables. The petitioner applied for investment incentive (subsidy) under the Policy and a sum of Rs. 6,63,000/- was sanctioned to it on 8.4.1997. The petitioner in the year 1997 expanded its manufacturing and established Unit-II within the same premises for manufacturing sheathing compound/water proof polyester film, which is the raw material required for the manufacturing of jelly filled telephone cables. The petitioner was sanctioned a sum of Rs. 7,53,000/- as additional incentives (subsidy) on 13.10.1998. The petitioner went into further expansion in the year 2000 and set up a Cold Rolling Mill for manufacturing of cold rolled steel strips, which is also a basic raw material for the manufacturing of galvanized steel tapes and on account of this expansion, a sum of Rs. 30 lacs were sanctioned as Incentive (subsidy) on 21.8.2008. The petitioner has allegedly obtained the benefit of Sales Tax exemption but the incentive (subsidy) was not given to it since the day it came into commercial production. During the year 2002, because of the change in the technology, jelly filled telephone cables were replaced by optic fiber cables, as a consequence thereof, the petitioner suffered losses as there were no buyers. It was unable to pay its loans and the banker of the petitioner issued a notice dated 5.2.2005 under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [for short ''the SARFAESI Act''] for taking possession of the Unit of the petitioner and the physical possession was taken in March, 2005. However, in order to avoid the Unit to be taken over by the banker, the petitioner was forced to sell its Unit to M/s Bansal Strips Pvt. Ltd. vide registered sale deed dated 25.3.2005 for a consideration of Rs. 1,70,00,000/- out of which Rs. 25 lacs were to be paid in ''No Lien Account'', to be opened by the purchaser in Bank of India, to be utilized for clearance of bank dues and the balance amount of Rs. 1,45,00,000/- was directly paid to Bank of India. Thereafter, respondent No.4 purchased the Unit from M/s Bansal Strips Pvt. Ltd. vide registered sale deed dated 18.7.2005. The petitioner made representation by way of an application dated 25.9.2006 for release of investment incentives (subsidy) but its application was rejected on the ground that the Unit has been sold. Aggrieved against the rejection order dated 14.12.2006, the petitioner filed CWP No.2966 of 2007 titled as M/s Majestic Metaliks Limited v. The State of Punjab and others, which was admitted on 21.1.2008. In the meantime, respondent No.4 represented the official respondents for recovery of the investment incentive (subsidy) and wrote a letter dated 24.3.2006 to respondent No.3 for disbursement of subsidy, which was rejected vide letter dated 19.7.2006 and communicated to respondent No.4 on 4.10.2006. Respondent No.4 filed a writ petition bearing CWP No.18520 of 2006 alleging that it is the successor unit of the petitioner and is entitled to receive the sanctioned investment incentive (subsidy). The said writ petition was disposed of on 6.5.2009 but it is alleged that the pendency of the CWP No.2966 of 2007, filed by the petitioner, was not brought to the notice of the Court. Thereafter, the impugned order dated 3.12.2009 was passed and consequently, vide memo dated 23.12.2009, the incentive (subsidy) was released to respondent No.4. It is alleged that the petitioner was not aware of the events of the release of investment incentives to respondent No.4 till he came to know about the decision in his CWP No.2966 of 2007, which was allowed on 20.5.2011 because thereafter he made enquires from the office of respondents No.2 and 3 and came to know that the investment incentive (subsidy) has already been released to respondent No.4 and thus, the present petition has been filed. 2. The petitioner has challenged the order dated 3.12.2009 (Annexure P-15) and 23.12.2009 (Annexure P-16) and has prayed for a direction to the official respondents to disburse the investment incentive (subsidy) to it which was sanctioned in its favour. 3. Learned counsel for the petitioner has argued that once the investment incentive (subsidy) was sanctioned in favour of the petitioner and could not be paid to it for the reasons best known to respondents No.1 to 3, the petitioner cannot be put to any kind of loss even if it had to sell its Unit to respondent No.4. It is further submitted that the right of the petitioner has crystallized with the order by which the subsidy was sanctioned in its favour and is entitled to receive the same. 4. Learned counsel for the respondents has submitted that the subsidy was not to be paid to any individual rather it was to be paid to the Unit and at the time when the funds were available, the Unit had already been sold by the petitioner to M/s Bansal Strips Pvt. Ltd. on 25.03.2005 and further it was sold to M/s Prerna Strips (respondent No.4) vide sale deed dated 18.7.2005. It is also submitted that disbursement of investment incentive (subsidy) to respondent No.4 has been made in terms of the order passed by this Court in CWP No.18520 of 2006 and also in view of the decision taken in the meeting dated 20.02.2009 in respect of the Units which have been sold. It is also submitted that even if the writ petition filed by the petitioner bearing CWP No.2966 of 2007 was allowed on 20.5.2011, it was mentioned therein that the investment incentive (subsidy) be released, if the Unit is otherwise eligible and entitled to it and since the investment incentive (subsidy) had already been released on 23.12.2009 to respondent No.4 much before the order was passed in favour of the petitioner and on the basis of the order passed by this Court in another writ petition bearing CWP No.18520 of 2006, which stand as it is till today and has not been modified on the representation of the petitioner that the said order has been obtained by respondent No.4 without disclosing the pendency of the writ petition, namely, CWP No.2966 of 2007, filed by the petitioner to the Court, respondents No.1 to 3 cannot be blamed. 5. I have heard learned counsel for the parties and perused the record. 6. There is no dispute that the investment incentive (subsidy) was sanctioned in the name of the Unit manufacturing galvanized steel tapes, which, at one point of time, was run by the petitioner. The case of the petitioner for grant of investment incentive (subsidy) was rejected on the ground that there is no provision under the Industrial Policy, 1996 that if a Unit is sold then the amount of subsidy sanctioned to that Unit can be released to purchaser Unit. The said communication was made to the petitioner on 4.10.2006, which was challenged by the petitioner and similarly other aggrieved parties by way of various writ petitions in this Court and a bunch of writ petitions were disposed of by this Court including the writ petition filed by the petitioner bearing CWP No.2966 of 2007 with the lead case, namely, CWP No.19007 of 2002 titled as M/s Balak

Gases Oxygen Gas Plant and another v. State of Punjab and others. The bunch of said writ petitions were allowed on 20.5.2011. The LPA filed by the State Government was dismissed as also the Special Leave Petition was dismissed by the Supreme Court but interestingly much before the decision, in the case of the petitioner bearing CWP No.2966 of 2007, respondent No.4 had filed CWP No.18520 of 2006 which was disposed of on 6.5.2009 with a direction that the respondents therein are would determine afresh as to whether or not the petitioner is entitled to the subject subsidy and if the respondents therein are themselves of the view that the petitioner is entitled to the subsidy, the same shall be released without insisting for any bank guarantee, however, subject to other valid conditions. At that time, there was no order of the Court passed in CWP No.2966 of 2007 and on the basis of the order passed in CWP No.18520 of 2006 on 6.5.2009, order was passed by respondents No.1 to 3 on 3.12.2009 holding respondent No.4 entitled to the subsidy as against the case set up by the petitioner, on the basis of the decision taken by the Government in a meeting headed by Chief Minister, Punjab as Chairman on 20.2.2009 in which it was decided that "regarding disbursement of subsidy to units which have been sold out but they remained in production for at least 5 year on the new/old place with same FCI, it was decided that subsidy may be disbursed to such units because the subsidy is to be given to a unit and not to an individual. The unit will however produce sale deed etc. in support of their claim". 7. The aforesaid decision though taken in the year 2009 has not been discussed in the decision rendered in the case of the petitioner, namely, CWP No.2966 of 2007. Moreover, the subsidy has been disbursed in the year 2009 whereas the present writ petition has been filed by the petitioner in the year 2013. There is no reference to the challenge made by the petitioner to the decision dated 20.2.2009 wherein they have decided to give subsidy to the Unit and not to the individual except for claiming the subsidy on the basis of its alleged right arising because of the sanctioning of Incentive (subsidy). The respondents have taken a stand that the Incentive (subsidy) was sanctioned in favour of a Unit which remain in production for at least 5 year on the new/old place with same FCI and it was decided to disburse subsidy to the unit which may be owned by a separate individual after its sale on production of the sale deed etc. by the said Unit. Thus, there is no error in the impugned orders dated 3.12.2009 and 23.12.2009 because the subsidy has been disbursed on account of an order passed by this Court in CWP No.18520 of 2006 which has never been got modified by the petitioner despite knowing about it much before the filing of the present writ petition. 8. Thus, in view of the aforesaid discussion, there is hardly any scope for interference in this petition and the same is hereby dismissed. Petition dismissed.

