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

W.P.NO.2656 OF 2002

ORDER : (Per Justice R. Subhash Reddy)

This writ petition is filed seeking a writ of mandamus to declare the order passed by the 4th respondent in G.I.No./96-97,dated 09.12.1998 as illegal and arbitrary and without jurisdiction with a consequential direction to respondents 3 to 5 not to collect tax from the petitioner-Company for the tax holiday period as envisaged in G.O.Ms.No.498, dated 16.10.1989 and also in view of the certificate issued by the General Manager, District Industries Centre, Kakinada in File No.1638/B1/94, dated 02.12.1996.

The petitioner is a small scale industry engaged in the manufacture of aluminum circles. The 1st respondent – Government has issued G.O.Ms.No.498, dated 16.10.1989 notifying certain tax incentives for attracting investments by setting up new industries in the State of Andhra Pradesh.

The petitioner is one of the applicants responded to the notification issued by the Government in G.O.Ms.No.498, dated 16.10.1989 and the competent authority has issued the eligibility certificate to the petitioner in file No.1638/B1/94, dated 02.12.1996. As per the said certificate, the petitioner is given the benefit of sales tax exemption for a period of five years from 04.07.1994 to 03.07.1999 in an amount for a sum of Rs.4,94,242/-. The Commercial Tax Officer has issued a notice assessing the sales tax for the period 1994-95, 1995-96 and 1996-97, for which the petitioner has submitted detailed reply stating that he is exempted from paying such tax, in terms of G.O.Ms.No.498, dated 16.10.1989. But, on the ground that further orders are issued vide G.O.Ms.No.117, dated 17.03.1993, wherein the petitioner-industry is shown as ineligible and as such, is not entitled to the benefit of tax exemption, consequential notice was issued by the 4th respondent. Hence, this writ petition is filed.

In this writ petition, mainly it is the case of the petitioner that in view of the certificate issued by the competent authority i.e. General Manager, District Industries Centre, dated 02.12.1996, it is not open for the Commercial Tax Officer either to pass any orders reviewing the earlier orders or to deny the benefit of exemption as provided in G.O.Ms.No.498, dated 16.10.1989.

In the counter filed by the 5th respondent, while denying the various allegations made by the petitioner, it is averred that as per the District Industries Center, the petitioner is not eligible for sales tax exemption in terms of G.O.Ms.No.117, dated 17.03.1993, as such, the earlier assessment orders were reviewed and consequential notices are issued.

Admittedly, the petitioner industry is eligible for tax incentives in terms of G.O.Ms.No.498, dated 16.10.1989. It may be that eligible certificate was issued to the petitioner on 02.12.1996 i.e. after issuance of G.O.Ms.No.117 , dated 17.03.1993, but, the petitioner has applied for eligibility certificate after issuing the orders of the Government in G.O.Ms.No.498, dated 16.10.1989, according to which, the claim of the petitioner was considered by the District Industries Center, Kakinada and eligibility certificate was issued, which is not cancelled, and as such, it is not open for the assessing authority to review the earlier assessment orders, by which, the petitioner was granted exemption of sales tax for the periods 1994-95, 1995-96 and 1996-97. In the judgment of the Hon'ble Supreme Court in the case of **Vadilal Chemicals Limited v. State of Andhra Pradesh and others**[1] it is held that once the eligibility certificate issued by the Department of Industries and Commerce is intact, the views expressed by the Department of Industries must be taken as the views of the State Government. Undisputably, the eligibility certificate issued to the petitioner in terms of G.O.Ms.No.498, dated 16.10.1989, as per which, tax holiday was given to the petitioner for the period 1994-95, 1995-96 and 1996-97, and hence, it is not open for the respondents either to review the earlier assessment orders or to issue any consequential notice demanding sales tax for the same periods which are covered by the exemption certificate.

In view of the judgment referred above and further in view of the certification made by the District Industries Centre, the petitioner is entitled for grant of relief as prayed for.

Accordingly, the writ petition is allowed and the order passed by the 4th respondent in G.I.No./96-97, dated 09.12.1998, is set aside and consequently, there shall be a direction to the respondents to give benefit of tax exemption to the petitioner as per the eligibility certificate issued by the District Industries Centre, Kakinada in File No.1638/B1/94, dated 02.12.1996.

As a sequel, miscellaneous petitions, if any, pending in the writ petition shall stand disposed of. No order as to costs.

R. SUBHASH REDDY, J

Dr.B.SIVA SANKARA RAO,J

February 24, 2015

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HON’BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON’BLE Dr. JUSTICE B.SIVA SANKARA RAO

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DATE: 24.02.2015

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