(2019) 10 SHI CK 0059

In the High Court Of Himachal Pradesh

Case No : Letter Patents Appeal No. 127 Of 2007

State Of Himachal Pradesh & Ors APPELLANT

Vs

M/s Jerath Electronics And Allied Industries Pvt. Ltd RESPONDENT

Date of Decision : 24-10-2019

Acts Referred:

Citation : (2019) 10 SHI CK 0059

Hon'ble Judges : Dharam Chand Chaudhary, J;Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : J.S. Guleria, Vandana Mishra, Amit Jamwal, Anandita Sharma

Final Decision : Disposed Of

Judgement

Jyotsna Rewal Dua, J

1. Alleging that the petitioner had to borrow money from respondent No.3 at an exorbitant interest rate only because of delay on part of the respondents in releasing Central Investment Subsidy sanctioned in favour of the petitioner, instant writ petition has been preferred with following prayer:-

"(i) That the respondents may kindly be directed to pay the interest at the rate of 20.5% on Rs.7.31 lacs which the petitioner had to borrow from the respondent No.3 with effect from 29th Jan., 1990 at the rate of 20.5% compounding half yearly interest due to non-payment of Central Subsidy amounting to Rs.5.58 lacs to the petitioner, alongwith interest with effect from August, 1989, till 9th February, 2002, as stipulated in Annexures P-5 amounting to Rs.67.48 lakhs and future interest till the date of payment."

2. Facts may be noticed:-

2(i) Government of India announced Central Investment Subsidy Scheme 1971, for industrial units, which were to be set up in the backward areas. The scheme was modified from time to time. For industrial units to be set up in the State of Himachal Pradesh, subsidy was admissible to the extent of 25% of the total capital investment, subject to maximum of Rs.25 lacs. Eligibility conditions to avail the benefit of scheme were stipulated in this scheme itself.

2(ii) Petitioner was desirous for establishing a small scale industrial unit for manufacturing electronic keypads in the State of Himachal Pradesh. Feasibility report for this project was submitted by the petitioner to the State Industrial Department. Petitioner unit was approved on 6.6.1988. The building plan of the unit was approved on 14.7.1988 (Annexure P-14). Respondent No.3 on 20.9.1988, (Annexure P-15) sanctioned the loan amount in favour of the petitioner, which was inclusive of Central Investment Subsidy amounting to Rs.15,27,250/- (Rs. Fifteen Lakh twenty seven thousand two fifty), Clause 20(d)(iv) of this document is reproduced hereinafter:-

"20. Besides the special conditions being being laid down as STIPULATIONS AS PER APPENDIX-B, the general conditions shall be as under:-

(d) It may be clearly understood that:

(iv) The company shall make arrangements, satisfactory to HPFC/HPMIDC for raising a sum of Rs.15,27 lacs by way of Central Subsidy. In the event of the amount of Central Subsidy not being available to the Company or in the event of the there being delay in getting the amount, the Company shall make arrangements satisfactory to HPFC/HPMIDC to make good the short-fall from its own resources so that there is no delay in the implementation of the project."

2(iii) Agreement of Subsidy was executed between the petitioner and respondent No.3 on 28.03.1989, whereunder the total fixed capital investment for petitioner's project was estimated at Rs.61,10,000/-, accordingly, maximum amount of 25% Central Subsidy admissible to the petitioner was sanctioned at Rs.15.27 lacs. The sanctioned subsidy was agreed to be released by respondent No.3, on behalf of the Government of India to the petitioner on creating fixed assets to the tune of Rs.61.10 lacs. Condition Nos. 7 & 8 of the agreement of subsidy (Annexure P-3) were:-

"7. After considering the above application and the further representations made by the entrepreneurs from time to time, the total fixed capital investment to be made for the purpose of the said new unit at 20 Industrial Area, Electronics Complex Shoghi District Shimla (H.P.) after 31.3.1983 are estimated at Rs.61.10.000/ - accordingly the maximum amount of 25% Central Subsidy admissible is Rs.15,27,500/-.

8. Relying on the said application and subsequent representations made by the entrepreneurs, the Government has sanctioned the Central Subsidy of Rs.15,27,500/- and the Corporation has agreed pay the same on behalf of the Government to the entrepreneurs executing necessary documents as hereinafter appearing and creating fixed assets to the tune of Rs.61,10,000/-"

2(iv) It is pertinent to take note at this stage that vide letter dated 3.5.1988, Central Investment Subsidy Scheme was extended by Government of India, Ministry of Industry, Department of Industrial Development, till 30.9.1988. This scheme was discontinued in respect of non-manufacturing units vide Ministry's letter dated 22.9.1988. Representations were made by various State Governments to the Government of India pointing out that projects have been sanctioned by them under the aforesaid scheme during its validity; the projects were still under implementation stage, therefore, for the projects, which were sanctioned during the validity of the scheme, the subsidy should be reimbursed/ released by the Government of India. After examining the matter, the Government of India issued letter dated 21.7.1989 (Annexure P-3) permitting reimbursement of subsidy disbursed by the State Government(s) in respect of manufacturing activities provided following conditions were satisfied:-

"(i) The project was approved by the Approval Committee i.e. the State Level Committee or the District Level Committee as the case may be, on or before 30th September, 1988.

(ii) The disbursement are made before 31st December, 1989."

In addition, it was communicated that the Government of India would reimburse the State Governments in respect of subsidy disbursed to the non-manufacturing units provided following conditions were satisfied:

"(i) The project was approved by the Committee, i.e. the State Level or the District level Committee as the case may be before 30th September, 1988, and,

(ii) The disbursement by the State Government is made before 30th September, 1989. (A short-time period has been prescribed for non-manufacturing activities as it should be possible to complete these projects quicker)."

Thus, the disbursement made on or before 30.09.1989 and 31.12.1989, for non-manufacturing and manufacturing activities respectively were to be reimbursed by the Government of India provided the project was approved on or before 30.9.1988.

2(v) In the instant cases, unit of the petitioner was approved on 6.6.1988. The building plan was approved on 14.7.1988. The loan was sanctioned by respondent No.3/Himachal Pradesh Financial Corporation in favour of petitioner on 20.9.1988, which included Central Investment Subsidy of Rs. 15.27 lacs. Agreement of subsidy was executed between the parties on 28.3.1989. By August 1989, an amount of Rs.9.42 lacs was disbursed by respondent No.3 to the petitioner as Central Investment Subsidy. It is the case of respondent No.3 that out of total sanctioned subsidy of Rs.15.27 lacs, only an amount of Rs.9.42 lacs was released in favour of the petitioner as he had created requisite proportionate fixed assets only for this much subsidy by August 1989. The remaining subsidy amount of Rs.5.85 lacs could not be released in favour of the petitioner during the validity of the scheme as petitioner failed to create fixed assets at the relevant time. As per Government of India letters referred to above, the validity of the scheme lapsed and thus no further subsidy due to the petitioner under the Central Investment Subsidy Scheme could be released till 1997.

2(vi) Due to non-release of the remaining subsidy under Central Investment Subsidy Scheme, the petitioner alleges to have suffered acute shortage of funds on account of which, it was compelled to take additional loan for the said amount from respondent No.3 at 20.5% compound interest; petitioner had to take loan amount of Rs.7.31 lacs from respondent No.3 w.e.f. 29.01.1990 @ 20.5% compound interest; it is also averred that petitioner had to pay Rs.1.46 lacs as margin money; as per petitioner's calculations, this eventually created an additional financial burden of Rs.67.48 lacs; this financial burden had to be borne by him without there being any fault on his part; petitioner further contends that, he would not have taken the additional loan amount of Rs.7.31 lacs, had balance subsidy of Rs. 5.85 lacs been released to him, in time.

2(vii) It is not in dispute that the remaining subsidy amount of Rs.5.85 lacs was released by respondent No.3 to the petitioner on 23.8.1997/25.8.1997. Alleging in-action on part of the respondents in not releasing his sanctioned balance subsidy amount of Rs.5.85 lacs in time and further alleging suffering of huge financial losses on this account, petitioner preferred writ petition before this Court. Learned Single Judge allowed the writ petition on 12.6.2007, directing the respondent financial corporation to pay to the petitioner the amount paid by him towards interest while raising loan of Rs.7.31 lacs w.e.f. 29.1.1990 till August 1997. Feeling aggrieved against the judgment, present appeal has been preferred by State of Himachal Pradesh.

3. We have heard Mr. J.S Guleria, learned Deputy Advocate General for the appellant and Ms. Vandana Mishra, learned counsel, for respondent No.1 and gone through the record.

3(i) Central Investment Subsidy was to be released by the Central Government. Respondent No.3, was only a disbursement agency. No doubt, petitioner was sanctioned the Central Investment Subsidy to the extent of Rs.15.27 lacs during the validity of the scheme, however, release of this subsidy depended upon creation of fixed assets by the borrower. It is the stand of respondents that by August 1989, the petitioner had created some fixed assets and in proportion to such fixed assets, the Central Investment Subsidy was released to it in three installments:- of Rs.1.95 lacs on 3.4.1989, Rs.4.38 lacs on 8.6.1989 and Rs.3.09 lacs on 5.8.1989. Thus in all Rs.9,42,000/- was disbursed to the petitioner by respondent No.3/Himachal Pradesh Financial Corporation as Central Investment Subsidy. The balance amount of Rs.5,85,250/- was not released as the petitioner had not created proportionate fixed assets for release of remaining subsidy amount by 31.12.1989; Government of India had completely banned the disbursement/reimbursement of the Central Investment Scheme after 31.12.1989, therefore, balance subsidy amount could not be released to the petitioner.

3(ii) Some of the aggrieved industrial concerns approached the Hon'ble Apex Court pointing out their grievances in respect of non-release of central investment subsidy to them. The matter was taken up in Civil Appeal No.6240/1999, titled Umesha Textile and another Vs. Union of India and another. In this matter, on 31.8.1995, an order was passed by the Hon'ble Apex Court directing the then Joint Secretary, Ministry of Industry Department of Industrial Development, Government of India to decide the representations of the industries after looking into the entire matter. Whereafter, a decision was taken by the then Joint Secretary, which was noticed by Hon'ble Apex Court in its order dated 5.12.1995, permitting the grant of central investment subsidy in all such cases where the applications were filed upto 30.9.1988, provided, the applications were complete in terms of the scheme as modified from time to time. It is only thereafter, that in the instant case, the remaining subsidy amounting to Rs.5.85 lacs could be released by the respondents in favour of the petitioner on 23.8.1997/25.8.1997.

3(iii) It was not open for the respondents to release the balance amount of subsidy in favour of the petitioner after 31.12.1989 till the decision of the Hon'ble Apex Court. It is the case of the respondents that before 31.12.1989, the petitioner had not created fixed assets required for releasing the entire sanctioned subsidy. The sanctioned subsidy was being released in favour of the petitioner only in proportion to the fixed assets being created by the petitioner. In this process, an amount of Rs.9.42 lacs was released in favour of the petitioner unit in three installments and it is for this reason that the remaining amount of subsidy could not be released to the petitioner till 31.12.1989, on which date the disbursement scheme was discontinued and release of subsidy was stopped by the Government of India.

3(iv) A prayer for grant of interest was declined by Hon'ble Apex Court in SLP (Civil) No.2378/97 titled Travel Corporation (India) Limited vs. Union of India & ors decided on 17.7.1997 (Annexure R-II), relevant portion reproduced hereinafter:-

"We are of the view that so far as the cut- off date is concerned, the joint Secretary has taken a fair and just stand. We agree with her that all the applications filed upto September 30, 1988 should be considered for grant of central investment subsidy provided the said applications were complete in terms of the scheme dated August 26, 1971 as modified from time to time. In this view of the matter, we set aside the judgment of the High Court and remand the case for fresh decision. All the applications filed before September 30, 1988 may be considered for grant of the central investment subsidy provided the applications were complete under the scheme.

In the light of these observations, the petitioner will make a representation to the Joint Secretary, Ministry of Industry and the same may be considered on merits in the light of the observations made in C.A. No.6240/94. The petitioner, however, will not claim any interest. With these observations, the S.L.P. is disposed of".

3(v) Petitioner has contended that it had created fixed assets required for complete release of Central Investment Subsidy before 31.12.1989, therefore, it was entitled to release of entire sanctioned subsidy of Rs.15.27 lacs. Petitioner's contention is that it had created fixed assets of required Rs.61.10 lacs upto 6.12.1989. In support of this assertion, petitioner relies upon Annexure P-10, a certificate of Chartered Accountant that petitioner had acquired machinery (valued on basis of CIF + Custom Duty) to the extent of Rs.31.78 lacs as on 6.12.1989, Annexure P-11 balance sheet as on 6.12.1989, prepared on 16.1.1990 reflecting creation of fixed assets of different denominations under various heads, Annexure P-13 & P-16 are also documents prepared by Chartered Accountant in respect of fixed assets allegedly created by petitioner as on 31.12.1989. This aspect is highly disputed on facts by the respondents. According to respondents, fixed assets required for releasing balance amount of subsidy were not created during the currency of scheme, therefore, remaining subsidy could not be disbursed. As per the stand of respondents, petitioner availed subsidy of Rs.9.42 lacs within the validity of scheme; As Government of India had withdrawn the scheme from 1.10.1988 onwards while subsidy disbursed by State before 31.12.1989, could be reimbursed by Government of India; Petitioner had filed claim for disbursement of balance amount of subsidy and intimated respondent No.3 Corporation about creation of fixed assets only on 16.1.1990, i.e. after the cut off date; Documentary evidence in respect of creation of fixed assets were not provided during validity of the scheme, therefore, balance subsidy was not released. However, pursuant to decision of Hon'ble Apex Court wherein Ministry had decided to release subsidy to all those, whose complete applications were received by 30.9.1988, balance subsidy was released to petitioner on 25.8.1997.

4. Thus, though no fault can be found with respondents in not releasing balance subsidy amount currency of scheme, yet it remains a fact that as per stand taken by respondents in the present appeal requisite fixed assets had been created by petitioner, as per information supplied to them as on 16.1.1990. And it was on this basis, the balance subsidy was released by them to the petitioner, post the decision of Hon'ble Apex Court on 23. 8.1997/25.8.1997.

5. In view of above observations and discussions, we quash and set aside the impugned judgment passed by the learned Single Judge; However, in the peculiar facts and circumstances of the case, we direct the respondents to sympathetically consider the case of the petitioner, in light of above observations and discussions for waiving of interest on delayed payment of subsidy of Rs.5,85,250/-, w.e.f. 29.1.1990 till the date of release of Capital Investment Subsidy within a period of eight weeks from today by passing a speaking order after affording the petitioner an opportunity of hearing. Appeal stands disposed of with the above directions. Pending application(s), if any, also stand disposed of accordingly.