IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.08.2022

PRONOUNCED ON : 28.10.2022

CORAM:

THE HON'BLE MR.JUSTICE S.SOUNTHAR

W.P.No.8278 of 2014
and M.P.No.1 of 2014
and M.P.No.1 of 2015

Sathyam Coco Green Products
Rep. By its Proprietor,
E.P.Srinivasan,
S/o.E.S.Palanisamy,
D.NO.61. S.F.No.149/2,
Athani Village, Forest Road,
A.Sembulichampalayam Post,
Bhavani TK, Erode District-638 502. ...Petitioner

vs.

1.The Principal Secretary/Industrial Commissioner and
Director of Industries and Commerce (LC Section),
No.36, South Canal Bank Road,
Mandaivelipakkam, Chennai-600 028.

2.The District Industries Centre,
Rep. By its General Manager,
Chennimalai Road, Erode-638 001. ..Respondents

Prayer: This Writ petition has been filed under Article 226 of the Constitution of India, praying to issue certiorarified mandamus to call for the records relating to the orders made in Proc.RC.No.S.E.S.A.54/D3/2011 dated 18.10.2013 and the consequential reminder made in RC.No.6169/D3/2013-14 dated 12.02.2014 passed by the 2nd respondent and quash the same and forebear the respondent from demanding any amount from the petitioner.

For Petitioner : M/s.G.Ethirajulu

For R1 and R2 : M/s.P.Sanjai Gandhi
Government Advocate

ORDER

The petitioner herein filed this writ petition challenging the order passed by 2nd respondent directing the petitioner to repay the state capital subsidy availed by it. The petitioner is a proprietary concern engaged in manufacture of Coir pith. The business of the petitioner comes under the category of Micro, Small, Medium and Agro based Industries covered by the capital subsidy scheme introduced by the State Government. The petitioner applied for capital subsidy of the State Government for purchase of machineries for his Coir pith manufacturing unit. The 2nd respondent by his order dated 28.03.2012 sanctioned a sum of Rs.3,13,000/- as a capital subsidy for the petitioner's unit. The petitioner entered into an agreement with the 2nd respondent on 21.03.2012 as per the terms of the capital subsidy scheme.

2. The petitioner claimed that the 2nd respondent issued 1st show cause notice on 29.07.2013 and 2nd show cause notice on 28.09.2013 stating that on inspection he found that the petitioner's enterprise was not functioning and machineries were also not available in the premises and hence he violated the terms of the agreement which stipulate that the industrial unit should not go out of production within 5 years from the date of commencement of production and machineries shall not be sold without prior permission of the Government within 5 years. The petitioner was directed to submit his explanation.

3. The petitioner filed his explanation to the show cause notices stating that his unit was not functioning due to acute water shortage and power shortage. He further submitted that the machineries are very well available in the premises. He further submitted that he was not aware of the inspection conducted by the 2nd respondent officials and machineries

were very much available in the premises. Subsequently, the impugned order was passed by the 2nd respondent directing the petitioner to pay back the capital subsidy as he stopped production and removed the machineries from the official premises violating the terms of the agreement he entered into with the respondent corporation. Aggrieved by the same petitioner has come up with this writ petition.

4. The learned counsel for the petitioner submitted that the impugned order is bad as the charge against the petitioner is vague and vitiated by lack of particulars. The learned counsel for the petitioner further submitted that the 2nd respondent ought to have conducted an enquiry based on inspection conducted in the petitioner's premises by giving opportunity before passing the impugned order. He also submitted that the inspection report dated 26.07.2013 was not furnished to him and therefore, the impugned order against him gets vitiated by violation of principles of natural justice.

5. The learned Government Advocate for the respondent furnished

the copy of the agreement entered into between the petitioner and 2nd respondent dated 21.03.2012. He has drawn the attention of the Court to clause (iv) and (vi) of the agreement and submitted that the petitioner is not entitled to change the location of the whole or any part of the industrial unit or effect substantial change without prior permission of the Government. Further, the petitioner who is the beneficiary of capital subsidy shall refund the same with interest, if he violates any of the terms of agreement or goes out of production within 5 years from the date of commencement of production . He further submitted in the case on hand, the petitioner's premises was inspected by officials of 2nd respondent twice and they found that the machineries of the industrial unit was not available and the industrial unit was not functioning. He also circulated the letter written by the Assistant Commissioner (ST) Bhavani Assessment Circle, Bhavani addressed to 2nd respondent wherein the Assistant Commissioner (ST) informed the 2nd respondent that petitioner failed to file the monthly returns and had not reported purchase and sales to the Commercial Tax Department. It was further informed that the registration of the petitioner with the Tamil Nadu Value Added Tax Department was cancelled with effect from 26.12.2016 due to his failure to file returns.

6. This Court perused the terms of condition of the agreement entered into between the petitioner and 2nd respondent. Clause iv and vi of the agreement reads as follows:

> "(iv) The *BENEFICIARY* after receiving a part or whole of the subsidy shall not without obtaining the prior written permission of the Government, change the location of the whole or any part of the Industrial Unit or effect substantial construction or dispose all or a substantial part of its total fixed capital investment within a period of five years from the date on which the Industrial unit goes into production."

> "(vi) The *BENEFICIARY* shall refund subsidy together with the interest at the rate fixed by Government and other charges if any to the Government, if it is found that the *BENEFICIARY* has violated any of the terms and conditions mentioned herein or that the subsidy has been

obtained by fraud or by false information or the Industrial Unit goes out of production within 5 years from the date of commencement of the production. ”

7. The close scrutiny of the agreement would suggest that if the Industrial unit which availed the benefit of capital subsidy goes out of production within 5 years from the date of commencement of production, the subsidy amount availed shall be repaid. Likewise, the beneficiary shall not without obtaining prior permission of the Government change the location of the industrial unit or dispose all or substantial part of the fixed capital assets within 5 years from the date of commencement of production. The 2nd respondent in the impugned order clearly mentioned that on 29.07.2013, the Assistant Engineer of his office conducted an inspection in the premises of the petitioner and found the unit was not functioning. He also found that the power supply to the unit was also disconnected and plant and machineries were not available. Based on his report show cause notices were issued to the petitioner. The petitioner submitted an explanation admitting that his industrial unit was not functioning. The petitioner had chosen to explain that the non functioning

is due to power and water shortage. It was represented by the petitioner in his explanation that machineries were available in the industrial unit's official premises. Therefore, again the Project Manager (Textiles) of the 2nd respondent office conducted inspection on 28.09.2012 in the official premises of the petitioner's unit and found that there was no plant and machineries. He also found that there was no industrial activity carried on in the premises. Based on these two reports by invoking the clauses iv and vi of the agreement entered into between petitioner and the 2nd respondent, the impugned order was passed directing the petitioner to pay the entire subsidy amount of Rs.3,13,000/-. In fact, the petitioner himself admitted in his explanation that its industrial unit was shut down. The clause vi of the agreement is very clear that if the petitioner goes out of production within 5 years from the date of commencement of production, he shall pay back the capital subsidy. Therefore, I don't find any illegality or irregularity in the order passed by the 2nd respondent. The writ petition is devoid of any merit and the same is dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

28.10.2022
(2/2)

Index : Yes / No
Internet : Yes/ No
Speaking/Non-speaking Order
jai

To

1.The Principal Secretary/Industrial Commissioner and
Director of Industries and Commerce (LC Section),
No.36, South Canal Bank Road,
Mandaivelipakkam, Chennai-600 028.

2.The District Industries Centre,
Rep. By its General Manager,
Chennimalai Road, Erode-638 001.

S.SOUNTHAR, J.
jai

W.P.No.8278 of 2014

28.10.2022
(2/2)