IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WP.No.41244 of 2006

MP.No.1 of 2006 and 1 of 2007

ITC Limited represented by its Head of Finance
(Packaging and Printing Division),
Chennai-18. ...Petitioner

Vs

1.The Assistant Commissioner (CT), Zone VIII
C.T buildings, Greams Road, Chennai-6

2.The State Industries Promotion Corporation of
Tamil Nadu Limited, Chennai-8

3.The State of Tamil Nadu, represented Secretary
Department of Commercial Taxes, Government
of Tamil Nadu, Chennai-9 ... Respondents

4.

Prayer:- This Writ Petition is filed to issue a Writ of Certiorari, to call for the records of the 1st Respondent in Rc.No.5405/2006/A1, dated 9.10.2006 and to quash the same, being contrary to GO.Ms.No.43 Industries (MIG II) Department, dated 13.12.1992 and the eligibility orders of the 2nd Respondent in Lr.No.ID/ST/BIPL/2003, dated 8.12.2003, as well as the Deed of Agreement, dated 27.5.2004, entered into by the Petitioner with the Assistant Commissioner (C T) , Zone II, Coimbatore.

For Petitioner : Mr.C.Natarajan,
SC for Mr.N.Inbarajan

For Respondents : Mr.S.Manoharan Sundaram, AGP

ORDER

In this Writ Petition, the Petitioner seeks to quash the impugned notice dated 9.10.2006 of the 1st Respondent, which holds that the Petitioner is not eligible for interest free sales tax deferral benefit and proposing to recover the deferral amounts.

2. The necessary facts of the case of the Petitioner are as follows:-

a. The Petitioner is engaged in the business of manufacture and the sale of paper boards and a registered dealer under the Tamil Nadu General Sales Tax Act, 1959 and the Central Sales Tax Act, 1956. The Government of Tamil Nadu, by GO.Ms.No.43, Industries (MIG II) Department, dated 13.12.1992 and other GOs, extended interest free sales tax deferral benefit for the industries set up in various areas for various periods. The object of such a deferral facility was to enable the Unit to collect the sales tax and retain it during its infancy and utilise the same as part of its working capital with a condition of repayment in instalments after a certain period. By the Eligibility Certificate, dated 1.6.2000, a Company, by name M/s.Servall Paper Board Limited, was granted interest free sales tax deferral benefit for a period of 10 years from 1.8.1997 to 31.07.2007, for the manufacture of Paper Board, carried on in their Unit, by the 2nd Respondent for a sum of Rs.6324.80 lakhs. The repayment commenced from 1.8.2007 and would come to an end on 31.7.2017. With effect from 14.1.2000, M/s.Servall Paper Board Limited was taken over by M/s.Bilt Industrial Packaging Company Ltd., (BIPCO). The 2nd Respondent, by proceedings dated 18.08.2000, accorded approval for the change in the management. The Assistant Commissioner of Commercial Taxes, Zone II, Coimbatore also entered into an agreement dated 8.11.2000 with BIPCO to maintain sales tax deferral facility. Accordingly, BIPCO began to enjoy the IFST benefit. Thereafter, the Petitioner, who is also engaged in the same business, was permitted to purchase and take over the Unit from BIPCO, by G.O.Ms.No.31, Industries (MIFI) Department, dated 6.2.2003. Before the Unit was transferred, BIPCO vide their letter dated 25.8.2003 sought for such permission from the Secretary, Department of Commercial Taxes and Industries, Government of Tamil Nadu as well as the 2nd Respondent. The Petitioner also sought for permission to purchase the Unit along with the deferral benefit vide their letter dated 13.11.2003 from the same parties. The Petitioner also vide letter dated 18.11.2003 sought for the permission from the Territorial Assistant Commissioner (CT), Zone II, Coimbatore for such transfer.

b. The 2nd Respondent by proceedings dated 8.12.2003, granted approval for transfer of the Unit and the sales tax deferral facility extended to BIPCO. Thereafter, by proceedings dated 24.2.2004, the Commissioner of Commercial Taxes, Chepauk, directed the Assistant Commissioner (CT), Zone II, Coimbatore to enter into an agreement with the Petitioner, which was followed by a communication dated 27.2.2004 informing that the Petitioner and BIPCO had furnished the required undertakings. The Petitioner entered into an agreement dated 7.11.2003, for a slump-sale agreement with BIPCO. Thus, the transfer of the Unit, as a going concern, was effected on 19.3.2004. Thereafter, the Petitioner entered into a deed of agreement dated 27.5.2004 with the territorial Assistant Commissioner of Commercial Taxes, Zone II, Coimbatore. On the basis of the events as aforesaid, the Petitioner became entitled to the deferral facility from March 2004 onwards. As the Assistant Commissioner (CT), Zone II, Coimbatore required the Petitioner to secure a separate registration Certificate under the State Act, in spite of the Petitioner informing him regarding their registration under the Local Act with the Thiruvottiyur Assessment Circle, the Petitioner applied for a fresh registration certificate before the Commercial Tax Officer, Mettupalayam. Accordingly, the Petitioner was granted fresh registration certificates in Form D-1 under the Local Act and Form B under the Central Act for the manufacture of Paper Boards. On that basis, the Petitioner began to file returns under the Local Act and Central Act with the Commercial Tax Officer, Mettupalayam and reported all their transactions and claimed the IFST deferral benefit on the sale of paper boards manufactured in the Unit. In March 2005, the Petitioner took up the matter regarding the dual registration with the appropriate authorities both in Coimbatore as well as Thiruvottiyur. The Petitioner was advised that as per the scheme of the Local Act and the Central Act, only a single registration was proper. Accordingly, the Commercial Tax Officer, Mettupalayam cancelled the registration certificates granted to the Unit vide his proceedings dated 9.11.2005. However, the Commissioner of Commercial Taxes, by his proceedings dated 22.05.2006, directed the Commercial Tax Officer, Thiruvottiyur to include the turnovers of the new Unit, while passing final assessment orders. Thereafter, by the impugned proceedings dated 9.10.2006, the 1st Respondent held that the Petitioner is not entitled to the IFST deferral benefit and required the Petitioner to make the payment of the deferral benefit already enjoyed in one lump sum. After the receipt of the impugned proceedings dated 9.10.2006, the Petitioner made a representations to the 1st Respondent dated 20.10.2006 and dated 25.10.2006, which are pending disposal. Hence, this Writ Petition has been filed for the relief as stated above.

3. The averments in a nutshell of the counter affidavit filed by the Respondents are as follows:-

a. The Eligibility Certificate was originally granted to M/s.Servall Paper Board Limited under new IFST Scheme for 10 years from 01.08.1997 to 31.07.2007. Subsequently the properties of the said Company were assigned to BIPCO and again the same was assigned in favour of the Petitioner. The deferral scheme will be applicable to the M/s.Servall Paper Board Limited only, so long as it manufactures the product namely 'Paper Board' for which Eligibility Certificate has been granted. The

Eligibility Certificate holder did not avail any deferral facility. After transfer, BIPCO Ltd had no right to transfer the Eligibility Certificate in the absence of any concurrence or consent from the Government agency. The Eligibility Certificate originally granted to M/s.Servall Paper Board Limited is not co-extendable to the subsequent buyers namely BIPCO Ltd and the Petitioner. The machinery, for which the eligibility certificate was originally granted to Ms/.Serval Paper Board Limited and the machinery at the hands of BIPCO and thereafter, in the hands of the Petitioner are different with sea changes. The eligibility certificate originally given to M/s.Servall Paper Board Limited was not modified or altered or granted by way of fresh eligibility certificates. Therefore, the Petitioner is not entitled to claim any IFST facility based on the eligibility certificate originally given to M/s.Servall Paper Board Limited. The Petitioner or their predecessor has not obtained the permission of the Government for the slump purchase/sale of the fixed assets. From a perusal of the documents submitted before the respondents, it was seen that no such permission was granted by the Government for the alleged transfer of deferral facility. However, permission was granted by SIPCOT merely to effect that the slump sale of business from BIPCO Limited to the Petitioner company vide proceedings dated 8.12.2003. The 2nd Respondent by proceedings dated 27.2.2004 confirmed that both BIPCO Limited and the Petitioner have given undertaking to the effect that either of them in their individual capacity would assume responsibility for transfer and take over of the deferral facility used by BIPCO Ltd. Thus, it is seen that there is no specific Eligibility Certificate in the form prescribed.

b. Enjoyment of a facility, without authority to do so, is a violation of rules. Not stopping with the violation of the condition that no other product, than the specified, may be manufactured, the Petitioner had gone one step further to convert the product into a different commercial commodity in the others forms. Therefore, the Petitioner was not eligible for any kind of deferral of sales tax illegally assumed by them. Therefore, the agreement entered into with them in the mistaken belief that they had an eligibility certificate was void ab-initio and the deferral amounts already enjoyed by them should be recovered in one lump sum with interest upto the date of repayment. In such circumstances, this Writ Petition is liable to be dismissed.

4. The learned Senior Counsel for the Petitioner has assailed the impugned proceedings, by contending that the impugned proceedings is wholly without jurisdiction, as it has been passed contrary to the terms of G.O.Ms.No.43, Industries (MIG II) Department, dated 13.12.1992 read with G.O.Ms.No.31, Industries (MIFI) Department, dated 6.2.2003 and the agreement

dated 27.5.2004 entered into by the Petitioner with the State of Tamil Nadu and that the Eligibility Certificate dated 8.12.2003 is conclusive of the rights of the Petitioner and binding on sales tax officers. The learned Senior Counsel further submitted that the impugned proceedings suffer from violation of the Principles of natural justice, in as much as without any prior notice, the same has been passed and that when 2nd Respondent by the proceedings dated 8.12.2003 had clearly accorded approval for transfer of the deferral benefit from BIPCO to the Petitioner, this itself is an eligibility certificate and hence, it cannot be said that there is no eligibility certificate granted to the Petitioner and that the Petitioner had only undertaken the manufacture of paper and the finding of the 1st Respondent that the Petitioner manufactured coated paper is without evidence and prayed for quashing of the impugned proceedings.

5. The learned Standing Counsel for the Respondent reiterated the averments made in the counter affidavits and supported the impugned proceedings.

6. This court heard and considered the submissions made by the learned counsel on either side and also perused the materials placed on record.

7. The undisputed facts are that M/s.Servall Paper Board Limited, was granted Interest-Free Sales Tax deferral benefit (IFST) for a period of 10 years from 1.8.1997 to 31.07.2007, by the Eligibility Certificate, dated 1.6.2000, which was taken over by M/s.Bilt Industrial Packaging Company Limited (BIPCO), for which approval was accorded by the 2nd Respondent, by proceedings dated 18.08.2000 and a Deed of Agreement dated 8.11.2000 with BIPCO to maintain sales tax deferral facility has also been entered into. As per G.O.Ms.No.31, dated 6.2.2003, the Petitioner by letters dated 13.11.2003 and 18.11.2003 sought for permission for purchase of the Unit along with the deferral benefit. The 2nd Respondent by proceedings dated 8.12.2003, granted approval for such transfer of the Unit. The Petitioner also entered into an agreement dated 7.11.2003 with BIPCO and fresh eligibility certificates were given both under the State Act and the Central Act by proceedings dated 19.3.2004 for the manufacture of 'paper boards' and thus, the transfer of the Unit as a going concern was effected on 19.3.2004. Thereafter, the Petitioner entered into a deed of agreement dated 27.5.2004 with the territorial Assistant Commissioner of Commercial Taxes, Zone II, Coimbatore.

8. According to the Petitioner, the impugned order is contrary to the terms of G.O.Ms.No.43, dated 13.12.1992, GO.Ms.No.31, dated 6.2.2003, the Eligibility Certificate dated 8.12.2003 and the agreement dated 27.5.2004 and further, the

impugned order has been passed without considering the documents produced by them, without prior notice or without giving any opportunity to the Petitioner, thereby violating principles of natural justice.

9. On the other hand, it is the contention of the Respondents that there is no proper approval granted to the Petitioner for transfer of deferral facility and that the original Eligibility Certificate holder did not avail any deferral facility and that after transfer, BIPCO had no right to transfer the Eligibility Certificate in the absence of any concurrence or consent from the Government agency. Therefore, the Eligibility Certificate originally granted to M/s.Servall Paper Board Limited is not co-extendable to the subsequent buyers. Hence, the Petitioner is not entitled to such deferral facility and is liable to pay the deferral amounts.

10. As per the G.O.Ms.No.43, dated 13.12.1992, the Units with investments between Rs.50 crores and below Rs.100 crores are eligible for tax waiver or deferral benefits for 10 years. As per the terms of GO.Ms.No.31, dated 6.2.2003, the 2nd Respondent by proceedings dated 8.12.2003 had accorded approval for transfer of the deferral benefit from BIPCO to the Petitioner and thereafter, the Petitioner was granted registration certificates dated 19.3.2004 both under the State Act and the Central Act and thus, the transfer of the Unit was effected on 19.3.2004 and the Petitioner also entered into an agreement dated 27.5.2004 with the territorial Assistant Commissioner of Commercial Taxes, Zone II, Coimbatore for deemed payment of deferred sales tax and recovery of loan. Pursuant to the issuance of registration certificates, the Petitioner also filed returns under the State Act and the Central Act and claimed deferral benefit in March 2005. Even after cancellation of the the registration certificates, the Commissioner of Commercial Taxes, by proceedings dated 22.5.2006 directed the Commercial Tax Officer, Thiruvottiyur to include the turnovers of the Unit, while passing final assessment order.

11. When the 2nd Respondent by proceedings 8.12.2003 granted approval to the transfer of the deferral facility, the finding of the 1st Respondent in the impugned order that the Petitioner is not entitled to such facility is baseless. Even after cancellation of the the registration certificates, a direction was given to include the turnovers of the Unit, while passing final assessment order. Further, the 1st Respondent without issuing any prior notice and looking into the GOs, the registration certificates and without considering the records and the agreement and the returns filed by the Petitioners, passed the impugned order, without any basis. However, since there are allegations made by the Respondents against the

Petitioner with regard to the violation of the conditions in respect of the products manufactured other than the one so specified and converted the same into a different commercial commodity in some other forms by the Petitioner, the matter is to be remanded back to the Respondents for fresh consideration, by setting aside the impugned order.

12. In view of the above reasons, the impugned order is set aside and the Respondents are directed to redo the entire assessment on the basis of the documents produced, after giving sufficient opportunity to the Petitioner, on merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order.

13. With the above directions, this Writ Petition is disposed of. No costs. Consequently, the connected MPs are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To:

1.The Assistant Commissioner (CT), Zone VIII, C.T buildings, Greams Road, Chennai-6.

2.The State Industries Promotion Corporation of Tamil Nadu Limited,
Chennai-8.

3.The State of Tamil Nadu, represented Secretary, Department of Commercial Taxes, Government of Tamil Nadu, Chennai-9.

+1cc to M/S.N.Inbarajan, Advocate, S.R.No.68475
+1cc to the Government Pleader, S.R.No.69031

WP.No.41244 of 2006

ala(CO)
srg(17/03/2016)