IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2022

CORAM

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P. No. 24393 of 2021
and
W.M.P.Nos.25697, 25698 & 25699 of 2021

M/s.K.H.Exports India Private Limited
Rep by its Managing Director
Mr.M.Abdul Wahab
Having their registered office at
KH Centre 15/2, College Road,
Nungambakkam, Chennai - 600 006. ... Petitioner

Vs

1.Government of India,
Represented by its Under Secretary,
Ministry of Commerce and Industry,
Department for Promotion of Industry and Internal Trade (DPIIT),
Formerly known as Department of Industrial Policy and Promotion
(Leather Section),
Udyog Bhawan, New Delhi - 110 011.

2.The General Manager,
Small Industries Development Bank of India,
Government Schemes Cell,
No.15, Ashok Marg, Lucknow - 226 001.

3.The General Manager,
Small Industries Development Bank of India,
Overseas Towers,
No.756-L, Anna Salai, Chennai - 600 002. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari Mandamus, to call for the records on the files of the 1st respondent namely the order FNo.9/123/2006 Leather dated 30.08.2017 rejecting the subsidy granted vide various letters dated as confirmed by letter dated 23.02.2015 and quash the same and consequently direct the respondents to release the balance subsidy granted vide various letters as confirmed by letter dated 23.02.2015 amounting to Rs.2,13,28,229/-.

For Petitioner : Mr.Jayesh B.Dolia, P.Mohammed Moin for M/s.Aiyar and Dolia

For R1 : Mr.T.V.Krishnamachari

ORDER

The petitioner has filed this writ petition for issuance of a Writ of Certiorari Mandamus, to call for the records on the files of the 1st respondent namely the order FNo.9/123/2006 Leather dated 30.08.2017 rejecting the subsidy granted vide various letters dated as confirmed by letter dated 23.02.2015 and quash the same and consequently direct the respondents to release the balance subsidy granted vide various letters as confirmed by letter dated 23.02.2015 amounting to Rs.2,13,28,229/-.

2.The impugned order / communication of the first respondent which rejects the request of the petitioner is read as hereunder :

"I am directed to refer to your letters dated 23.03.2016, 16.08.2017 and CLE's letter dated 04.05.2017 regarding disbursement of IDLS grant to M/s.K.H.Exports India Pvt. Ltd.

2. Before disbursement of grant amount could be made with reference to this Department's letter of even no dated 23.02.2015, M/s.K.H.Exports India Pvt. Ltd. informed about yet another amalgamation with M/s.K.H.Arvind Pvt. Ltd. which is also a beneficiary under the IDLS sub-scheme.

3.The matter was place before the 41st Steering Committee in its meeting held on 16.08.2017 and the Committee decided to close the case with the observation that the current amalgamation of M/s.K.H.Exports India Pvt. Ltd. with M/s.K.H.Arvind Pvt. Ltd. has been done without any necessitated ground and without prior permission of this Department. Accordingly, this case is covered under the Steering Committee decision taken in its 29th meeting held on 28.06.2013 that "any unit chang in its status (viz., change in name, address, partner, company, bank account, machinery, location of machinery & any other status) after sanction of the Steering Committee and before availing of assistance has to apply afresh to obtain new mandate for availing assistance under the IDLS sub-scheme".

4.The Steering Committee comprised of all stakeholders in the Leather, Footwear & Accessories Sector including Industry representatives viz. Chairman & Vice-Chairman, Council for Leather Export and Chairman, Council for Footwear Leather & Accessories".

The only reason given in the impugned order / communication is that the amalgamation of M/s.K.H.Exports India Pvt.Ltd. with M/s.K.H.Arind Pvt.Ltd. has been done without any necessitated ground and without prior permission of the department. The brief background of this case is that the four different companies were earlier given the subsidy as detailed below :

Name of the Unit	*GOI assistance approved*	*GOI assistance released*	*GOI assistance balance*	*Remarks*
M/s.Rabia Leather Industries Pvt. Ltd.	1,41,74,034	35,43,508	1,06,30,526	Approved in 25th meeting held on 31.08.2012
M/s.K.H. Shoes Pvt. Ltd.	31,98,671	7,99,667	23,99,004	11th plan case (22nd meeting

Name of the Unit	*GOI assistance approved*	*GOI assistance released*	*GOI assistance balance*	*Remarks*
				held on 09.12.2011)
M/s.M.A.Khizar Hussain & Sons	16,98,196	0	16,98,196	Approved in 29th meeting held on 28.06.2013
M/s.M.A.Khizar Hussain & Sons	1,32,01,005	66,00,502	66,00,503	11th plan case (17th meeting held on 22.02.2010)

Among four mentioned above companies, some of the below mentioned companies were merged with the petitioner pursuant to the scheme of amalgamation approved by this Court in C.P.Nos.145 to 150/2013 vide order dated 25.06.2013 as detailed hereunder :

SCHEME OF AMALGAMATION approved by High Court of Judicature, Madras
Company Petition Nos.145 to 150 of 2013 : Order passed on : June 25, 2013

SCHEME OF AMALGAMATION

K.H.SHOES PRIVATE LIMITED : (Transferor 1)
M.A.KHIZAR HUSSAIN & SONS PRIVATE LIMITED : (Transferor 2)
K.H.SHOES ACCESSORIES PRIVATE LIMITED : (Transferor 3)
ZAK LEATHER GARMENTS PRIVATE LIMITED : (Transferor 4)
K.H.EXPORTS PRIVATE LIMITED : (Transferor 5)

WITH

K.H.EXPORTS INDIA PRIVATE LIMITED : (Transferee Company)

Thereafter, the other concern, namely K.H.Arvind Company Pvt. Ltd., got merged with the petitioner's company pursuant to the proceedings under Section 391 to 394, the Companies Act, 1956 in terms of order dated 09.02.2016 in C.P.Nos.517 & 518/2015. Challenge of the impugned order is on the ground that so called reason mentioned in impugned order is on the basis of which the scheme operates under IDLS. It is further submitted that the petitioner has not suppressed any fact and that no prejudice would be caused to the respondents in granting the subsidy to the petitioner.

3.The respondents on the other hand have filed detailed counter and opposed the present Writ Petition. It is submitted that as per the 29th Steering Committee meeting held on 28.06.2013 "any unit change in its status (viz., change in name, address, partner, company, bank account, machinery, location of machinery & any other status) after sanction of the Steering Committee, before availing of subsidy, has to apply afresh permission under a new mandate. It is further submitted that the initial 38th Steering Committee Meeting held on 20.10.2014, based on the site verification where the approved machines of all the units were made by

Project Implementing Units (PIUs) (FDDI and CLRI) had considered the merger to the following three units on compassionate basis due the untimely demise of the Director of the earlier units :

Name of the Unit	***GOI assistance approved***	***GOI assistance released***	***GOI assistance balance***	***Remarks***
M/s.Rabia Leather Industries Pvt. Ltd.	Rs.1,41,74,034/-	Rs.35,43,508/-	Rs.1,06,30,526/-	Approved in 25th meeting held on 31.08.2012
M/s.K.H. Shoes Pvt. Ltd.	Rs.31,98,671/-	Rs.7,99,667/-	Rs.23,99,004/-	11th plan cases (22nd meeting held on 09.12.2011)
M/s.M.A.Khizar Hussain & Sons	Rs.16,98,196/-	0	Rs.16,98,196/-	Approved in 29th meeting held on 28.06.2013
M/s.M.A.Khizar Hussain & Sons	Rs.1,32,01,005/-	Rs.66,00,502/-	Rs.66,00,502/-	11th plan case (17th meeting held on 22.02.2010)
Total	Rs.3,22,71,906/-	Rs.1,09,43,677/-	Rs.2,13,28,229/-	

It is further submitted that if the petitioner approaches again with a fresh application along with the earlier sanction which was granted to the four companies, the request can be considered on merit. However, after merger of M/s.K.H.Arvind Pvt. Ltd., with the petitioner company the subsidy cannot be continued as same was unwarranted without due notice to the first respondent. The learned counsel for the first respondent has also drew attention to the guidelines of Integrated Development of Leather Sector (IDLS) and resolution dated 07.01.2009 of the Department of Industrial Policy and Promotion. It is submitted that the impugned order rejecting the request of the petitioner for continue of the subsidy, was well reasoned and it requires no interference under Article 226 of the Constitution of India. It is further submitted that the petitioner can apply for a fresh subsidy which will be considered on merits in accordance with law, and therefore, prays for dismissal of the present Writ Petition.

4. I have Considered the arguments of the learned counsel for the petitioner and the respondent. The so called reason given in the impugned communication is that M/s.K.H.Arvind Pvt. Ltd., merged with the petitioner "without any necessitated ground" and "without prior permission of the Department" and sanction based on any express clause

from the Integrated Development of Leather Sector (IDLS). A copy of the scheme has not been filed either by the petitioner or respondents to substantiate their case. On the other hand, the impugned order is based on the decision taken during the 29th meeting held on 28.06.2013 that any change in status etc. after sanction of the Steering Committee and before availing of assistance has to apply afresh to obtain new mandate under the IDLS sub-scheme. The reason given in the counter affidavit are in variance with the grounds given in the impugned communication dated 30.08.2017, which cannot be countenanced in the light of the decision of the Hon'ble Supreme Court in the case of **Mohinder Singh Gill Vs. Chief Election Officer, New Delhi,** reported in **(1978) 1 SCC 405.** In paragraph-8 it has been held as under:

> *"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji [Commr. of*

Police, Bombay v. Gordhandas Bhanji, AIR 1952 SC 16] :

> *"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."*

Thus, the reason given in the impugned communication cannot be explained by way of counter stating that machines which were found at the transferor company namely M/s.K.H.Arvind Pvt. Ltd. were not eligible for the subsidy. Such ground cannot be countenanced. That apart in the typed set filed by the petitioner, communication of the Central Leather Research Institute (CLRI) on 12.08.2016 & 14.06.2016 in response to the letter of the first respondent dated 27.04.2016 indicates that the machines as per the list, were found to be present and that the machines were approved by DIPP as per sanction Letter No.9/106/06 -

Leather dated 18.12.2006 for the grant of assistance amounting to Rs.50,00,000/-. Similarly, the communication letter of the Central Leather Research Institute (CLRI) on 14.06.2016 has informed the first respondent as follows :

> "Referring to your letter dated 27.04.2016, a visit to M/s.K.H.Arvind Pvt. Ltd., (now Amalgamated with K.H.Exports Pvt. Ltd.,) was under taken on 09.06.2016.
> Nine machines as per the attached the list were found to be installed & in working condition. These machines were approved by DIPP as per sanction letter No.9/106/06-Leather dated 11.07.2011".

Thus, the reason given for rejecting the subsidy to the petitioner merely because M/s.K.H.Arvind Pvt. Ltd., merged with the petitioner cannot be countenanced. The scheme under the IDLS is only to permit export of the leather products from the country. Once the subsidy has been sanctioned, unless there are deviations, the benefits under the scheme cannot be denied. The Hon'ble Supreme Court in *M/s.Prachi Leathers (Pvt) Ltd., Vs. Union of India & Others* vide its order dated 22.03.2018 in Civil Appeal No.3176 of 2018 (Arising out of S.L.P. (c) No.13066 of 2017) has held as follows:

> "The claim of the appellant under the Integrated Development of Leather Sector ("IDLS") Scheme has been rejected mainly on the ground that it had applied in Self Finance category but it availed loan and it had also purchased machinery before 1.01.2011.
>
> We find that disbursement of subsidy could not be withheld only on the ground that the appellant shifted from 'Bank finance' category to 'self finance' category as the Scheme applied to both categories. Since the appellant had applied prior to coming into force of 12th Plan, purchase of machinery prior to 1.01.2011 was no disqualification. It is Signature Not Verified not disputed that subsidy has already been sanctioned.
>
> Accordingly, we set aside the impugned order and direct that the subsidy be disbursed to the appellant within one month."

5. Looking from any point of view, I do not find any reason to sustain the impugned order . Under these circumstances, I am inclined to allow this Writ Petition to secure the ends of justice. The respondents are directed to grant subsidy within a period of ninety days of date of receipt of this order.

6. This Writ Petition stands allowed with the above observations. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

23.06.2022

mtl
Index : Yes/ No
Internet : Yes/No

To

1.Government of India,
Represented by its Under Secretary,
Ministry of Commerce and Industry,
Department for Promotion of Industry and Internal Trade (DPIIT),
Formerly known as Department of Industrial Policy and Promotion (Leather Section),
Udyog Bhawan, New Delhi - 110 011.

2.The General Manager,
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C. SARAVANAN, J.

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