

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.24024 of 2011
and WMP.No.1 of 2011

M/s.Divyam Spinners,
Rep. by its Partner Mr.T.S.Venkatasubramaniam,
5, B.K.Thottaiapatti Road,
Rajapalayam - 626 117.

.. Petitioner

Vs.

- 1.State of Tamil Nadu,
Rep. by its Secretary Industries Dept,
Fort St.George, Chennai - 9.
2. Director of Industries and Commerce,
Chepauk, Chennai - 5.
3. General Manager,
District Industries Centre,
Virudhunagar.

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, for a Writ of Certiorarifeid Mandamus, calling for the records relating to the order passed by the 2nd respondent date 06.09.2011 in R.C.No.24554/LC2/2010, received by the petitioner on 04.10.2011 confirming the order passed by the 3rd respondent dated 08.09.2003 in his K.Dis.No.LTPT.122/A7/97 to quash the same and to direct the respondent to refund the sun of Rupees One Lakhs Eighty Nine Thousand four hundred fifty seven to the petitioner as LTPT subsidy for the period from 23.09.1996 to 22.01.1998 forthwith together with interest of 18% per annum till the payment is made.

For Petitioner : Mr.AR.Karthik Lakshmanan
for Mrs.A.L.Ganthimathi

For Respondents: Mr.J.Ramesh, Addl.Govt.Pleader

O R D E R

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the 2nd respondent date 06.09.2011 in

R.C.No.24554/LC2/2010, received by the petitioner on 04.10.2011 confirming the order passed by the 3rd respondent dated 08.09.2003 in K.Dis.No.LTPT.122/A7/97 to quash the same and to direct the respondents to refund sum of Rupees One Lakhs Eighty Nine Thousand four hundred fifty seven to the petitioner as Low Tension Power Subsidy for the period from 23.09.1996 to 22.01.1998 forthwith together with interest of 18% per annum till the payment is made.

2. The petitioner viz., is the factory and obtained SSC certificate for claiming Low Tension power subsidy from the 2nd respondent. The petitioner factory commenced production with effect from 07.06.1996, by obtaining the permanent SSC certificate from the Department of Industries and Commerce. Thereafter, the petitioner applied for Low Tension Power subsidy with the Tamil Nadu Electricity Board and based on the application submitted by the petitioner dated 03.09.1996, the 3rd respondent by proceeding dated 22.11.1996, issued an eligibility certificate for the Low Tension Power subsidy to the petitioner subject to certain terms and conditions.

2. The certificate was for the period from 07.06.1996 to 06.06.1997, at the rate of 40% from 07.06.1997 to 06.06.1998 at the rate of 30% and for the period 07.06.1998 to 06.06.1999 at the rate of 20%. In order to avail the benefits as per the proceedings dated 22.11.1996, the petitioner has submitted application on 29.11.1996, along with the Form-C in duplicate, electricity receipts, TNEB meter card, copies of SSC certificate and eligibility certificate of Low Tension power subsidy and advance stamped receipts. Accordingly, the 3rd respondent has refunded a sum of Rs.36,900/- through Demand Draft. On receipt of the said amount, the petitioner made representations dated 24.02.1997 and 26.02.1998, has claimed the refunded subsidy paid for the period 23.09.1996 to 22.01.1998. Subsequently, on 04.08.1998, theft in the factory had taken place in which the materials was stolen away, hence an FIR was lodged in FIR No.306/1998 in Mamsapuram Police station and a criminal case is pending on the file of Judicial Magistrate-II, Srivilliputhur. Hence, the factory was closed and till date the petitioner has not commenced the production.

3. However, the respondent by its order dated 08.09.2003, rejected the petitioner's representation dated 24.02.1997, on the ground that the petitioner unit is not functioning. Challenging the above said impugned order dated 08.09.2003, the petitioner filed a writ petition before this Court in WP.No.828 of 2004. This Court by its order dated 29.01.2004, dismissed the writ petition. Aggrieved by the said order, the petitioner filed writ appeal before this Court in Writ Appeal

No.1466 of 2004. This Court, by its order dated 08.04.2011, confirmed the order of learned Single Judge and granted liberty to the petitioner to file a fresh application within a period of two weeks from the date of receipt of a copy of the order. Thereafter, the petitioner made an application dated 13.06.2011, annexing the relevant documents which was rejected by the respondent on 06.09.2011. Aggrieved over the same, the present writ petition is filed.

4. The learned counsel appearing for the petitioner would submit that, though the industry was functioning at the relevant point of time and thereafter, due to theft of articles and other problems, the petitioner was forced to closed the industry. However, the petitioner is entitled to claim the subsidy during the aforesaid period, since the said factory was functioned as per the Government orders. However, without considering the relevant documents, mechanically, the authority passed the order rejecting the claim of the petitioner.

5. Per contra, the learned Additional Government Pleader appearing for the State would submit that, the petitioner claimed the subsidy for the period from 07.06.1996 to 22.01.1998. Initially, the petitioner made several applications for claiming the subsidy amount for the period of 07.06.1996 to 22.01.1998. After inspecting the factory premises and ascertaining whether the factory was running on that particular period, a portion of subsidy to the tune of Rs.36,900/- was granted to the petitioner. However, the authorities had found that the factory is not running, in which the petitioner is not entitled to avail subsidy for non-functioning period. Admittedly, the unit was closed after the year 1998.

6. Initially, the petitioner's claim was rejected and the same was questioned before this Court in WP.No.828 of 2004. This Court by its order dated 29.01.2004, dismissed the writ petition. Aggrieved by the said order, the petitioner filed a writ appeal before this Court in Writ Appeal No.1466 of 2004. This Court by its order dated 08.04.2011, confirmed the order of learned Single Judge and granted liberty to the petitioner to file a fresh application within a period of two weeks from the date of receipt of a copy of the order. Again the petitioner made an application dated 13.06.2011, annexing the relevant documents. Again the respondent rejected the said application on 06.09.2011.

7. On perusal of the entire records, it seems that the petitioner industry was commenced on 07.06.1996, after obtaining Low Tension power subsidy from the Electricity Board and SSC certificate from the Industries Department. It appears that, initially the subsidy was granted in favour of the petitioner to the tune of Rs.36,900/- for the admitted period when the unit was functioned and thereafter, the petitioner made several representations for claiming the subsidy amount from the year 1996 to 1998 and the said representations were rejected on 08.09.2003 and the same was questioned before this Court in WP.No.828 of 2004. This Court dismissed the said writ petition. Aggrieved by the said order, the petitioner had filed a writ appeal and the same also dismissed by this Court. Thereafter, the petitioner made an application as directed by the Division Bench of this Court on 13.06.2011. The authority rejected the application on the ground that at the time of inspection the factory was closed.

8. This Court perused the entire record. The Initial representation for claiming the subsidy was submitted on 22.02.1997. This Court perused the application dated 22.02.1997, wherein, the petitioner annexed only the SSC certificate and electricity meter card. However, no proof was annexed along with the representation dated 22.02.1997, for establishing that the industry was commissioned on that particular period. As rightly, the authority have rejected the application by an order dated 08.09.2003. Thereafter, the petitioner made an application based on the direction issued by the Division Bench of this Court annexing their documents. However, the facts remains in order to ascertain whether the petitioner industry was running at the relevant point of time. After lapse of 11 years, it is impossible to the 2nd respondent to ascertain as to whether the industry was running or not. After lapse of several years, admittedly, as on date after 1998, the industry was closed and they are not commenced the production. In the absence of any material, it is difficult to arrive a conclusion, whether the petitioner industry was functioned at the relevant point of time or not.

9. In the absence of any material, I am not inclined to interfere with the impugned order passed by the 3rd respondent / The General Manager, District Industries Centre, Virudhunagar, dated 08.09.2003. Accordingly, the writ petition is dismissed. No Costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

Pkn.

To

1.The Secretary,
Industries Dept,
Fort St.George, Chennai - 9.

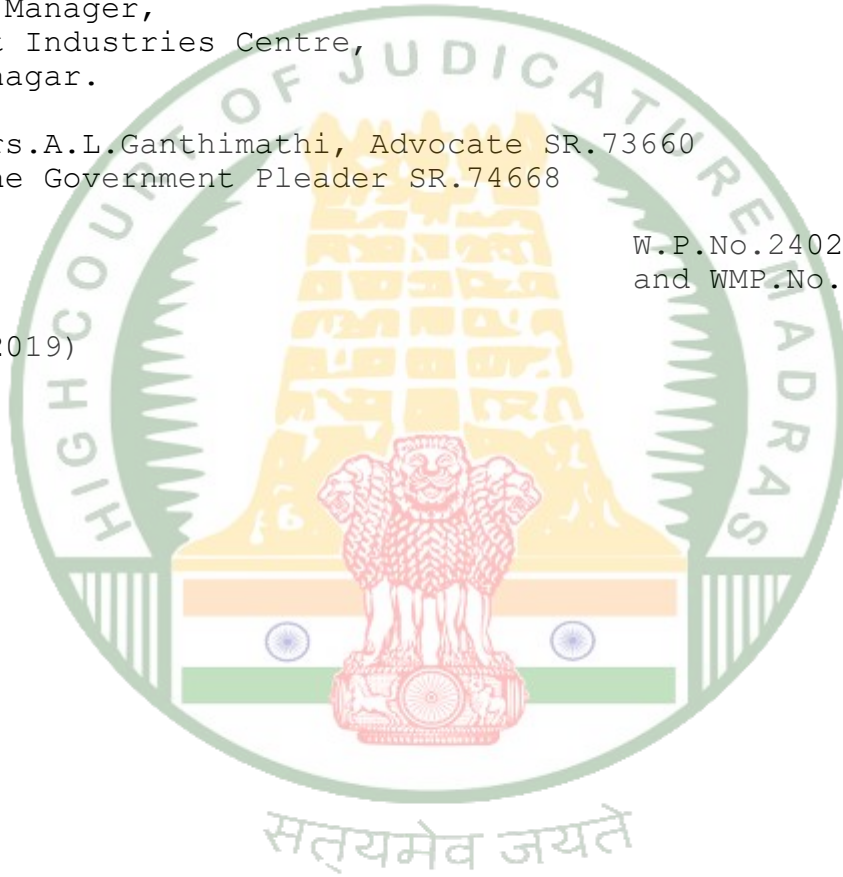
2.Director of Industries and Commerce,
Chepauk, Chennai - 5.

3.General Manager,
District Industries Centre,
Virudhunagar.

+1cc to Mrs.A.L.Ganthimathi, Advocate SR.73660
+1cc to the Government Pleader SR.74668

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(CO)
CB(22/11/2019)



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