
(2006) 09 RAJ CK 0010
In the Rajasthan High Court

Stuti Electronics Limited

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 07-09-2006

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2007) 3 BC 288 : (2007) 2 RLW 1589

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shiv Kumar Sharma, J.—M/s. Stuti Electronics Limited, petitioner herein, seeks to challenge the order dated March 31, 1998 denying the grant of subsidy to the petitioner company and the Notification dated Feb. 28, 1998 whereby proviso after clause 4(L) of "the State Capital Investment Subsidy Scheme for New Industries 1990" was inserted providing that the benefit of subsidy would be available only to those small scale industrial units whose investment in Plant and Machinery did not exceed Rs. 60 lacs. The amendment came into force retrospectively i.e. w.e.f. April, 1997.

2. Contextual facts depict that the petitioner purchased plots in Industrial Area Bhiwadi and executed lease agreement dated March 27, 1995. A sum of Rs. 330 lacs was sanctioned by the Industrial Development Bank of India for setting up the industrial units vide orders dated August 22, 1995 and December 2, 1996. The petitioner got provisional registration certificate in the category of SSI Unit on January 28, 1998 and got permanent registration certificate in the category of SSI Unit on July 23, 1998. It is an admitted case of the petitioner that it is an SSI Unit but they have incurred more than 300 lacs in establishing the unit. As per the Central Government Industries (Development and Regulation) Act, 1951 the investment ceiling for plant and machinery of SSI was enhanced to Rs. 3 crore. The petitioner being fully eligible for disbursement of subsidy as per the State Capital Investment Subsidy Scheme, submitted application to the

respondent No. 3 on January 19, 1998. The respondent No. 3 issued order on March 31, 1998 rejecting the subsidy application on the ground that the petitioner invested more than Rs. 60 lacs in plant and machinery. On Feb. 28, 1998 a Notification was also issued whereby the SSI Units whose investment in plant and machinery did not exceed Rs. 60 lacs were not entitled to subsidy. This amendment was made applicable with effect from 1.4.1997. Calling in question the notification the petitioner has prayed to issue direction to the respondents to provide subsidy to the petitioner.

3. The respondents filed reply to the writ petition and submitted that the petitioner has been registered as SSI unit as the Central Government had vide order dated 10.12.1997 defined the SSI units in which the investment in plant and machinery had not exceeded Rs. 3 crore. Prior to it such units which were having investment in plant and machinery up to Rs. 60 lacs were being recorded and registered as SSI units. The petitioner is not eligible for subsidy as plant and machinery installed by the petitioner company exceeds Rs. 60 lacs.

4. The petitioner filed rejoined to the reply reiterating the averments made in the writ petition. It was further reiterated that as per the order dated December 10, 1997 of the Central Government, the plant and machinery installed by the petitioner did not exceed more than Rs. 3 crores, thus the petitioner was entitled for subsidy being SSI unit.

5. I have given my thoughtful consideration to the submissions advanced by learned Counsel for the parties and carefully scanned the record as well as the case law cited before me.

6. In Indo Afgan Agencies case AIR 1968 SC 718 their Lordships of the Supreme Court laid down that the Government cannot claim to be immune from the applicability of the rule of promissory estoppel and repudiate a promise made by it on the ground that such promise may fetter its future executive action. If the Government does not want its freedom of executive action to be hampered or restricted the Government need not make a promise knowing or intending that it would be acted on by the promisee and the promisee would alter his position relying upon it. But if Government makes such a promise and the promisee acts in reliance upon it and alters his position, there is no reason why the Government should not be compelled to make good such promise like any other private individual.

7. In Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, the Hon''ble Supreme Court propounded that the Government cannot claim to be exempt from liability to carry out the promise on some indefinite and undisclosed ground of necessity or expediency. The Government cannot claim to be the sole judge of its liability and repudiate it.

8. In Under Secretary, Ministry of Industries and Ors. v. Marchon Textile Inds. (P.) Ltd. and Anr. (2005) 10 SCC 554, the Hon''ble Apex Court indicated as under. (Para 8)

The schemes floated by the State releasing grant of subsidy for industrial units to be set up in certain selected backward districts/area have a benevolent and public purpose to achieve, and that is, to promote the growth of industries in such districts/areas which but for the State encouragement would continue to remain backward and the industrial investment will not be attracted to such areas. Such schemes have to be construed with practical and pragmatic approach so as to achieve and not frustrate the purpose sought to be achieved. The benefit of the scheme ought to be allowed, if it can be done. The applications should not be dealt with a hypertechnical approach or in a pedantic manner. If the application filed before the cut off date is substantially in order and satisfies the formalities expected of the scheme, then an opportunity should be allowed to the applicant to cure the defects which are not of substantial nature or are capable of being cured so that the deserving units are not left out of the scheme.

9. In *State of Rajasthan v. Khemka Cement* JT 1999 (5) SC 120 it was held that the subsidy could not be withdrawn with retrospective effect.

10. Undeniably the petitioner submitted the application for grant of subsidy pursuant to prevailing notification dated September 22, 1997 according to which the petitioner was entitled to the benefit of subsidy. The impugned notification dated Feb. 28, 1998 took away the right of petitioner with retrospective effect. Act of inserting proviso to Clause 4(L) of the Subsidy Scheme 1990 with retrospective effect in my opinion was arbitrary and violative of Article 14 of the Constitution. I therefore quash following condition inserted in the notification dated February 28, 1998-

The above amendments shall come into force with effect from 1.4.1997

I declare that aforequoted notification was prospective in nature and it was not applicable to the application of petitioner which was submitted prior to Feb. 28, 1998.

11. For these reasons I allow the writ petition and direct the respondents to consider the application of the petitioner afresh pursuant to the notification dated Sept. 22, 1997. The respondents shall ensure compliance within 30 days of the receipt of certified copy of this order. There shall be no order as to costs.