IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 20.06.2019
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.30285 of 2007

Shyam Textiles Limited
Represented by its Director
Chandra Prakash Ramsisaria
No.335/1, 335/2, 344/B1 and 334/B2,
334/4 & 336/B2
Ulumaranapalli,
(Near Gumlapuram Village)
Thally Post,
Denkanikottai Taluk ... Petitioners

Vs.

1.The General Manager,
District Industries Centre,
Krishnagiri District.

2. The Industries Commissioner and
Director of Industries and Commerce,
Chepauk,
Chennai - 600 005.

3.The State of Tamil Nadu,
represented by its Secretary,
Department of Commercial Taxes and
Religious Endowments,
Fort St. George,
Chennai - 600 009. ... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records on the file of the first respondent herein in Rc.No.457/A2/2005 dated 04.01.2007 quashing the same, while directing the first respondent to release State Capital Subsidy of Rs.6,02,904/- being balance State Capital Subsidy yet to be released by the first respondent.

For Petitioners : Mr.N. Inbarajan

For Respondents : Mrs.K. Bhuvaneswari
Additional Government Pleader

ORDER

The petitioner is the Director of the Company. The petitioner's Company is the Public Limited Company incorporated under the provisions of the Indian Companies Act having registered office at No. 156, M.G.Road, Kolkatta. The petitioner is having factory at Ulumaranapalli, Thally Post, Denkenikottai Taluk, Dharmapuri District, Tamil Nadu in which they are inter alia involved in the activity of manufacture and trading of HDPE Monofilament Yarn and Fabrics. Further, petitioner averred that their Unit is set up in a backward Taluk, namely, Ulumaranapally, Denkanikottai Taluk, Dharmapuri District. He further averred that the Unit was set up in the said backward Taluk and Commercial production commenced on 01.02.1996. As per G.O.Ms.No.149 dated 01.04.1991, the rate of capital subsidy was enhanced to 15% on fixed Investment. The rate was made applicable both to new industries as well as expansion and diversification units. It is averred that the actual value of the investment in the fixed assets came to Rs.46.04 lakhs. On 09.10.1997, the first respondent granted provisional sanction of State Capital subsidy of Rs.3,54,015/-. The petitioner's industry was established in the said backward area and by investing a sum of Rs.46 lakhs, he is entitled to 15% of the subsidy from that amount. In order to avail the subsidy, the petitioner made a representation to the first respondent on 30.10.1996. However, the first respondent rejected the request on the ground that already the petitioner's issue was considered by the Audit Department Officer and passed an order revoking the earlier representation and the said representation was rejected, against which, the writ petition is filed.

2. Learned counsel for the petitioner would submit that even on bare perusal of the said Government Order, it is clearly held that all State Governments issued various orders of sanction of subsidies for which the petitioner is entitled to viz., State Capital Subsidy at 15% for a micro, small and medium scale industries and also for major sectors with a view to bring unity for various types of subsidies and sort out the difficulties in the implementation of the subsidies. Accordingly, the State Government extended its subsidy of small scale industries at 15% and in all the fixed investment. The petitioner has established the industry in the backward area by investing Rs.46 lakhs and on that Rs.46 lakhs, the petitioner is entitled to 15% of the amount towards subsidy. However, the original authority viz., Audit Department fixed Rs.97000/- as subsidy to the petitioner. Aggrieved by the said earlier arbitrary fixation, the petitioner again made the representation to the first respondent for releasing

appropriate subsidy in favour of the petitioner. Accordingly, he prayed for allowing of the writ petition.

3. Learned Additional Government Pleader appearing for the respondents filed a counter stating that the Government Order makes it clear that 15% of the fixed investments satisfied the ceiling limit by Rs.15 lakhs. Though the petitioner claimed that he invested Rs.46 lakhs, the Government Order specified the ceiling limits and he further submitted that the first respondent had arrived the value of the fixed assets eligible for subsidy as per the norms provided in the Government Order Ms.No.423, Industries Department, dated 07.07.1989 and also based on Tamil Nadu Industrial Investment Corporation (TIIC) norms at Rs.23,60,106/- as against the petitioner's claim at Rs.46,04,000/- and accordingly, the subsidy was arrived at Rs.3,54,015/- (i.e., 15% of investment on eligible fixed assets). The same decision was informed to the petitioner's unit vide the first respondent provisional sanction letter R.A.No.327/SCS/B3/97, dated 09.10.1997.

4. However, the petitioner has not produced any document. Thereafter, the show-cause notice was issued on 05.03.1998 to the petitioner and the same was despatched on 13.03.1998 by Registered Post with Acknowledgement Due requesting to show cause why the provisional sanction order for state capital subsidy and Eligibility Certificate issued for Interest Free Sales Tax deferral should not be cancelled since the petitioner had shifted 20 numbers of Power looms which were considered for subsidy from the premises without any prior intimation or permission from the office of the first respondent which is an obligatory condition to which the unit had already agreed upon. Thereafter, the present impugned order was passed based on the merits. A Scrutiny Committee from the office of the Industries Commissioner and Director of Industries and Commerce i.e, second respondent perused the file and arrived at the conclusion that only the investment on the useful of area of the building i.e., Rs.6,24,150/- is eligible for subsidy. The subsidy amount was arrived at Rs.96,620/-. Subsequently, a first part payment of Rs.87,696/- was paid to the unit. The Deed of Agreement, Personal Guarantee have been signed on 23.02.1999 by the company for accepting the above subsidy and the petitioner has accepted and signed all the documents with the dispute of the subsidy with the first respondent without any objection and consequential order was passed and the same has to be cancelled since the learned Additional Government Pleader for the State submitted that the earlier proceeding was already in favour of the petitioner. If at all, the petitioner is aggrieved on rejection of his request, the petitioner has to challenge the proceedings.

5. The undisputed facts is that in the earlier occasion, the petitioner has made a representation for availing the subsidy as per G.O.Ms.No.149 dated 01.04.1991. The said request was initially considered by the authority and sanctioned a sum of Rs.3,54,000/- through provisional sanction order dated 09.10.1991 and directed the petitioner to execute the document. Immediately thereafter, the show-cause notice was issued to the petitioner on 05.03.1998 to show cause why the provisional sanction order for state capital subsidy and Eligibility Certificate issued for Interest Free Sales Tax deferral should not be cancelled since the petitioner had shifted 20 numbers of Power looms which were considered for subsidy from the premises without any prior intimation or permission from the office of the first respondent and further the competent authority viz., The Commissioner and Director of Industries and Commerce re-assessed the file of the petitioner and arrived at a conclusion that only the investment on the useful of area of the Building i.e., Rs.6,24,150/- is eligible for subsidy. Accordingly, the amount was disbursed in favour of the petitioner and the petitioner also accepted and executed the documents to the first respondent on 23.02.1999.

6. As rightly argued by the learned Additional Government Pleader appearing for the respondents, this court opines that unless the earlier order was challenged, the consequential order cannot be challenged. In other words, the petitioner ought to have challenged the earlier order but not the consequential order. Hence, this court finds no error in the order passed by the first respondent and the writ petition is liable to be dismissed.

7. In the result, the writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

gv

To

1.The General Manager,
District Industries Centre,
Krishnagiri District.

2. The Industries Commissioner and
 Director of Industries and Commerce,
 Chepauk,
 Chennai - 600 005.

3.The Secretary,
State of Tamil Nadu,
Department of Commercial Taxes and
Religious Endowments,
Fort St. George,
Chennai - 600 009.

+1cc to Mr.V.Srikanth , Advocate SR.No. 50830
+1 cc to Government Pleader Sr.No. 51765

W.P.No.30285 of 2007

nmi (CO)
A.SK(13/08/2019)