HON'BLE SRI JUSTICE G.CHANDRAIAH

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HON’BLE SRI JUSTICE CHALLA KODANDA RAM

W.P. Nos. 39158 and 39163 of 2014

DATE: 23-09-2015

Between:

M/s.Leo Meridian Infrastructure Projects
& Hotels Ltd. .. Petitioner

and

The State of Telangana rep. by its
Prl. Secretary, Youth Advancement
Tourism & Cultural Affairs Department
and seven others .. Respondents

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<u>COMMON ORDER</u>:- (per Hon'ble Sri Justice G. Chandraiah)

Inasmuch as the question of fact and law and the parties in these writ petitions are one and the same, these matters are taken up together for disposal by this common order.

While W.P.No. 39158 of 2014 is filed seeking to declare the inaction of the respondents in providing concessions and exemptions to the petitioner in spite of the fact that the petitioner is recognized as a Mega Tourism Project, vide G.O.Ms.No.10, dated 25.02.2009 as arbitrary and illegal, W.P.No. 39613 of 2014 is instituted seeking similar relief even though the petitioner is registered as a Tourism Unit under the Tourism Policy, 1998 and also by virtue of the orders issued in G.O.Ms.No. 6, dated 18.12.2998 and a consequential direction to the respondents to extend tax reliefs to the petitioner.

The brief facts of the case are that the petitioner – M/s.Leo Meridian

Infrastructure Projects & Hotels Ltd., Hyderabad are registered dealers engaged in the business of sale of Food and Beverages being served in the premises of their Resorts and their projects have been declared as Mega Tourism Projects. While so, it is stated that the

7th respondent – Assistant Commissioner (C.T-1) issued a Notice of Assessment of VAT dated 14.06.2010 to the petitioner demanding payment of Rs.7.93 crores towards VAT / Sales Tax and penalty for the tax period between April, 2005 and March 2010. Inasmuch as the petitioner is entitled to sale tax exemption till 2008, they submitted a letter dated 10.08.2010, but the 5th respondent refused to defer collection of VAT / Sales Tax and Luxury Tax dues from the petitioner. Thereupon, the 8th respondent issued a demand notice dated 08.02.2011 indicating that the taxes due were to be recovered by attachment of the Bank Accounts of the petitioner. On 28.04.2012, the 3rd respondent issued a Memo stating that Sales Tax / VAT exemption to the petitioner was available only till 31.10.2005 and Luxury Tax exemption was allowed till November, 2008. When the petitioner submitted a letter dated 08.02.2013 requesting for implementation of the orders of the Government in G.O.Ms.No. 10 whereby various concessions and exemptions are ordered to be extended to the petitioner, the Special Chief Secretary to the Government, vide his letter dated 06.04.2013, directed the Commissioner of Commercial Taxes to withhold the collection of pending dues and release the attachment of the petitioner's bank accounts till the Government takes a decision. Subsequently, the dealers of the petitioner filed VAT 200 returns for the year 2012-2013 reporting sale turnover as exempt sales and not claimed input tax credit on the plea that their sales are exempted from levy of tax under the A.P.V.A.T. Act, 2005. The petitioner made several representations, the latest being dated 01.07.2014 to the

4th respondent requesting to withhold the collection of pending dues and release attachment of the petitioner's bank accounts till a decision is taken by the Government. On assessment of the dealers' turnover for the tax periods from April, 2012 to September, 2013, the 7th respondent – Assistant Commissioner issued Show Cause Notice dated 30.08.2014 in Form VAT 203-A proposing to levy Tax of Rs.9,12,11,994/- and a penalty to a tune of Rs.2,28,02,998/- which is equivalent to 25 % of the tax. Now, the main grievance of the petitioner is that the 7th respondent, without considering the earlier successive representations whereby it was requested to withhold collection of pending dues, not to take any coercive steps as the matter is still pending with the Government and to implement the G.O.Ms.Nos. 6 and 10 dated 18.12.1998 and 25.02.2009 respectively in extending tax reliefs as enshrined in the Tourism Policy, 1998 and Industrial Investment Promotion Policy 2000-2005 and 2005-2010, issued proceedings dated 30.10.2014 confirming the proposed levy of penalty amounting to Rs.2,28,02,998/-. Hence, the present writ petitions are filed seeking appropriate directions.

Sri D.Prakash Reddy, learned senior counsel appearing for the petitioner, has mainly contended that even though the petitioner is eligible for incentives under the Tourism Policy, 1998, Industrial Investment Promotion Policy 2005-2010 and the G.O.Ms.Nos.6 and 10, dated 18.12.1998 and 25.02.2009 respectively, and in spite of the fact that they filed umpteen representations to extend such tax exemptions / reliefs as may be applicable to them as were allowed to other Tourism Units, the respondents have neither considered their representations nor extended the benefits thereof.

Sri K.Vivek Reddy, learned Advocate General appearing for the 1st respondent – Government (Telangana) has strenuously contended that unless and until the Government takes decision in the matter, the question of extending tax exemptions / reliefs / concessions to the petitioner and their dealers on various projects, does not arise. Further, it is contended that by virtue of the orders dated 02.09.2014 issued by the Government, no provision is there in A.P.V.A.T. Act for exemption of VAT and the petitioner-company did not obtain eligibility certificate for exemption of luxury tax. However, he has submitted that except exemptions as sought for by the petitioner under APVAT Act, any other concessions and incentives as may be applicable to the petitioner would be considered by the Government.

Heard the learned counsel for both the parties and perused the material placed on record.

This Court, by order dated 23.02.2015 in W.P.M.P.No. 49113 of 2014 directed the respondents not to take any coercive steps to raise demand for recovery of tax.

The factual aspects of the matter are not in dispute. G.O.Ms.No.6, dated 18.12.1998 provides extension of certain concessions/incentives to the Tourism Projects whereas according to the G.O.Ms.No. 10, dated 25.02.2009, the Government, while treating the petitioner as a Mega Tourism Project as a special case, ordered extension of the benefits of concession and exemptions and also concessions by Excise & HMDA to the petitioner. Further, it is to be noticed that the Government, vide orders issued in G.O.Ms.No. 169, dated 24.12.2011, framed certain guidelines and further clearly stated that for those units which have been issued eligibility certificates with the provision of limiting the tax benefits to 31.10.2005 irrespective of the fact whether they have completed five years of commercial operations, the Commissioner of Tourism will issue revised eligibility certificates incorporating the provisions of deferment of tax payment as per the guidelines. The Government Order further reveals that the Commissioner of Tourism, Andhra Pradesh, Hyderabad shall examine the requests of the Tourism Units on case to case basis and issue necessary orders based on the guidelines.

In the light of the above Orders of the Government, it is evident that the case of the petitioner is under active consideration and the Government’s decision thereon is awaited. That apart, a careful perusal of the Industrial Policy, 2000-2005 and Industrial Investment Promotion Policy, 2005-2010 of Andhra Pradesh reveals that the Government have undertaken wide-ranging measures in the filed of industrial sector by offering various incentives for the development of industrial infrastructure to the Mega Industrial Projects like the petitioner for their consistent growth and also set out various attractive offers and innumerable incentives/benefits to all eligible industrial units.

On the above analysis, this Court is of the considered opinion that though G.O.Ms.No.10 enables the petitioner to get incentives and concessions under the Industrial Policies 2000-2005 and 2005-2010, but having regard to the fact that a decision is yet to be taken on the issue with regard to extension of various specific incentives to the petitioner in which one of the components being tax-related, without going into the merits of the matter, interest of justice would be met if the writ petitions are disposed of with the following direction:

> "The 1st respondent – State of Telangana shall consider the representations, the latest being dated 01.07.2014, said to have been made by the petitioner, by taking a comprehensive decision in consultation with all the departments concerned on various concessions as can be extended under the relevant provisions of the A.P.V.A.T. Act and the existing Industrial Policies and pass appropriate orders thereon in accordance with law, within a period of one month from the date of receipt of a copy of this order and communicate the same to the petitioner. Till such time, interim stay granted by this Court on 23.02.2015 shall remain in force. The petitioner is also at liberty to make a fresh representation comprehensively setting out the details of concessions and exemptions which they are otherwise entitled to, however, such representation shall be made within one week from the date of receipt of a copy of this order.
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> At the juncture, the learned senior counsel for the petitioner, on instructions, has categorically submitted that from 2014 onwards, V.A.T. is being paid in all respects. In that view of the matter, the interim order passed by this Court earlier shall be construed as not preventing collection of tax for the periods from 2014 onwards."

With the above observations, the writ petitions are disposed of. No order as to costs.

As a sequel to the disposal of the two writ petitions, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

G. CHANDRAIAH, J

23.09.2015

bcj CHALLA KODANDA RAM,J