

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2018

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.28167 of 2010

and

M.P.No.1 of 2010

Sri Muhuntha Paper Boards,
Rep. By its Managing Partner
Mr.S.Jagadeesh

... Petitioner

Vs.

1. The Commissioner & Secretary
to Government of Tamil Nadu,
Industries Department,
Fort St. George, Chennai.
2. The Industries Commissioner & Director
of Industries & Commerce,
Chepauk, Chennai-600 005.
3. The General Manager,
District Industries Centre,
Namakkal District.

.... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the second respondent in R.C.No.27870/LC 2/09 dated 7.6.2010 and to quash the same and consequently direct the respondents herein to issue eligibility certificate and release low tension power tariff subsidy to the petitioner for S.C. Nos.409 and 410 for the period from 11.05.2001 to 17.04.2004.

For Petitioner : Mr.V.N.Mohanraj

For Respondents : Mr.V.Shanmugasundar
Spl. Govt. Pleader

O R D E R

This writ petition is directed against the communication dated 07.06.2010 sent by the second respondent, whereby, the request of the petitioner seeking issuance of eligibility certificate to the service connection bearing Nos.409 and 410,

was rejected in accordance with the circular dated 11.06.2002 and the decision taken by the Standing Committee on Incentives for Industrial Promotion meeting held on 13.06.2008.

2. Upon notice, the respondents filed a detailed counter affidavit dated 10.11.2011, wherein, in para 11, it has been averred as follows:

"It is further submitted that as per G.O. (Ms) No.809 dated 02.12.1987 and also the circular Rc.No.41390/KA4/2001 dated 11.06.2002 issued by the second respondent, all the Small Scale Industries Units are eligible to avail the Low Tension Power Tariff subsidy for only one service connection i.e., First Low Tension Power connection not higher than 150 HP load and not more than one service connection. Even though the petitioner has applied for eligibility certificate for their three service connections vide his letter dated 23.04.2001, the office of the third respondent has issued the eligibility certificate only for one service connection No.408 and thereby negated the claim for tariff concessions in respect of service connection numbers 409 and 410. The petitioner has not chosen to challenge the said rejection and even under those circumstances also, the petitioner's claim for power tariff subsidy concession in respect of service connection numbers 409 and 410 are legally untenable and factually unsustainable and lower Tension Power Tariff subsidy cannot be granted."

3. When the matter was taken up for consideration, the learned counsel for the petitioner submitted that the issue involved herein is squarely covered by a decision of the Division Bench of this Court dated 31.01.2007 in W.A.No.1576 of 2004, wherein, it has been held thus:

"7. By issuing G.O.Ms.No.809 dated 2.12.1987 the first respondent announced the subsidy scheme. Nowhere in the said Government Order it is stated that if a person is having more than one service connection, all the consumption charges should be clubbed together and see whether it exceeds 150 HP. The guidelines issued for implementation of the said scheme on 14.1.1988 also nowhere states the said reason for withholding or denying subsidy.

8. The contention raised in the counter affidavit is that only because of the circular issued by the second respondent dated 11.6.2002, petitioner is not entitled to get subsidy and is bound to refund the subsidy amount already received. The circular of the second respondent reads as follows:

xxx xxx xxx

From the perusal of the above circular, it is seen that the second respondent was informed by the State Government that the power tariff subsidy for H.T. consuming unit are withdrawn and some of the SSI units are obtaining more L.T power connections in the same factory location so as to avail the L.T. Power Tariff Subsidy instead of going for H.T Power connection. On the basis of the same, second respondent instructed that L.T. Power subsidy shall be given only to one L.T. Power connection obtained in respect of SSI Units and not to the other L.T. Power connection in the same factory location.

9. As rightly contended by the learned counsel for the petitioner, the said circular is not having retrospective effect. Only instruction is issued through the circular dated 11.6.2002. The petitioner obtained L.T. Power supply long prior to the said circular and the period for subsidy is also over by 2001.

10. Since we have found that the circular dated 11.6.2002 relied on by the respondents to sustain the impugned order in the writ petition is not having any retrospective effect and the impugned order in the writ petition itself states that due to the audit objection the said order is passed and subsequently the said audit objection also having been dropped by the Accountant General on 5.2.2004 as per the statement made in the counter affidavit, we hold that there is no justification in denying the subsidy already sanctioned to the petitioner Mill.

11. No other point was raised by the learned counsel for the respondents to sustain the impugned order.

12. In view of our above finding, W.P.No.32776 of 2003 is allowed and the impugned order dated 15.10.2003 is set aside with a direction to the respondents to pay the balance subsidy amount to the petitioner Mill within a

period of eight weeks from the date of receipt of copy of this order."

The aforesaid submission has been fairly agreed by the learned Special Government Pleader appearing for the respondents.

4.In the light of the aforesaid decision, this Court is of the opinion that since the petitioner is a similarly placed Unit like of the appellant therein, there cannot be any justification for denying the subsidy already sanctioned to the petitioner mill.

5.Hence, the writ petition stands allowed and the impugned communication dated 07.06.2010 issued by the second respondent is set aside. Consequently, the respondents are directed to disburse the subsidy amount payable to the petitioner, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner & Secretary
to Government of Tamil Nadu,
Industries Department,
Fort St. George, Chennai.
2. The Industries Commissioner & Director
of Industries & Commerce,
Chepauk, Chennai-600 005.
3. The General Manager,
District Industries Centre,
Namakkal District.

+1cc to M/S.V.N.Mohanraj, Advocate Sr.54138
+1cc to the Government Pleader Sr.54253

W.P.No.28167 of 2010

mp[co]
srg 26/10/2018