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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos. 27915, 26192, 27882 & 27964 of 2010

and

M.P.Nos.1, 1, 1, 2, 2, 2, 3, 3, 3, 3, 4 & 5 of 2010

M/s.Rajapalaym Mills Limited,
Rep. By Mr.S.Kanthimathinathan,
President ,P.A.C. Ramasamy Raja Salai,
Post Box No.1, Rajapalayam,
Pin- 626 117.

...Petitioner in W.P.No.27915 of 2010

M/s. Ramco Industries,
Rep. By its Chief Operating Officer,
6th Floor, Aura Corporate Centre,
No.98A, Dr.Radhakrishnan Salai,
Mylapore.Chennai 600 004.

...Petitioner in W.P.No.26192 of 2010

Sri Vishnu Shankar Mill Limited,
Post Box NO.1091 P.A.C.Ramasamy Raja Salai,
Rajapalayam 626 117,
Thirunelveli District.

...Petitioner in W.P.No.27882 of 2010

M/s. Sandhya Spinning Mill Limited,
47, P.S.K. Nagar,
Rajapalayam, Pin 626 108
Rep. By its Director,
Thirunelveli District.

...Petitioner in W.P.No.27964 of 2010

Vs

1. Government of India,
Ministry of Textiles,
Represented by the Secretary to the Government,
Udhyog Bhavan,
New Delhi - 110 011.
2. The Textile Commissioner,
Post Bag No.11500,
Mumbai - 400 020.



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3. Indian Bank,
Thousand Lights Branch,
Kannammal Building,
611, Anna Salai,
Chennai - 600 006.

...Respondents in all WPs

PRAYER in W.P.Nos. 27915 , 27964 and 27882 of 2010 : Writ 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 the circular No.9, No.28(19)/2004-Ms/ dated 26.02.2005 and its subsequent clarification in Circular No.10 bearing No.28(19)/2004-Ms/ dated 24.03.2005 in so far as it withdraws the benefits of the TUF scheme to the petitioner's investments in Wind Energy Generators and the consequential actions of the first and second respondent in refusing to grant relaxation from such withdrawal and quash the same as illegal, arbitrary and without authority of law and direct the respondents to grant the petitioner the benefit of the TUFs with respect to the petitioner's investment in Wind Mills in line with the TUFs by grant of interest subsidy on the basis that the petitioner's investment would be entitled to the benefits contained in the TUF scheme.

PRAYER in W.P.No.26192 of 2010 : Writ 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 the circular No.9 No.28(19) /2004-Ms/ dated 26.02.2005 and its subsequent clarification in Circular No.10 bearing No.28(19)/2004-MS/ dated 24.03.2005 and the consequent decision of the first respondent as set out in its letter NO.22/3/2005-CT-1 dated 18.02.2008 and consequential letter of 2nd respondent bearing No.28(22)/2005-MS/14 dated 2/5.12.2005 and quash the same as illegal, arbitrary and without authority of law and direct the respondents to grant the petitioner the benefit of the TUFs with respect to the petitioners investment in wind mills in line with the TUFs by grant of interest subsidy on the basis that the petitioner's investment would be entitled to the benefits contained in the TUF scheme.

For Petitioners : Mr.Rahul Balaji
[In all WPs]

For Respondents : Mr.G.Baskaran
[In all WPs] Central Government
Standing Counsel
[For R1 and R2]

Mr.V.Kalyanaraman
For M/s.Aiyar & Dolia
[For R3]



COMMON ORDER

The Circular issued by the second respondent on 26.02.2005 and the subsequent clarification issued in Circular No.10 dated 24.03.2005 are under challenge in the present writ petitions.

2. The petitioner is a Company, states that by the action of the second respondent in removing the wind energy units from the eligible list of plant and machinery under the Technology Up-gradation Fund Scheme (TUFS) in the impugned Circular and the clarification Circular, resulted denial of subsidiary benefits to the petitioners.

3. Removal of Wind Energy from the eligible list of plant and machinery under TUFS is the policy decision taken by the Government of India, Ministry of Textiles.

4. In ordinary circumstances, Courts would not interfere with such policy decision taken by the Government. However, the learned counsel for the petitioner drew the attention of this Court with reference to the letter dated 18.02.2005 issued by the Indian Bank / third respondent. Relying on the said letter, it is contended that the term loan (TUF) was sanctioned in favour of the petitioner by the third respondent-Bank on 18.02.2005. However, the impugned circular dated 26.02.2005 indicates that "The wind energy units have been removed from the eligible list of plant and machinery under TUFS prospectively from 22.02.2005 (i.e., date of decision taken by IMSC)". In view of the fact that the removal of the scheme was effected with prospective effect from 22.02.2005 and in the case of the petitioner, the term loan was sanctioned in favour of the petitioner by the third respondent-Bank on 18.02.2005, the petitioner claims that they are entitled for subsidy under the scheme. However, the case of the petitioner was not considered by the respondents 1 and 2.

5. The learned Central Government Standing counsel appearing on behalf of the respondents / Government of India, objected the said contentions by stating that it is only a sanction letter and however, final sanction of loan is relevant and in-principle sanction by Bank is irrelevant for the purpose of grant of subsidy under the scheme. However, the terms and conditions of the subsidy are to be considered by the competent authorities based on the facts and circumstances.



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6. The learned counsel for the petitioners replied that the scheme does not contain any such difference in respect of the term loan. The dispute in this regard requires verification of the terms and conditions of the scheme for the purpose of sanctioning subsidy.

7. In view of the facts and circumstances placed, this Court is inclined to direct the respondents 1 and 2 to consider the application submitted by the writ petitioners for grant of subsidy in accordance with the terms and conditions of the scheme as expeditiously as possible and preferably within a period of four months from the date of receipt of the copy of this order. The petitioners are directed to submit the copy of the application along with all relevant documents within a period of two weeks from the date of receipt of a copy of this order.

8. The petitioners are at liberty to submit the copy of the application to the respondents along with all other documents within a period of two weeks and in the event of receiving any such application, the respondents 1 and 2 are directed to consider the same, take a decision and pass orders on merits and in accordance with law within a period of four months from the date of receipt of a copy of the application.

9. With these directions, all the writ petitions stand disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to the Government,
Government of India,
Ministry of Textiles,
Udhyog Bhavan,
New Delhi - 110 011.
2. The Textile Commissioner,
Post Bag No.11500,
Mumbai - 400 020.



3. Indian Bank,
Thousand Lights Branch,
Kannammal Building,
611, Anna Salai,
Chennai - 600 006.

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+1cc to M/s.Aiyar & Dolia, Advocate, S.R.No.56419
+1cc to Mr.G.Baskaran, Advocate, S.R.No.56087
+1cc to M/s.R.Parthasarathy, Advocate, S.R.No.56253

W.P.Nos. 27915, 26192,
27882 & 27964 of 2010

SR-II[co]
NSK 25/11/2021