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Babu P.M vs the General Manager

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Court : Kerala

Decided On : Feb-01-2021

Judge : Honourable Mr.Justice N.Nagaresh

Appeal No. : WP(C)/39399/2015

Appellant : Babu P.M

Respondent : The General Manager

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE N.NAGARESH MONDAY, THE 01ST DAY OF FEBRUARY 2021/12TH MAGHA,1942 WP(C).No.39399 OF 2015(Y) PETITIONER: BABU P.M.,M/S.GLEN TEA FACTORY, MANAGING PARTNER, PEERMADE, 685531, IDUKKI DISTRICT BY ADVS. SRI.G.HARIHARAN SRI.PRAVEEN.H. SRI.SHINE VARGHESE RESPONDENTS: 1 THE GENERAL MANAGER, IDUKKI DISTRICT INDUSTRIAL CENTRE, CHERUTHONI, IDUKKI COLONY P.O., IDUKKI DISTRICT, 685 602 2 DEPUTY TAHASILDAR (RR), TALUK OFFICE, PEERMADE-685 531, DISTRICT IDUKKI 3 THE VILLAGE OFFICER, PEERMADE VILLAGE OFFICE, PEERMADE 685 531 (DISTRICT IDUKKI) R1-R3 BY GOVERNMENT PLEADER

SMT.RASHMI K.M. THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01.02.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: :2 :

JUDGMENT

Dated this the 1st day of February, 2021 The petitioner, who is the Managing Partner of M/s.Glen Tea Factory, has filed this writ petition seeking to restrain respondents 1 to 3 from proceeding against the petitioner for recovery of subsidy amount granted to the petitioner for the purchase of generator set mentioned in Ext.P1. The petitioner seeks for further direction to hear the petitioner and the supplier of the generator on the question as to who is the actual purchaser of the generator set.

2. The petitioner states that the petitioner's factory is a

small scale tea industry registered under the General Manager, District Industries Centre. The petitioner purchased 125 KW diesel generator on 02.07.1997 from M/s.Coimbatore Electric and Engineering Corporation as per invoice No.17 dated 02.07.1997. The diesel generator cost 6,92,725/-. :3 : The petitioner was provided with a subsidy of 2,75,000/- by the 1st respondent on production of bills and other documents.

3. Subsequently, the petitioner was proceeded against

under the Revenue Recovery Act for recovering the subsidy granted to the petitioner. The petitioner would submit that the revenue recovery is based on a local audit conducted by the 1st respondent. In fact, the 1 st respondent has only sought clarification as to how subsidy of 2,79,137/- was paid to the petitioner on the basis of invoice showing the position that the generator set was sold to M/s.India Cements Capital and

Finance Limited. On the basis of such letters seeking clarification, revenue recovery cannot be effected, contends the petitioner. The petitioner would further submit that the generator set was hypothecated to the financier and was actually delivered to the petitioner as per Ext.P1 certificate issued by the seller. In such

circumstances, the revenue recovery proceedings are unsustainable.

4. The respondents contested the writ petition filing counter affidavit. The 1st respondent in his counter affidavit :4 :

stated that as per Rules of SIS Manual, the authorities have the power to recover the ineligible amount of subsidy from the beneficiary. If the unit which availed SIS has made breach of any terms and conditions, then the unit is liable to refund the entire amount together with 14% interest. The 1 st respondent would further submit that the generator set was actually sold to M/s. India Cements Capital and Finance Limited, Kottayam

and the petitioner's factory was only a hirer. For any generator or any other machinery taken on hire, the investment subsidy cannot be provided with. The petitioner was served with a notice as evident from Ext.R1(c). Therefore, it is evident that opportunity was given to the petitioner to advance his case. In view of the conditions for grant of investment subsidy, the subsidy granted to the petitioner was irregular and it is liable to be revoked, contended the learned Government Pleader.

5. Heard learned counsel for the petitioner.

6. From Ext.R1(a) invoice, it can be seen that the generator set was sold to M/s. India Cements Capital and :5 :

Finance Limited, Kottayam. The Managing Partner, Glen Tea Factory is shown as hirer. In view of the conditions for grant of investment subsidy, a hirer cannot be extended with subsidy. As the material document Ext.R1(a) shows that M/s. India Cements Capital and Finance Limited, Kottayam is the entity to which the generator is sold, the petitioner will not be

legally entitled to claim subsidy. The revenue recovery proceedings are therefore justified. In such circumstances, I find no merit in the writ petition and the writ petition is dismissed. Sd/- N. NAGARESH, JUDGE aks/01.02.2021 :6 : APPENDIX PETITIONER'S EXHIBITS:

EXHIBIT P1 TRUE COPY OF THE CERTIFICATE DATED

RAVIPURAM ROAD, KOCHI 682016 EVIDENCING SUPPLY OF 125 KVA DIESEL GENERATING SET

EXHIBIT P2 TRUE COPY OF THE COMMUNICATION DATED

THIRUVANANTHAPURAM EXHIBIT P3 TRUE COPY OF THE RELEVANT EXTRACT OF THE REPORT ON THE LOCAL AUDIT OF THE ACCOUNTS AND REGISTERS OF THE DISTRICT INDUSTIES CENTRE, IDUKKI FOR THE PERIOD 05/98 TO EXHIBIT P4 TRUE COPY OF THE NOTICE ISSUED UNDER SECTION 7 OF THE RR ACT ISSUED BY THE 2ND RESPONDENT TO THE 3RD RESPONDENT AGAINT THE PETITIONER DEMANDING A SUM OF RS.6,92,725/- WITH INTEREST @ 7.5% EXHIBIT P5 TRUE COPY OF THE NOTICE ISSUED UNDER SECTION 345 OF THE RR ACT ISSUED BY THE 2ND RESPONDENT TO THE 3RD RESPONDENT AGAINT THE PETITIONER DEMANDING A SUM OF RS.6,92,725/- WITH INTEREST @ 7.5%

EXHIBIT P6 TRUE COPY OF THE COMPLAINT FILED U/S12(1) OF THE CONSUMER PROTECTION ACT BY THE PETITIONER OF CDRF IDUKKI ON 17.12.2012 EXHIBIT P7 TRUE COPY OF THE STATEMENT OF FACTS BY THE 1ST RESPONDENT IN CONNECTION WITH EXHIBIT P6 PROCEEDINGS EXHIBIT P8 TRUE COPY OF THE ORDER DATED 08.07.2015 MADE IN CC.NO.310/2012 BEFORE THE CDRF :7 : RESPONDENTS' EXHIBITS EXHIBIT R1(a) THE TRUE COPY OF THE INVOICE NO.17 DATED 07.06.1997. EXHIBIT R1(b) TRUE COPY OF THE LETTER NO.FC2-1765/01 L- DIS DATED 26.02.2001. EXHIBIT R1(c) TRUE COPY OF THE LETTER NO.1/302/2001 DATED 11.10.2001. ncd

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