

(2013) 08 DEL CK 0282**Delhi High Court****Case No:** Writ Petition (C) 1047 of 1987

M/s. Marinda Coop. Sugar Mills
Ltd. and Others

APPELLANT

UOI and Others

Vs**RESPONDENT****Date of Decision:** Aug. 7, 2013**Hon'ble Judges:** V.K. Jain, J**Bench:** Single Bench**Advocate:** Rajiv Garg and Mr. Ashish Garg, for the Appellant;**Final Decision:** Disposed Off**Judgement**

V.K. Jain, J.

Vide its decision dated 6.12.1975, the Government of India, Ministry of Agriculture and Irrigation came out with a Scheme to provide incentives for new sugar factories and expansion of the existing sugar factories. A perusal of the said decision would show that the Government had issued licenses for establishing new sugar factories as well as expansion of the existing sugar factories, but, on account of steep increases in the costs of plants and machinery required for such projects, the costs for setting up new factories as also for expansion of the existing factories had gone substantially high, as a result of which it remained no more economically viable to set up new sugar factories or expand the existing factories. In order to make the new factories and expansion of existing factories cost viable, the above referred Scheme was formulated by the Government so as to provide incentive in the form of higher free quota allowed on sugar and excise benefits for the new factories and the production on account of expansion of existing factories. The salient features of the said scheme to the extent it related to expansion of existing sugar factories, provides as follows:

ii. The incentives in this scheme are available to the existing sugar factories for a period of 5 years on completion of any licensed expansion scheme irrespective of the quantum of expansion and cost of expansion.

iii. The percentages of levy free quota of sugar in the high, medium and low recovery areas would be as follows:-

Explanation: a) The term "Year" means "Sugar Season"

b) The Zones will be identical with the pricing zones as contained in the Report of Tariff Commission (1973).

2. Vide Circular dated 3.1.1987, the criteria for determining the completion of the licensed expansion scheme was decided as follows:

(i) The sugar factory should have installed all the items of machinery proposed by them earlier at the time of applying for the grant of a license under industries Act for effecting substantial expansion and permitted by the Directorate of Sugar and Vanaspati for installation.

Or

(ii) The sugar factory should achieve the final licensed capacity for a continuous period of 15 days (i.e. the average rate of crushing per 24 hours operation on each day in a fortnight period should be equal to the final licensed capacity indicated in the license), after installing machinery costing about Rs. 1.0 crore.

3. In the year 1978, there was a major change in the sugar policy since the control on the price distribution relations and movement of sugar was lifted with effect from 16.8.1978. However, with effect from 17.12.1979, the sugar policy was again modified to provide for partial control with dual pricing, which was the situation prevailing prior to 16.8.1978. The Government of India, therefore, came out with a revised scheme to provide incentive to the new sugar factories as well as expansion of existing sugar factories and the revised scheme dated 15.11.1980, to the extent it is relevant for our purpose, reads as under:

(i) The incentives are proposed to be given in a period of five years in all the three recovery areas insofar as expansion projects are concerned.

(ii) The scheme would apply to the following categories of expansion projects:

(a) All licensed examinations completing expansions on or after October 1, 1980.

v). The percentage of levy free quota of sugar in the high, medium and low recovery areas are given below:-

vi). The incentives are applicable with reference to "Additional production" of sugar attributable to expansion only as against expansion modernization and rehabilitation. This should be computed in the following manner:

vii) besides higher free sale quota allowed, the expanded units are allowed to pay excise duty in accordance with the normal rates applicable to the existing units on the basis of 65 to 35 ratio of and levy free sugar.

3.2. In respect of the new factories and expansion projects which were completed and become eligible under the earlier scheme but could not avail of any benefits even for a portion of a period, it has been decided that these units would be fitted wholly under this new scheme. In such case, the first year of incentive for these units will be the season 1980-81, the period intervening between the date of start/completion of expansion and the first year of incentive under the revised scheme being treated as non-incentive period.

4. All the operation, conditions of the earlier scheme notified vide letter No. F.27/(6)/75 ST dated 6.12.1975 and as modified from time to time, to the extent those are not changed specifically in the revised scheme, would be deemed to continue and hold good under the revised scheme.

4. The petitioner before this Court was already running a sugar mill at MARINDA, Rohtak, Punjab when the scheme of 1975 was notified by the government. The petitioner company also applied for expansion of its cane crushing and sugar manufacturing capacity and the said expansion was completed by 14.8.1981. However, the production from the expanded portion of the sugar factory started only on 10.12.1981. The case of the petitioner before this Court is that since the production from the expanded plant started only on 10.12.1981 and sugar year commences in October every year and closes September next year, the first year of production from the expanded plant was 1981-1982 and consequently the petitioner was entitled to incentive in terms of the Scheme of the Government, for the sugar years 1981-82, 1982-83, 1983-84, 1984-85 and 1985-86. The Government of India, however, computed the sugar year 1980-81 as the first year and consequently the benefit of the incentive was granted to the petitioner only for four years i.e. 1981-82, 1982-83, 1983-84, 1984-85. Obviously, there was no production in the sugar year 1980-81 which ended on 30.9.1981, as the expanded plant commenced production only on 10.12.1981.

5. The petitioner wrote to the government for granting incentive for five years commencing sugar year 1981-82. The said representation, however, was declined vide communication dated 12.3.1987 which to the extent it is relevant, reads as under:

2. In view of the fact that the certificate nothing completion of the expansion project was issued at the factory's request and on the basis of the information furnished by the factory in support of the date of completion of the expansion, it is regretted that it is not possible to accede to the request for treating 1981-82 as the first year of incentive in respect of the Morinda Sugar Factory.

Being aggrieved from the rejection of its representation, present writ petition was filed by the petitioner seeking following reliefs:

a) Quashing and/or setting aside the impugned decision of the respondents contained in letter dated 12.3.1987 (Annexure "A") and grant the petitioner all

consequential reliefs.

b) To grant the petitioners benefits of the incentive scheme computing the first year of production attributable to substantial expansion as the Sugar year 1981-82 and conferring the entitlement of the said benefit to the petitioners for a period of 5 years from sugar year 1981-82.

c) Directing the respondents to re-compute the additional production attributable to substantial expansion with reference to the previous three years, computing the first year of additional production as the year 1981-82 and to grant appropriate and consequential reliefs to the petitioners

d) Direct that the said reliefs be granted after such re-computation in respect of future production since the same was wrongfully denied to the petitioners.

6. In the counter affidavit, the respondents have stated that the validity period of the license obtained by the petitioner for expansion of the sugar factory was upto 18.8.1981 only, the petitioner submitted data showing installation of machinery by 14.8.1981 and accordingly, the expansion was reckoned with reference to the first alternative contained in the circular dated 3.1.1977. According to the respondents, completion of the expansion project having been communicated by the petitioners themselves in August, 1981, they have been given incentive on that very basis. It is also stated in the counter affidavit that under the incentive scheme of 1980, the period of incentive for expansion project was five years and since the said scheme came into force in the sugar year 1980-81, the first year of incentive under the scheme in respect of the petitioner was 1980-81 during which season, the petitioner had completed the expansion of the project. It is also claimed that had the date of completion being reckoned with reference to the achievements of 15 days continuous production after the production commenced, the expansion of the petitioner would have become irregular and they would have become liable to action for exceeding the period of validity of the license.

7. It would be seen from a perusal of the notification date 3.1.1987 issued by the Government of India that the criteria for determining the completion of the expansion could be either the date by which the expansion was completed by installing all items of machinery proposed at the time of applying for grant of license or it could be the date when the final licensed capacity was achieved in continuous period of 15 days after installation of machinery, costing more than one crore rupees. The aforesaid notification did not give a discretion to the government to decide as to which criteria would be applied for the purpose of determining the completion of the license expansion. The choice obviously would be with the sugar mill going for expansion of its capacity and it was open to the sugar mill to seek incentive on the basis of the date on which it achieved the final licensed capacity for a continuous period of 15 days, after installation of machinery, provided the costs of such machinery was more than Rs. 1 crore. Of course, the sugar company at its

option could also opt for determining the completion of license expansion in terms of the date on which the expansion was completed by installation of all the items of machinery proposed by them. But, that was not the option exercised by the petitioner in this case. The respondents therefore could not have taken the sugar year as 1980-81 as the first year of production of petitioner company for the purpose of granting incentive nor could they have determined the completion of the license expansion with reference to the date on which all the machinery proposed by the petitioner for the purpose of expansion were actually installed.

8. This is not the case of the respondents that actual production from the expanded capacity commenced in the sugar year 1980-81. There is no dispute that the production from the expanded capacity started only on 10.12.1981 which falls for the sugar year 1981-82. The question whether taking the date of completion of license of expansion from the date of achieving the final licensed capacity would amount to breach of the terms on which the license was obtained for expansion of the sugar mill would not be a relevant consideration for determining the eligibility for grant of incentive in terms of the scheme formulated by the government. Therefore, despite the installation of the expanded capacity being complete on 14.8.1981, the first year for the purpose of incentive under the scheme would be 1981-82 for the reason that the production from the expanded capacity commenced only in the said sugar year.

9. As regards the contention that under the 1980 Scheme, the season 1980-81 was to be taken as the first year for the purpose of incentives, I find that clause 3.2 of the 1980 scheme does not apply to the petitioner. The said clause applied only to those factories which had completed their expansion on the date the said Scheme came into force, but which were not able to avail the incentive even for a portion of a period, on account of de-control of sugar in the meanwhile. The expansion of capacity by the petitioner came to be completed only after the revised Scheme of 1980 had already come into force. There is nothing even in the 1980 Scheme which would preclude the petitioner from seeking incentive on the basis of the date of actual production from the expanded capacity. For the reasons stated hereinabove, I am of the considered view that the petitioner was entitled to incentive for five sugar years commencing sugar year 1981-82. The impugned communication dated 12.03.1987 is hereby quashed. The respondents are directed to provide such incentives as can now be made available to the petitioner for the sugar years 1981-82, 1982-83, 1983-84, 1984-85 & 1985-86, considering that sugar has since been wholly de-controlled.

The writ petition stands disposed of accordingly. There shall be no orders as to costs.