IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2016

CORAM

THE HONOURABLE Mr. JUSTICE M.DURAISWAMY

W.P.No.15337 of 2012

Shree Karthik Papers Limited
rep. by Managing Director
M.S.Velu
25, 50 Feet Road
Krishnasamy Nagar
Ramanathapuram
Coimbatore 641 045 ..Petitioner

Vs.

1 The Assistant Commissioner
(Commercial Tax)
R.S.Puram (West Circle)
Coimbatore.

2 The Government of Tamil Nadu
rep. By Principal Secretary to Government
Industries (IT) Department
Fort St. George Chennai-600 009.

3 The State Industries Promotion
Corporation of Tamil Nadu Ltd.
(A Government of Tamil Nadu undertaking)
Rep. By its Managing Director
19-A Rukmani Lakshmipathy Road
Egmore Chennai-600 008.

(R-2 and R-3 are impleaded as per Order
dated 01/07/2015 in MP.1/2015)

[Respondents]

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified mandamus, calling for the records on the file of the Respondent in proceedings TNGST: 1960975/2005-2006 & 2006-2007 dated 21.05.2012 and quash the same consequently direct the Respondent to refund the TNGST and CST amounts paid by the Petitioner for the period covered by the Interest Free Sales Tax Deferral Scheme as per Government Order in G.O.Ms.26 - Industries (IT) Department dated 03.02.2011.

For Petitioner : Mr.M.Krishnappan,
Senior Counsel
for Ms.R.Swarnalatha

For Respondents : Mr.S.Kanmani Annamalai, AGP (T) (R1&2)
Mr.Ramesh Venkatachalapathy (R3)

ORDER

The petitioner has filed the above writ petition to issue a Writ of certiorarified mandamus, calling for the records on the file of the respondent in proceedings TNGST No.1960975 for the assessment years 2005-2006 and 2006-2007 dated 21.05.2012, to quash the same and consequently to direct the respondent to refund the TNGST and CST amounts paid by the petitioner for the period covered by the Interest Free Sales Tax Deferral Scheme as per Government Order in G.O.Ms.26 - Industries (IT) Department dated 03.02.2011.

2.1 It is the case of the petitioner that they are engaged in the manufacturing of writing and printing paper. The Government of Tamil Nadu, approved a scheme known as Interest Free Sales Tax Deferral Scheme for encouraging the manufacturing company situate in a remote place as an incentive. According to the petitioner, they are eligible and continues to be eligible for the Sales Tax Deferral Scheme as per the Government Order in G.O.Ms.26, Industries (IT) Department dated 03.02.2011. The petitioner was granted the deferral period from 01.02.1995 to 31.01.2004, fixing the repayment period of 9 years payable from 01.02.2004 to 31.03.2013. The petitioner is also entitled to the deferral of sales tax not exceeding Rs.752.44 lakhs. Subsequently, the repayment schedule was revised starting from 01.04.2005.

2.2 According to the petitioner, the Sales Tax Deferral Scheme expired on 01.04.2005 and the repayment period of the Scheme was upto 31.03.2014. In the meanwhile, the Petitioner Company was declared as a Sick Unit and therefore, the matter was referred to the BIFR. The BIFR, after following the necessary procedure and after hearing the various parties, sanctioned a scheme of rehabilitation by proceedings dated 22.01.2007. Under the said sanctioned scheme, the Commercial Tax Department was directed to consider granting extension of time upto 31.03.2014 for utilization of unutilized interest free Sales Tax loan of Rs.594.95 lakhs, to consider reschedulement of Interest Free Sales Tax Loan by 9 years so as to be payable over a period of 7 years, starting from 01.04.2014. Subsequently, the BIFR passed a final order dated 11.05.2007 approving the earlier direction given on 22.01.2007. The copy of the order was also communicated to the Commercial Tax Department.

2.3 According to the petitioner, since the Commercial Tax Department had failed to implement the order of the BIFR dated 11.05.2007, the petitioner filed a writ petition in W.P.No.2868 of 2008 for a mandamus to implement the order. By order dated 27.11.2009, this Court directed the Government of Tamil Nadu and the Commercial Tax Department to implement the order of the BIFR. By order dated 03.02.2011, the Government of Tamil Nadu, in G.O.Ms.26, Industries (IT) Department dated 03.02.2011, had passed an order granting time for utilization of unutilized Interest Free Sales Tax Loan of Rs.594.95 lakhs upto 31.03.2014 and Interest Free Sales Tax Loan sanctioned was rescheduled by 9 years from 01.04.2005 to 31.03.2014 so as to be payable over a period of 7 years starting from 01.04.2014. By proceedings dated 16.05.2011, the State Industries Promotion Corporation of Tamil Nadu Limited, had revised the schedule pursuant to the orders of the Government of Tamil Nadu.

2.4 In the meantime, before reschedulement ordered by the Government, the petitioner paid TNGST as well as CST for the period April 2005 to February 2007, making a total of Rs.34,48,319/-. According to the petitioner, they are eligible to the benefit of Interest Free Sales Tax Loan from 01.04.2005 onwards as per the orders of the Government. Further, in view of the order passed by the Government, the petitioner need not pay the amount of Rs.34,48,319/-. Therefore, on 30.01.2012, the petitioner sent a representation to the respondent, for the refund of the sales tax amount paid for the period 2005-2006 and 2006-2007. However, the respondent has not refunded the amount till this date. The petitioner also filed a writ petition in W.P.No.6199 of 2012 for a writ of mandamus to direct the respondent to consider and pass orders on the representation dated 30.01.2012 and this Court, by order dated 13.03.2012, directed the respondent to dispose of the representation, within a period of four weeks. Thereafter, on 21.05.2012, the respondent, rejected the claim for refund, contrary to the Government Order in G.O.Ms.No.26 dated 03.02.2011. Challenging the said order dated 21.05.2012, the petitioner has filed the above writ petition.

3. The learned Senior Counsel for the petitioner submitted that when the Government of Tamil Nadu, by the Government Order in G.O.Ms.No.26 dated 03.02.2011 extended the time for utilization of unutilized interest free Sales Tax loan of Rs.594.95 lakhs upto 31.03.2014 and also rescheduled the interest free sales tax loan sanctioned to the petitioner by 9 years from 01.04.2005 to 31.03.2014, so as to be payable over a period of 7 years starting from April 2014, contrary to the said Government order, the respondent had rejected the request of the petitioner to refund a sum of Rs.34,48,319/-.

4. Mr.S.Kanmani Annamalai, learned Additional Government Pleader, appearing for the respondent fairly submitted that the petitioner is entitled to get a sum of Rs.34,48,319/-, however, instead of getting refund of the said amount, the respondent may be directed to adjust the said amount towards the existing dues of the sales tax payable by the petitioner, in accordance with law. Further, the learned Additional Government Pleader submitted that if any excess amount is due and payable by the petitioner, over and above the sum of Rs.34,48,319/-, the petitioner may be directed to pay the excess amount.

5. In reply, Mr.M.Krishnappan, learned Senior Counsel appearing for the petitioner submitted that the petitioner is

willing to pay the excess tax due over and above the sum of Rs.34,48,319/-.

6. Having regard to the submissions made by the learned counsel on either side, since the respondent had rejected the request made by the petitioner for the refund of the sum of Rs.34,48,319/- by the impugned proceedings dated 21.05.2012, which is contrary to the Government Order passed by the Government of Tamil Nadu in G.O.Ms.No.26, Industries (IT) Department, dated 03.02.2011, the same is liable to be set aside.

7. Accordingly, the impugned proceedings dated 21.05.2012 is set aside. The respondent is directed to adjust the sum of Rs.34,48,319/- towards the existing dues of the Sales tax of the petitioner and in case of any excess amount payable by the petitioner over and above the said sum of Rs.34,48,319/-, the petitioner shall pay the excess amount towards the existing sales tax dues.

With these observations, the writ petition is disposed of. No costs.

rg

Sd/-
Asst.Registrar

/true copy/
Sub Asst. Registrar

To

1 The Assistant Commissioner
(Commercial Tax)
R.S.Puram (West Circle)
Coimbatore.

2 The Government of Tamil Nadu
rep. By Principal Secretary to Government
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19-A Rukmani Lakshmipathy Road
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+ 1 cc to Ms.R.Swarnalatha, Advocate Sr 17121
+ 1 cc to Mr.Ramesh Venkatachalapathy, Advocate Sr 17260
+ 1 cc to The Spl.Govt.Pleader (TAXES) HCT, MDS-104. Sr 17614

KR/21/3/16