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(2013) 11 P&H CK 0234

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 13786 of 2003

Steel Strips Wheels Ltd.	APPELLANT
Vs	
State of Punjab and Others	RESPONDENT

Date of Decision : 21-11-2013

Acts Referred:

Citation : (2014) 2 PLR 504

Hon'ble Judges : Sanjay Kishan Kaul, C.J;Augustine George Masih, J

Bench : Division Bench

Advocate : Akshay Bhan, for the Appellant; D.S. Brar, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, C.J.—The challenge laid in the present writ petition filed under Article 226 of the Constitution of India is to the impugned notification dated 26.04.2000 whereby incentive of capital subsidy as enshrined in the industrial policy of 1996 qua medium and large scale industries was withdrawn.

The Industrial Policy and Industrial Incentive Code of 1996 provide for grant of various incentives to new industrial units that came into production or undertakes expansion on or after the 1st April, 1996. In terms of Clause 4 of this policy, such of the units that had taken effective steps as defined under Rule 2.9 before 01.04.1996 shall have the option to be covered under either Package of Incentives-1992 or 1996 provided they exercised their option by 30.09.1996. As to what is meant by "Effective steps" has been defined under Rule 2.9 to mean any of the following steps:-

i) that more than half of the factory building for the project has been constructed.

ii) That a firm order has been placed for more than half of the plant and machinery required for the industrial unit.

iii) That 60% or more of the capital issued for the industrial unit has been paid up.

iv) That term loan has either been sanctioned for its project, or an application for the same is under consideration of the all India/State Level financial Institutions/ Banks.

2. The incentives to large and medium units have been specified in Rule 7 which may be applicable to such of the units which undertake expansion as prescribed in rule 2.5. Clause 2.5 defines ''Expansion'' to mean at least 50% increase in the fixed capital investment or a minimum of 50% increase in the installed capacity as recorded in the industrial licence/certificate of Department of Industries.

3. In terms of the Notification dated 26.04.2000, the amendments were made regarding definition of existing units, investment incentive and interest subsidy as contained in the policy in the following terms:-

1. The period of remaining in production for existing units to qualify for availment of incentive under Rule 2.19 and 2.20 of Industrial Policy, 1996 is reduced from 3 years to 1 year.

2. Investment Incentive (capital subsidy) to Large and Medium Units is discontinued except for extreme thrust industries viz. Agro based units, Software and Information Technology, Export-Oriented Units, Flyash based units and units under the Rural Focal Point Scheme.''

3. Option of interest subsidy in lieu of sales tax exemption/deferment in case of SSI units is discontinued.

The aforesaid notification became effective from 1.5.2000.

4. It is the say of the petitioner that they had already taken steps towards such expansion and the change in the definition midstream has resulted into the withdrawal of the benefit of the subsidy which would have been available to them on their commencement of production.

5. The stand of the respondents is that vide notification dated 26.04.2000, the investment incentive of capital subsidy to large and medium units was discontinued and since the petitioner unit went into production on 25.03.2002 after expansion in its existing unit and submitted investment incentive claim of capital subsidy on 19.09.2002, the same was not admissible and was returned to the petitioner. The date of going into commercial production is stated to be the matter of consideration for determining the date on which the unit becomes eligible for incentives and merely taking ''effective steps'' does not entitle the unit to enforce a claim of enforcement incentives.

6. In our view, the matter falls within the policy domain. There cannot be inherent right of subsidy. No doubt, the industrial policy for 1996 contained provision for certain subsidies/incentives for medium and large scale industries but the same were admissible on commencement of production. There can be varied reasons for change of policy and it is not open to assail the change of policy ipso-facto. It is not in dispute that on the date when the policy was

changed the petitioner was not eligible as it has not gone into production. May be they had hoped for getting these incentives/subsidies and started expansion process but that can give rise to some sympathy qua the petitioner but not a legal actionable right.

We are thus not inclined to entertain the writ petition.

Dismissed.