(2005) 07 RAJ CK 0060

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4831 of 2000

Shree Cold Storage	APPELLANT
Vs	
Rajasthan State Agriculture Marketing Board and Others	RESPONDENT

Date of Decision : 11-07-2005

Acts Referred:

Citation : (2005) 4 RLW 2663 : (2005) 4 WLC 192

Hon'ble Judges : P.C. Tatia, J

Bench : Single Bench

Advocate : Sangeet Lodha, for the Appellant; R.G. Purohit, for the Respondent

Final Decision : Allowed

Judgement

Prakash Tatia, J.—Heard learned Counsel for the petitioner as well as learned Counsel for the respondents.

2. Facts in brief are that Rajasthan State Agriculture Marketing Board Capital Investment Subsidy Scheme for Agro Based Units, 1996 for promotion of Agro-based Units was floated by the State Government. The petitioner applied for the benefit of subsidy under this scheme and petitioner''s application for grant of subsidy was considered and his case was recommended by the Rajasthan State Agriculture Marketing Board, Jaipur (for short RSAMB) and for that purpose a certificate was given by the Executive Engineer was also annexed with the recommendation. The Executive Engineer, RSAMB recommended total subsidy of Rs. 8.44 lacs. The said amount was reduced by the RSAMB in its sanctioned letter dated 11th March, 1999 to Rs. 5.69 lacs in place of Rs. 8.44 lacs. The petitioner being aggrieved against the reduction of that subsidy amount, submitted representation to the Chairman, State Level Committee for Capital Investment Subsidy Scheme, copy of which is placed on record as Annex. 6 and also submitted a representation Annex. 7 in detail pointing out that the petitioner was wrongly denied the maximum benefit of the scheme. The petitioner was informed by letter dated 29.5.2000 (Annex. 9) that no action can be taken on

petitioner''s applications dated 12.8.99 and 22.5.2000 by the State Agriculture Board. The petitioner further submitted a representation to the Hon''ble Minister, copy of which is placed on record as Annex. 10. The net result is that the petitioner could not get relief as claimed by the petitioner. Therefore, the petitioner preferred this writ petition.

3. The detail facts are not necessary in view of the fact that so far as establishing a unit by the petitioner eligible for investment benefit under the RSAMB Capital Investment Subsidy Scheme for Promotion of Agro-Based Units, 1996 is concerned, there is no dispute. There is no dispute about investment made by the petitioner for establishing the unit. The dispute is only with respect to the interpretation of Note (ii) appended to Clause 4 of the scheme of 1996. According to respondents in view of the limit provided for investment subsidy on various investments the petitioner is entitled to the lesser amount of subsidy whereas according to learned Counsel for the petitioner neither the Note (ii) of Clause 4 has any application in the case of the petitioner nor it restricts or reserve the 50% of the subsidy benefit on investments. Note (ii) of Clause 4 of Scheme 1996 is as under:

"(ii) Any investment in land and building which is in excess of fifty per cent (50%) of the total fixed capital investment will not be eligible for subsidy under this scheme. "As such 50% fixed capital investment on land & building and 50% on plant and machinery shall be eligible amount for subsidy purpose." (No. F.(8) Agri/Gr.2/95 dated 7.1.98)"

4. The Clause 4(j) and Clause 5 of the said scheme are also relevant. The Sub-clause (j) of Clause 4 is as under:--

"4. Definitions

(a) **** **** ****

(b) **** **** ****

(c) **** **** ****

(d) **** **** ****

(E) **** **** ****

(f) **** **** ****

(g) **** **** ****

(h) **** **** ****

(i) **** **** ****

(j) ''Eligible fixed capital investment'' means investment in:

(i) The actual price paid for the land to the extent needed

(ii) New Building to the extend needed.

(iii) New Plant & Machinery and other fixed capital investment essential for activities of the unit.

Provided that second hand machinery imported from outside the country would also be eligible with the following conditions:

1. Subsidy has not been availed on such machinery under any other -subsidy.

2. A certificate from Chartered Engineer shall have to be furnished regarding depreciated value of the old plant and machinery and regarding successful working of the machinery for a period of 5 years from the date of start of production/operation.

3. Original copies of bills/vouchers alongwith payment receipts from concerned foreign supplier/suppliers shall have to be furnished."

5. The Clause 5 of the scheme is as under:--

"5. Eligible units set up in the State of Rajasthan will be eligible for capital investment subsidy at the following rates:

General Units 1. Unit with a fixed investment 20% of the eligible fixed from Rs. 5 lacs to Rs. 3 crore Capital Investment or Rupees Rs. 20 lacs whichever is less. 2. Unit with a fixed capital At the above rates but shall investment upto Rs. 5 lacs be eligible for the subsidy on assured on assured viability by SLC."

6. According to learned Counsel for the petitioner, the petitioner since invested more than Rs. 60 lacs and as per his investment in land he was entitled for the subsidy against the heads (a) investment on land, (b) building and (c) plant and machinery. However, the petitioner invested more amount, which have been shown as other expenditure Rs. 12.42 lacs and Rs. 1.95 lacs as working capital and there is no dispute that for those two components, the petitioner is not entitled for any subsidy. It will be worthwhile to mention here that what the petitioner has claimed in investment, is as under:

(i) Land Rs. 2.38 lacs (ii) Building Rs. 19.36 lacs (iii) Plant & Machinery Rs. 24.51 lacs

7. Against this investment, the RSAMB assessed eligible investment for the purpose of grant of subsidy is an under:

(i) Land Rs. 1.95 lacs (ii) Building Rs. 4.07 lacs (iii) Plant & Machinery Rs. 38.88 lacs

8. The subsidy sanctioned to the petitioner is as under:

(i) Land Rs. 1.95 lacs (1.95 + 4.07) (Eligible amount 6.02) (Subsidy sanctioned @ 20% on eligible amount) (ii) Plant & Machinery Rs. 38.88 lacs Sanctioned amount Rs. 44.90 lacs.

9. According to learned Counsel for the petitioner, the land should have been assessed separately for the purpose of grant of subsidy, but has been assessed by clubbing the investment on building. So far as amount, which has been given to the petitioner as subsidy against land and building of Rs. 1.20 lacs is concerned, there is no dispute or grievance by the petitioner. The grievance of the petitioner is for denial of the subsidy amount to the maximum extent under the head of plant and machinery. According to learned Counsel for the petitioner, as per note (ii) of Clause 4, the petitioner was entitled for the total subsidy @ 20% of the total investment on plant and machinery, but that has been reduced by the respondents by taking help of Note (ii) of Clause 4.

10. The petitioner was given benefit of 20% subsidy amount for land only on the ground that the petitioner''s total eligible investment in fixed capital investment shall stand divided in two parts; (i) investment in land and (ii) investment for plant and machinery. The respondents have decided to keep the benefit maximum upto the extent of 50% only for each category. According to learned Counsel for the petitioner, the petitioner''s investment in land is not in excess than the 50% of the total investment, therefore, note (ii) of Sub-clause (J) of Clause 4 has no application and, therefore, the petitioner should have been given benefit of the subsidy to the full extent of 20% under Clause 5 of the scheme.

11. Learned Counsel for the respondent vehemently submitted that the subsidy is a discretionary benefit and that can be provided only as provided under the scheme and since the scheme very clearly provides and particularly, the language ''as such 50% fixed capital investment on land and building and 50% on plant and machinery shall be eligible amount for subsidy purpose" unambiguously provides that a person if invests more money on any of the head then he shall be entitled for 50% of the eligible amount. In this case, since the petitioner invested Rs. 38.88 lacs in plant and machinery whereas as per scheme he was entitled to invest only to the extent of Rs. 22.45 lacs, therefore, his subsidy has been reduced by 50% and, therefore, award of the subsidy to the tune of Rs. 5.69 lacs is in consonance with the scheme.

12. I considered the submissions of learned Counsel for the parties and perused the relevant part of the scheme. The Note (ii) of Clause 4 of the Scheme of 1996 starts with the words "any investment in land and building which is in excess of 50% of the total fixed capital investment will not be eligible for subsidy under this scheme." Note (ii) of Clause 4 was amended by order No. F7(8) Agri/Gr. 2/95 dated 7.1.98 by inserting following condition, added part is as under:

"As such 50% fixed capital investment on land & building and 50% on plant and machinery shall be eligible amount for subsidy purpose."

13. Though there is change in the language of Note (ii) of Clause 4 of the Scheme, but Sub-clause (j) of Clause 4 has not been amended. Even the Clause 5 of the scheme has not been amended so as to make the eligible fixed capital investment different than as provided under Clause 5 of the scheme of 1996 nor

the total eligible amount as subsidy has been reduced from 20% on the eligible fixed capital investment.

14. In the present case, admittedly, the petitioner has not invested in land and building in excess of 50% of the total fixed capital investment. Therefore, the note (ii) of Clause 4 cannot be applied in the case of the petitioner on this count alone. This will also be in consonance with Note (ii) of Clause 4 because in case the industrial unit has invested more than 50% in land and building then by inserting the words by the amending notification dated 7.1.98 a relief has been granted to the investor by providing benefit of subsidy to those investors, who have invested more than 50% on land and building. Before amendment dated 7.1.98 he could have been denied total investment benefit as per note (ii) of Clause 4, but after amendment dated 7.1.98 the total denial of scheme has been taken away and it has provided that the person, who invested more money on land shall be entitled to investment subsidy upto the extent of 50% of investment on land and building. The intention behind this is to limit the investment subsidy on investment in land and building of the industrial unit. By this interpretation only the condition (ii) can survive against Sub-clause (j) of Clause 4 and Clause 5 of the scheme and by this, benefit can pass to the investor on their investment, which are investment under Sub-clause (i), (ii) and (iii) of Sub-clause (j) of Clause 4 of the scheme. Otherwise Sub-clause (j) of Clause 4 are recognizes the investment as "eligible fixed capital investment" and Clause 5 of the scheme allows 20% amount for the industrial unit as subsidy, but it will stand reduce because of the fact that one has invested more money in land and building, which will result into denial of subsidy benefit on plant and machinery, which have direct relation with the productivity.

15. In addition to above when petitioner has not invested in land and building in excess of 50% of the total fixed capital investment, how the respondent could have applied the condition as provided under Note (ii) of Clause 4 of the scheme of 1996 stand not explained in any manner.

16. In addition to above, there appears to be some basis in the submissions of learned Counsel for the petitioner that note (ii) has been inserted with sole object that the persons should not Invest more in land and building to get more subsidy amount despite the fact that land and building is not needed to run the Industrial unit because by allowing subsidy on un-limited Investment on land and building the tendency to procure more land and Investment on building will Increase and that may not be a productive Investment and consequentially may not fulfill any of the object of providing subsidy on Investment.

17. In view of the above, the writ petition of the petitioner is allowed. The petitioner is held to be entitled for the subsidy of Rs. 8.44 lacs in total looking to the investment of the petitioner and the respondents are directed to disburse the amount of the subsidy to the petitioner within a period of 2 months from the date of receipt of this order.

18. Learned Counsel for the petitioner prayed for the interest on the remaining amount of the subsidy. The prayer of the petitioner cannot be accepted simply because of the reason that the petitioner''s entitlement for the amount has been decided by this Court and, therefore, the amount became due from the date of decision of this Court only. Therefore, the petitioner is not entitled for any benefit of interest.