IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	27/04/2018
Delivered on	21/06/2018

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P.No.26016 of 2013 & M.P.No.1 of 2013 &
W.M.P.No.35670 of 2016

Tirupur Sri Senthil Cotton Mills Limited,
Having its Office at SF No.302, Andipalayam,
Mangalam Road,
Tirupur - 641 687.
Represented by its Managing Director,
Mr.A.P.Velusamy .. Petitioner

Vs.

1. UCO Bank,
   Government of India Undertaking,
   Tirupur Branch,
   At Sakthi Towers, Bharathi Street,
   Valipalayam 3rd Street, Tirupur - 641 601.

2. The Assistant General Manager,
   UCO Bank, TUF Cell,
   Mumbai.

3. Ministry of Textiles,
   Office of Textile Commissioner,
   Mumbai. .. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, to direct the respondents 1 and 2 to give credit the interest TUF Subsidiary amount of Rs.54.09 Lakhs to the current account of the petitioner lying with the first respondent within a time frame.

For Petitioner : Mr.P.H.Arvindh Pandian, Senior Counsel
For Mr.M.C.Joseph for Chennai Law Associates

For Respondents : Mr.V.Suthakar for R1
Mr.M.Krishnan, CGSC for R2
Mr.Arvind Kumar SCGPC for R3

O R D E R

The prayer in the Writ Petition is to issue Writ of Mandamus directing the respondents 1 and 2 to give credit of Rs.54.09 lakhs to the current account of the petitioner.

2. The Ministry of Textiles (MOT) introduced a Scheme called "Technology Upgradation Fund Scheme (TUFS) giving 5% interest reimbursement. Though the first respondent received Rs.54.09 Lakhs in the year 2012, it was not given credit to the account of the petitioner. Hence, the present Writ Petition.

3. The undisputed facts are that the petitioner availed a term loan of Rs.375 Lakhs from South Indian Bank, Tirupur in the year 2004 and thereafter, it was taken over by the first respondent Bank in the year 2005. For the amount borrowed by the petitioner, the first respondent collected interest and on payment of such interest, 5% of interest reimbursement is allowed under "TUFS". Since the reimbursement of interest was delayed, the petitioner contacted the second respondent, who advised the petitioner to pursue the matter with the first respondent. Subsequently, letters dated 20.07.2012 and 13.08.2012 were addressed to the first respondent to arrange for release of subsidy amount, for which, a reply dated 24.08.2012 was sent to the petitioner categorically admitting receipt of interest TUF subsidy of Rs.54.09 Lakhs on 09.07.2012.

4. The petitioner would allege that the first respondent has no authority to withhold the subsidy amount once it is released by the Ministry of Textiles (MOT) and on flimsy grounds the amount has been retained by the first respondent.

5. In the counter filed by the first respondent, the receipt of TUFS subsidy of Rs.54.09 Lakhs from MOT has been admitted. But, it is contended that the amount was not given credit to the account of the petitioner due to the reason that the writ petitioner failed to furnish the copy of the Eligibility Certificate Number (ECN). In the additional counter affidavit, it is stated that the account of the petitioner is under CBI investigation for production of fraudulent export bills and the investigation is in progress.

6. In reply cum rejoinder affidavit, the petitioner stated that as per the guidelines issued by the Ministry of Textiles, such ECN Number has to be generated by the nodal agency, the first respondent herein at the time of claiming reimbursement from the Ministry of Textiles on their satisfaction that the petitioner had paid the entire agreed interest. The first respondent after conducting this exercise generated and furnished the ECN to the third respondent and got subsidy amount. The first respondent knowing fully well that the petitioner would not be able to produce the said ECN number and

contrary to the guidelines, has taken a stand and blaming the petitioner with a mala fide intention.

7. In the reply, it is further stated that the CBI case is pending not only against the petitioner but also against the officials of the first respondent-Bank, who are in the rank of Chief Managers. The petitioner had availed export benefits for 1462 export bills initially and since export orders of 28 bills were cancelled by the oversees purchasers, the said 28 bills alone was recalled and treated under the regular domestic commercial interest rate and the entire interest and the bill amount of 28 bills have been paid and settled by the petitioner. The case is pending trial in C.C.No.12 of 2011 on the file of Special Judge, for CBI Cases, Coimbatore and the CBI case is nothing to do with the payment of subsidy to the petitioner.

8. Heard Mr.P.H.Arvindh Pandian, learned Senior Counsel, representing Mr.M.C.Joseph, learned counsel for the petitioner; Mr.V.Suthakar, learned counsel for the first respondent; Mr.M.Krishnan, learned CGSC for the second respondent; Mr.Arvind Kumar, learned SCGPC for the third respondent and perused the materials available on record.

9.In the instant case, as stated supra, it is not in dispute that the petitioner had availed loan amount of Rs.375 Lakhs for installation of 5 wind mills and the entire loan amount with interest has been settled. According to the petitioner, the Mill is entitled for 5% interest reimbursement as per the "Technology Upgradation Fund Scheme (TUFS). The subsidy amount of Rs.54.09 Lakhs was released by the Ministry of Textiles and the amount is lying with the first respondent since 09.07.2012, but despite the petitioner's repeated representations since July 2012, it was not given credit to the account of the petitioner for the only reason of non submitting of Eligibility Certificate Number.

10. The specific case of the petitioner is that as per the guidelines of the scheme, the Eligibility Certificate Number (ECN) could be generated only by the nodal agency, the first respondent herein. Perusal of the guidelines reveal that after settling the entire loan amount with interest and as per the scheme, the nodal agency, after determining the eligibility and admissible amount in TUFS for each case, decide eligibility and allot Eligibility Certificate Number (ECN) for each case and thereafter submit online in the prescribed format to the Textile Commissioner, Mumbai.

11. The implementation / Monitoring / appraisal mechanism of the Scheme reads as follows:-

> " (iv) For obtaining a Unique ID number, the nodal banks / nodal agencies after determination of

eligibility and admissible amount under TUFS for each case decide the eligibility and allot ECN (Eligibility Certificate Number) for each case and thereafter submit information online in the prescribed format to the Textile Commissioner, Mumbai. The co-opted PLIs of Nodal Agencies will submit information olnine in the prescribed format to the Textile Commissioner, Mumbai after obtaining ECN from their concerned Nodal Agencies. The format for applying unique ID number is at FR-2. The lending agencies are required to furnish quarter-wise subsidy requirement for entire period of 7 years of actual period whichever is lower. Quarter-wise interest reimbursement / capital subsidy will be restricted to the quantum as submitted in this format to the Office of the Textile Commissioner. Quarter-wise interest reimbursement / capital subsidy can be lower than the amount given in this format but cannot be higher than this amount."

So, it is evident that the Eligibility Certificate Number shall be allotted only by the nodal agency and hence the demand of the first respondent directing the petitioner to furnish Eligibility Certificate Number, is without any basis and also contrary to the Scheme as referred above.

12. In such view of the matter, this Court is of the considered view that the petitioner is entitled to succeed in the Writ Petition. The first respondent Bank is directed to give credit to the subsidy amount of Rs.54.09 lakhs to the current account of the petitioner within a period of two weeks from the date of receipt of a copy of this order along with interest at the rate of 7.5% per annum.

13. Accordingly, the Writ Petition is allowed. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

r n s

To

1. UCO Bank,
   Government of India Undertaking,
   Tirupur Branch,
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2. The Assistant General Manager,
   UCO Bank, TUF Cell,
   Mumbai.

3. Ministry of Textiles,
   Office of Textile Commissioner,
   Mumbai.

+2 CCS to M/s. Chennai Law Associates sr 39355.
+1 CC to Mr.V. Suthakar, Advocate sr 39059.

W.P.No.26016 of 2013 & M.P.No.1 of 2013 &
W.M.P.No.35670 of 2016

SP(04/07/2018)