(2013) 08 P&H CK 0350

In the Punjab And Haryana At Chandigarh

Case No : L.P.A. No. 752 of 2010

The State of Punjab and Others APPELLANT

Vs

M/s. Ferozshah Agro Pvt. Ltd. RESPONDENT

Date of Decision : 22-08-2013

Acts Referred:

Citation : (2014) 1 SCT 489

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

Bench : Division Bench

Advocate : Gaurav Garg Dhuriwala, DAG, Punjab, for the Appellant;

Final Decision : Dismissed

Judgement

Augustine George Masih, J.—State of Punjab is assailing the judgment passed by the learned Single Judge dated 19.4.2010 through the present appeal on the ground that the respondent is not entitled to subsidy as the unit was not a running unit and stood closed on the date when the amount was to be disbursed. Counsel for the appellants submits that as per the sanction of the investment incentive claim dated 25.6.1999, Annexure P-2, a condition was imposed that disbursement will be made on the availability of funds and strictly as per the seniority, provided the unit is found in working condition/in operation at the time of disbursement. When the funds became available, the matter with regard to the disbursement, as per the sanction, was taken up in the year 2006 on a communication received from the Committee constituted for disbursement of the amount, which sought information from the Director, Food and Supplies and Consumer Affairs with regard to the fact regarding the status of the unit. The report so submitted suggested that the unit was not running during the year 2007-08 for the reason that the respondent-Company had defaulted in complying with certain conditions of the contract with Markfed and, therefore, its claim was rejected. This action of the appellants is sought to be supported by the counsel in the light of the conditions imposed in the sanction of investment incentive claim dated 25.6.1999 that at the time of disbursement, the unit should be found to be in working condition/in operation. Since the unit stood closed, no disbursement of the subsidy could be made to the respondent. He, on this basis, contends that the judgment of the learned Single Judge cannot be sustained and deserves to be set-aside.

2. We have considered the submissions made by counsel for the appellants and are unable to accept the same.

3. In the light of the policy of the Government of Punjab, which provided for incentive on capital investment by way of subsidy to the units/industries, which are established in the border districts, to reduce rampant unemployment. It was under this Industrial Policy, 1992 floated by the Government of Punjab that the respondent herein established the unit and claimed capital investment incentive through a claim, which was available under Clause 6 of the Industrial Policy 1992, which clause reads as follows:-

6. Investment incentive

(i) New Industrial units that are set up in the ''A'' Category areas shall be eligible for investment incentives @ 30% of their fixed capital investment (FCI) subject to a maximum of Rs. 50 lacs.

(ii) In the ''B'' Category areas, the new industrial units except the items included in the Negative list, shall be eligible for investment incentives 20% of their fixed capital investment (FC) subject to a maximum of Rs. 30 lacs.

(iii) Self financed units will be ineligible for investment incentive, provided that new units which are funded by mobilization of funds from the Capital Market through issuance of shares, debentures, bonds etc. shall be eligible for the investment incentive.

(iv) Investment incentives shall be disbursed only after the new industrial unit goes into commercial production.

4. As a matter of fact, in pursuance to the above Clause 6, the case of the respondent herein was duly considered by the Committee constituted by the appellants. In the meeting held on 29.4.1999, the Committee sanctioned an amount of Rs. 39,69,500/- as investment incentive. The said decision was conveyed vide letter dated 29.6.1999.

5. Clause 7.5 of the Industrial Policy 1992 provides for the mode of disbursement, which reads as follow:-

Mode of disbursement

(a) The incentive may be claimed by a unit and sanctioned only after the unit has gone into commercial production. The disbursement will be made through the financial institutions/banks. The financial institution/bank shall execute a Bond in favour of the State Government in the prescribed proforma as given in 1(v) at the time of release of funds for the disbursement of investment to the unit.

(b) The financial institution/bank shall disburse the amount of investment incentive released to them to the concerned eligible units within a period of 15 days from the date of release of funds by the Punjab Government and send utilization certificate in respect of the amount released/disbursed every quarter within 15 days of the closure of the quarter in the prescribed proforma given in 1(vi).

(c) The financial institution/bank shall actually disburse the investment incentive to the eligible units and in no case, adjust the same against the outstanding dues from the unit.

(d) In the event of the concerned financial institution/Bank not complying with the condition of disbursement the investment incentive would be disbursed directly to the unit.

6. According to this Clause, the incentive claim was to be sanctioned only after the unit had gone into commercial production. It has been provided that the financial institutions/banks shall disburse the amount of investment incentive, which is released to them by the Government to the eligible units within 15 days. Further, it has been mandated that the amount has to be actually disbursed to the eligible units and is not to be adjusted against the outstanding dues from the units. In the event of failure of the financial institution/bank, the disbursement of investment incentive would be directly given to the Unit by the Government. The respondent had been approaching the appellants for release of the investment incentive claim but without any result and, thus, had approached this Court.

7. A perusal of the above two Clauses i.e. 6 and 7.5 leave no manner of doubt that the claim of the respondent-unit was considered by the competent authority and the incentive was cleared. The condition, which has been imposed with regard to the unit to be found in working condition/in operation at the time of disbursement, is alien to the Industrial Policy 1992. The only condition imposed under Clauses 6 and 7.5 is that the unit should have, after its establishment, gone into commercial production, which admittedly the respondent-Unit had commenced production in the year 1997. Thus, the objection, which has been sought to be raised with regard to the entitlement of the respondent for release of the incentive under the Industrial Policy 1992 for it being not in running condition at the time of disbursement of the incentive, cannot be a ground to deny the benefit of the capital investment incentive.

8. The judgment passed by the learned Single Judge is in consonance with the policy issued by the Government of Punjab, which does not call for any interference in the appeal preferred against the same. Finding no merit in the present appeal, the same stands dismissed.