THE HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
THE HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

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WRIT PETITION No.24920 OF 2001

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ORDER: (Per Hon'ble Dr. Justice B.Siva Sankara Rao)

The writ petitioner Satish Industries, represented by its Partner, Satish Kumar, filed the writ petition against the respondents under Article 226 of the Constitution of India seeking writ of mandamus calling for records relating to the proceedings No.A-2834/93-2, dated 10.09.1993 (cancelling the provisional sales tax eligibility certificate) and to set aside the same holding as arbitrary and unconstitutional and consequently declare that the writ petitioner is entitled to exemption on fixed capital investment to a tune of Rs.12,41,127.85Ps, and also to direct the respondents to issue final eligibility certificate for the same and to pass such other just orders.

2) The facts are that the State Government issued G.O.Ms.No.498, Industries and Commerce (I.A) Department, dated 16.10.1989 by providing special incentives by encouraging new industries especially in certain agency and backward areas of the State of Andhra Pradesh viz., investment subsidy, interest-free sales tax loan and power tariff concession etc., As per the

criteria provided therein Adilabad district is one among the three districts where 20% of the capital not exceeding Rs.20,00,000/-, subsidy is offered besides deferment/tax holiday on sales tax on the products manufactured in the industrial unit newly being started and also 100% of fixed capital investment upto maximum period of 10 years to the industries in the district not to mention others and the sales tax holiday is for a period of five years upto a ceiling of Rs.35,00,000/- to pay in the case of deferred payment without interest in annual instalments after the deferment period. The state level and district level committees constituted therein to scrutinise and sanction the claims of units involving eligibility capital investment of about Rs.7.50 lakhs and below to it respectively. It speaks that the decision of the State Level Committee shall be final in scrutinising and deciding the eligibile investment and for sanction of incentives to those eligible units. It is not applicable to units already existing but for new ones which hold valid registration/letters of indent and have taken steps for the first time on or after 03.10.1989 for project implementation such as applying for project finance, placing orders for any part of the machinery, commencement of construction etc., that would be eligible for those concessions provided they go into commercial production before 31.03.1995.

3) As per the affidavit of the writ petitioner, in support of the prayer supra in the writ petition pursuant to the G.O.Ms.No.498 supra being resident of Adilabad he decided to start a cotton seed oil industry (a small scale industry) and got registered the same with the Registrar of Small Scale Industries dated 31.03.1990 and thereafter on 04.09.1990 submitted an application with the General Manager, Industries Centre, Adilabad (R-4) for issuance of eligibility certificate and obtained land on lease vide registered document No.1552 of 1990 dated 01.08.1990 and also applied to the Municipality for construction of an industrial shed and also placed an order with M/s.Gopal Expeller Company, Ludhiana on 23.03.1990 for purchasing machinery, having paid Rs.10,000/- as advance and on 27.12.1991 the Electricity Department granted service connection and on 13.02.1992, the municipality granted permission to construct the shed and on 18.02.1992, Director of Factories granted permission to run the industry and based on the above, a temporary eligibility certificate was obtained from the 4th respondent on 27.01.1992 for Rs.11,50,000/-. It is further averred that the State Government modified the original scheme by another G.O.Ms.No.146, dated 25.04.1991 by excluding cotton seed oil industries from the benefit of tax holiday despite the industries already commissioned the scheme

including himself of what is referred supra and spend amounts exceeding in 25% of the total investment by him and contends that said G.O.Ms.No.146 thereby has no application to him; however, by memo No.360/Desk-10/A2-93-2, dated 01.09.1993, the Government of Andhra Pradesh represented by Principal Secretary, Department of Industries (R-1), communicated to the Commissioner of Industries (R-2) that meeting of State Level Committee held on 23.08.1993 and his case was rejected, that no reasons were assigned for rejecting his case and he made a detailed representation that was not even responded and the Commercial Tax Officer, Adilabad Circle, 3rd respondent, insisted for payment of tax. He there from was constrained to file O.S. No.54 of 1996 on the file of the District Judge, Adilabad for declaration that his firm is entitled for tax holiday as per G.O.Ms.No.498 supra and obtained interim injunction and after trial, the suit was ended in dismissal on 27.08.2001 on the ground that he did not challenge the order of rejection supra and did not implead the respondents 1 and 2 herein as parties to the suit. He claims that the State Government latter passed Act, 14 of 1995; wherein the claim for sales tax holiday was restricted to the extent of capital investment without even defining what is capital investment, but for in G.O.Ms.No.498, that as per G.O.Ms.No.146, the writ petitioner is required to commence process for installing the industry and not the production as the outer limit for commercial production fixed is by or before 31.03.1995 and thereby he is constrained to question the proceedings dated 10.09.1993 supra as prayed for in the writ petition.

4) The Respondents filed counter affidavit of the Assistant Director of Industries, while denying the writ petition averments and of no grounds to admit for delay and latches and the lis covered by suit of him reached finality for bar of the writ petition; while admitting the issuing of G.O.Ms.No.498, G.O.Ms.No.146, passing of Act 14 of 1995 and the same amended by Act 18 of 1996 and the impugned proceedings dated 10.09.1993, however, by substantiating the same and with further contention that the writ petitioner is not within the eligibility criterion and not entitled to the relief by specifically denying the so called acts allegedly performed by him for starting of the unit and commencement of the production activity and in seeking to dismiss the writ petition.

5) From the above arguments respectively of the writ petitioner as well as the respective standing counsel for respondents heard at length and perused the material on record including the propositions placed reliance.

6) Now, the points that arise for consideration are:

i) Whether the petitioner is entitled to the eligibility for the cotton seed oil industry within the parameters of G.O.Ms.Nos.498 modified by G.O.Ms.No.146 and the subsequent Act, 14 of 1995 with retrospective effect to date of G.O.ms.No.498; (amended by Act 18 of 1996) and if so entitled to the reliefs sought in the writ petition with no bar on maintainability?

ii) To what relief?

7) Undisputedly, along with the writ petition the writ petitioner did not file any documentary proof (but for so called auditors report) in support of what he claimed the alleged acts performed at para No.3 of the writ petition affidavit pursuant to G.O.Ms.No.498 not to mention subsequent G.O.Ms.No.146, even in the counter it is specifically denied and with no rejoinder even undisputedly in the suit lis he went unsuccessful on merits and the same reached finality and the writ petition filed is subsequent thereto. Importantly a Division Bench of this Court in ***Sarran Industries (Cotton Seed Oil Industry) V. Govt. of A.P***[1] on the scope of G.O.Ms.No.498, G.O.Ms.No.146, Act 14 of 1995 amended by Act 18 of 1996, on eligibility or not of industries engaged in extraction or production of cotton seed oil held that G.O.ms.No.146, dated 25.04.1991 was no doubt in partial modification of the G.O.Ms.No.498. The original annexure appended to G.O.Ms.No.498 undergone a thorough revision of eligible list as per the annexure in

G.O.Ms.No.146. It was observed that most of the industries which are already there, retained in the new annexure, some are deleted and some are modified to say list contained in G.O.Ms.No.146 becomes an integral part of G.O.Ms.No.498, but for to say the annexure to G.O.Ms.No.498 in its original form gets proceeded giving way to new list brought about by G.O.Ms.No.146. At para No.25 of the judgment, it was there from concluded that an industry engaged in the extraction or production of cotton seed oil with or without refinery, comes under the list of ineligible industries as per the annexure to G.O.Ms.No.498 as amended by G.O.Ms.No.146. It was held referring to earlier batch of writ petitions, at para No.33 of the Judgment that once the Act 14 of 1995 was enacted that was also amended by Act 18 of 1996 and came into force all earlier Government Orders are superseded. From para No.35 onwards it was observed that G.O.Ms.No.146 had no effect and the Act 14 of 1995 is given retrospective effect from the date of G.O.Ms.No.498 and the same amended by Act 18 of 1996 and by Act 18 of 1996 by amendment to Section 2 of Act 14 of 1995, it underwent a change to deny the benefit to ineligible industries specified in G.O.Ms.No.146 as the amendment is also brought into force with retrospective effect. Ultimately it was held at para No.41 that the amendment is with non-obstante clause and retrospective in operation.

8) On facts, it was observed in relation to the promissory estoppel that the tentative sales tax eligibility certificate cancelled were after the amended Act, 18 of 1996 and not before and there is no specific provision in the Act for recovery of sales tax not paid by petitioners based on said tentative sales tax eligibility certificate.

9) In ***State of Andhra Pradesh V. Sunita Industries*** in the Civil Appeal No.7238 of 2004 order dated 20.11.2004; by sitting in appeal against the orders passed in W.P. No.17931 of 2001 by a Division Bench of this Court, the Apex Court referring to G.O.Ms.No.498, G.O.Ms.No.146, Act 14 of 1995 amended by Act 18 of 1996; on facts observed that the impugned industry was a new one set up after October, 1989 and had gone into commercial production on 13.04.1991 which falls between 31.10.1989 and 31.03.1995 and by virtue of Act 14 of 1995 amended by Act 18 of 1996, Section 2 of the same which commences with non-obstante clause of notwithstanding anything contained in G.O.Ms.No.498, dated 16.10.1989, the non-obstante provision indicates that G.O issued by the State Government prior to the enactment of the Act cannot be taken into again for the purpose of applying the eligibility criterion. The Act came into force on 16.10.1989 which happens to be the date of

promulgamation of G.O.Ms.No.498, there from held entitled to the sales tax holiday with a direction to grant final eligibility certificate from provisional eligibility certificate in substances. From the above expressions it is clear that G.O.Ms.No.146 is no way in availment and G.O.Ms.No.498 ripened into an enactment with retrospective effect by Act 14 of 1995 from its amendment by Act 18 of 1996 with non-obstante clause regarding earlier G.Os.

10) Here the writ petition filed in the year, 2001 with the prayer to set aside the provisional eligibility sales tax exemption certificate cancellation proceedings is well before dated 10.09.1993. Whether he is entitled to the eligibility within the criterion or not concerned, the civil Court judgment in O.S.No.54 of 1996 went in dismissal on contest with finality not in dispute. The written statement filed by the General manager of District Industries, Adilabad in the suit and the evidence in relation thereto that form part of the findings of the Civil Court on facts show from page No.6, para No.3 of the judgment that, the unit machinery has purchased from Gopal Expeller Company, Ludhiana on 25.10.1991, from Swasthik Foundary, Ludhiana on 24.10.1991, from Nava Durga Engineering Works, Adilabad on 05.12.1991, from Jadhav Engineering Company, Amaravathi on 25.12.1991, from

Allied Electronics, Adilabad on 05.12.1991 and all the expenditure incurred is after the G.O.Ms.No.146 and after 29.04.1991. Thus, there is no any promissory estoppel to invoke.

11) As discussed supra and at the cost of repetition with reference to the facts, the writ petitioner in his affidavit supra, para No.3 claimed of he got registered the firm with Registrar of Small Scale Industries on 31.03.1990 and submitted to issue eligibility certificate to the District Manager of Industries on 04.09.1990 or placed order with Gopal Expeller Company on 23.03.1990 by payment of Rs.10,000/- advance or obtained lease deed on 01.08.1990, he did not file any of the documents to support it despite the respondents in the counter affidavit referred supra disputed all the same and there is no rejoinder even and further even the civil Court in the fact finding judgment also held referring to the pleadings and evidence that all his activities commenced only after 25.04.1991.

12) Thus, when the provisional sales tax holiday eligibility certificate thus was cancelled before 10.09.1993 and not after the Act 14 of 1995 amended by 18 of 1996 and he did not take up any activity worth, muchless substantially, pursuant to G.O.Ms.No.498 and G.O.Ms.No.146 apart from subsequent to the Act 14 of

1995 amended by Act 18 of 1996, the earlier G.Os seized force; there is nothing to survive muchless on the contention of estoppel against the respondents to claim any exemption or tax holiday muchless to impugning the proceedings. Accordingly point No.i is answered.

POINT No.ii:

13) In the result, the writ petition is dismissed. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed. No costs.

R. SUBHASH REDDY, J

Dr. B. SIVA SANKARA RAO, J

March 27, 2015
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[1] 1999 (6) ALD 486 (DB)