BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.12.2024

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P(MD)No.19984 of 2018

R.Ramesh ... Petitioner

(R.Ramasamy name is deleted and substituted R.Ramesh vide Court order, dated 13.12.2024 made in W.M.P(MD)No.25330 of 2024 in W.P(MD)No.19984 of 2018)

Vs.

1.The Principal Secretary / Industries
Commissioner & Director of Industries & Commerce,
Director of Industries & Commerce,
SIDCO Corporate Office Building,
Guindy Industrial Estate,
Chennai-600 032.

2.The Additional Chief Secretary
(Industries Commissioner),
SIDCO Corporate Office Building,
Guindy Industrial Estate,
Chennai-600 032.

3.The Joint Director (Engg/General Manager),
District Industries Centre,
Pudukkottai District. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned order under Ref.No.RC.No.768/A3/2018, dated 01.03.2018 an order passed by the third respondent herein and quash the same and further direct the respondents herein to grant capital and LTPT subsidy for the petitioner's Modern Rice Mill within a time stipulated by this Court and to pass any other direction and pass such other further orders.

For Petitioner	:	Mr.D.Nallathambi
For R-1 & R-2	:	Mr.D.Gandhiraj Special Government Pleader
For R-3	:	Mr.T.Sakthi Kumaran

ORDER

The present writ petition has been filed challenging the order passed by the third respondent, dated 01.03.2018, thereby rejected the application submitted by the petitioner for claiming subsidy for capital subsidy and Low Tension Power Tariff subsidy [Hereinafter called as 'LTPT') on the ground that the petitioner continued the unit under very same TIN number till the introduction of GST and the original firm continues in the same premises with a new machinery.

2. The petitioner is the proprietor is engaged in the Rice Mill business with an old type of Rice Mill in the land comprised in S.Nos.181-1-A, 181-1B1A, 181-2C, 181-1BB, 181-1B2, 181-2A1, 181-2B and 181-3 at Vettanviduthi rural area. Subsequently, in order to expand the Mill, the petitioner also had purchased additional land at measuring 13.99 acres since comprised in S.F.No.162-4 by the registered sale deed, dated 16.07.2008 situated at Vettanviduthi, Kanakkankadu Village, Karambakudi Taluk, Pudukkottai District. In order to put up a new factory building in the year 2013 to 2014, the petitioner disposed the old machineries and also demolished the old factory building premises except the portion of RCC building which is used as office building. The petitioner was sanctioned loan for his new project as Term Loan to the tune of Rs.97.50 Lakhs on 17.02.2014 and also cash credit limit up to Rs.140 Lakhs. During the month of October, 2014, the petitioner had constructed a new Mill and installed new machineries after demolishing the old building. The old service connection was also surrendered and obtained new electricity service connection as per the required load of electricity. Thereafter, the petitioner had commenced the production on 30.10.2014. The department of Industries and Commerce of Government of Tamil Nadu with a view to establish new modernized factory in the backward and rural areas introduced Micro Small and Medium [Manufacturing] Enterprises Policy, 2008 [Hereinafter called as 'Policy']. Accordingly, through the department of

Industries and Commerce grant subsidy like a capital subsidy and other heads. The petitioner had applied for grant of subsidy under the policy. On receipt of the same, the third respondent visited the petitioner's modern Mill and conducted personal enquiry. However, the third respondent rejected the subsidy claims made by the petitioner on the ground that the petitioner is running the new machineries in the old building under the original TIN number. Therefore, no new building was constructed and the petitioner is not eligible for capital and LTPT subsidy as per the Government orders.

3. On perusal of the counter affidavit filed by the third respondent revealed that as per G.O(Ms)No.14, Micro, Small and Medium Enterprises (B) Department, dated 07.05.2008, the enterprises are eligible for availing capital subsidy are as follows:

> *"a. All New Micro Manufacturing Enterprises set up anywhere in the sate (including non backward areas and industrial estates located within the radius of 50 Kms from Chennai City Centre).*
>
> *b. All New Micro, Small and Medium Agro based and Food Processing Enterprises set up in all 385 blocks in the state (except the items listed in para 8.4).*

c. All New Small and Medium Manufacturing Enterprises set up in backward areas and industrial estate, excluding the industrial estates located within the radius of 50 Kms from Chennai City Centre.

d. Existing Manufacturing Enterprises of the above three categories which have taken up substantial expansion / diversification of the existing activities.

The instant enterprise does not fall under any of the above four categories of enterprise due to the following reasons.

i. The unit is not a new unit since it was already existing, the same TIN Registration was continued till the introduction of GST.

ii. The unit cannot be considered under expansion / diversification because the existing machineries have been disposed off."

4. The entire subsidy is purely policy oriented and it has been introduced with a view to establish no industries as well as expansion of existing entities. But the petitioner installed new machineries in the old building and also run the business under the very same TIN number. Therefore, the petitioner is not entitled for subsidy.

5. On perusal of records, the G.O(Ms)No.14, Micro, Small and Medium Enterprises (B) Department, dated 07.05.2008 and the policy and it's clause 5.4 states about enterprises ineligible for subsidy and the same is reads as follows:

> ***"5.4. Enterprises ineligible for subsidy:***
>
> *Capital subsidy and other subsidies noted in paras 5.1.1 to 5.3 above will not be available to*
>
> *i. Indigenous and imported second-hand machinery (except imported second-hand machinery brought into use within the country for the first time subject to certification by Charted Engineer of its value and its residual life of not less than 5 years).*
>
> *ii. Wherever enterprises avail subsidy under any other schemes of Government of Tamil Nadu / Government of India, only differential amount of subsidy, if any, would be provided under this Policy.*
>
> *iii. Enterprises in Special Economic Zones or in Special Zones which are eligible for special fiscal benefits and special packages of incentives (though located in the blocks notified as backward) will not be entitled for Capital or LTPT subsidy provided under this Policy.*
>
> *iv. Enterprises eligible for Special Capital subsidy for thrust sectors will not be eligible for other subsidies noted in paras 5.2.2 to 5.2.5 above. However, this restriction will not be applicable to thrust sector enterprises set up in backward areas.*

v. List of enterprises / activities not eligible for the package of incentives mentioned in Para 5.1.1 and 5.1.2 for Micro Manufacturing Enterprises and in Para Nos.5.2.1 to 5.2.5 for Micro, Small and Medium Manufacturing Enterprises is enclosed as Annexure-IV."

6. The claim of the petitioner for subsidy was not rejected for any of the above ineligible conditions of the enterprises. The claim of the petitioner was rejected only on the ground that the petitioner installed new machineries in the old building which may considered as replacement of old machineries and it is not for new unit. Therefore, 1) Admittedly, the petitioner did not fall any of the ineligible conditions. 2) Deny the subsidy. In fact the petitioner submitted the following documents along with subsidy application as required by the respondents. That apart, on receipt of the claim application from the petitioner, the third respondent conducted inspection and also conducted enquiry and concluded that the petitioner had availed the bank loan facilities to the tune of Rs.97.50 lakhs as turn over and cash credit to the tune of Rs.140 lakhs from the Punjab National Bank, Vettanviduthi, Kanakkankadu Village, Karambakudi Taluk, Pudukkottai District and established a new unit by construction of entirely new building, by installing with latest version of new machineries with a value of Rs.145 lakhs [including all electrical accessories] and by obtaining new power service connection. Therefore, the third respondent is of the opinion that the unit AE has get as new unit and eligible for quote the LTPT and capital subsidy, since the petitioner have not availed any subsidy either for his old unit or new unit so far. Even then, unfortunately, without considering its own report, once again the third respondent rejected the claim made by the petitioner by the clarification issued by the Directorate / first respondent, dated 13.02.2018 that the original TIN assigned the petitioner's unit was continued till the introduction of GST and still it is used by the petitioner's unit. Hence, it is clear indicative that the original firm continues in the same premises with new machinery installed which may consider as replacement for old machinery which it is not eligible for capital and LTPT subsidy as per G.O(Ms)No.14, dated 07.05.2008. As stated *supra*, the G.O(Ms)No.14, dated 07.05.2008 and the policy do not say anywhere that unit in the old TIN number is not eligible for any subsidy. Further as per the third respondent's report itself, the petitioner had purchased new land to an extent of 13.99 acres adjacent to the old unit and the following effective steps were taken by the petitioner:

Sl.No.	Event	Date
01.	Purchased the additional land of 13.99 cents	16.07.2008
02.	Disposed the old machineries and then demolished the old factory building except a portion of RCC building used for office during	2013-14
03.	Obtained EM part - I No:33/022/12/05690E	25.10.2013
04.	Bank loan sanctioned on the new project report submitted by the applicant	17.02.2014 for Term loan:Rs.97.50 Lakhs & CC Limit: Rs.140.00 Lakhs
05.	Obtained plan of factory building approval from Kannakadu Panchayat President	
06.	Constructed the entire new factory building with 5 times more than the old building by his own fund during	29.10.2014
07.	Disconnected the old service connection vide no 150-001-61	07.05.2014
08.	Purchased all the required brand new machines and installed within the new factory building	from 26.03.2014 to 08.09.2014
09.	Payment made through RTGS	from 03.03.2014 to 03.09.2014
10.	Obtained New Service Connection vide 150-002-1705	29.10.2014
11.	Commenced production on	30.10.2014
12.	First invoice raised	17.11.2014
13.	Obtained EM part - II No: 33/022/12/04400	02.12.2014
14.	Applied for LTPT subsidy	06.01.2015 (within 90 days from DCP)
15.	Applied for Capital Subsidy	25.02.2015 (within one year from DCP)

7. Therefore, the petitioner had constructed new building after demolition of the old Mill and installed new machineries. Thereafter, the petitioner started production on 30.10.2014.

8. In view of the above, the rejection of claim made by the petitioner cannot be sustained and liable to be quashed. Accordingly, the same is quashed. The respondents are directed to grant capital and LTPT [Low Tension Power Tariff] subsidy for the petitioner's modern Mill within a period of four (4) weeks from the date of receipt of a copy of this order.

9. With the above direction, this writ petition stands allowed. There shall be no order as to costs.

13.12.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

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G.K.ILANTHIRAIYAN, J.

BTR

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