THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Writ Petition No. 20354 of 2006

Order: (**Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan**)

The proceedings, under challenge in this Writ Petition, is the notice dated 20.6.2006 informing the petitioner that they were sanctioned Final Eligibility Certificate by the Commissioner of Industries, Hyderabad, to avail sales tax exemption for Rs.78,43,610/- vide proceedings dated 26.12.2000 for a period of seven years from 18.3.2000 to 17.3.2007 to manufacture rubber products; the assessee had carried on business during the years 1999-2005 in the above commodities on the rolls of the Deputy Commercial Tax Officer, Kanchikacherla, and had availed sales tax exemption of Rs. 7,82,587/-; the Additional Director of Industries, Andhra Pradesh, Hyderabad, by proceedings dated 30.8.2005, had cancelled the sales tax exemption for the reason that the unit was not working for the last one year, and there was no machinery except one lathe machine; and, in view of the cancellation orders issued by the Additional Director of Industries dated 30.8.2005, the assessee had to pay the entire amount of sales tax availed from 1999-2000 onwards.

Sri G. Gopal Rao, learned counsel for the petitioner, would submit that, as the petitioner supplies rubber to D.R.D.L. and other defence organizations, they shifted their machinery to Hyderabad to serve the defence organizations better; as the unit continued its production at Hyderabad during the required period, they did not violate any of the conditions laid down for grant of exemption from sales tax; inspite of the petitioner's representation that they were in continuous production at Hyderabad, the 3rd respondent had cancelled the incentives relating to investment subsidy and sales tax exemption; thereafter, the impugned notice was issued calling upon the petitioner to pay sales tax of Rs.7,82,587/-; and such a demand was arbitrary and illegal. Learned counsel, would place reliance on **MRF Limited, Kottayam vs. Assistant Commissioner (Assessment), Sales Tax and Others**[1].

On the other hand both Learned Government Pleader for Industries, and the Learned Special Standing Counsel for Commercial Taxes, would draw our attention to the counter affidavit, filed on behalf of the 3rd respondent, wherein it is stated that the General Manager, District Industries Centre, Vijayawada, Krishna District, had reported that the unit was not working for the last one year; there was no machinery except one lathe machine in the premises on 19.10.2004; a show cause notice was issued to the petitioner as to why the incentives, sanctioned to them earlier, should not be cancelled, and the investment subsidy be recovered; the petitioner had submitted their reply, vide letter dated 6.12.2004, stating that their unit was continuously working from the date of commencement of commercial production; the Standing Scrutiny Committee, to which the matter was referred, had inspected the unit on 16.4.2005, and had informed that major machinery worth Rs.27.00 lakhs was not found in the premises; the petitioner had informed that they were working for defence organizations for supply of rubber, and this was done at the locations of D.R.D.L. and D.R.D.O; he had also stated that the machinery had been shifted to D.R.D.O. Hyderabad; the Committee

[1] (2006) 8 SCC 702

was of the view that shifting of machinery deviated the norms; as the machinery was shifted without prior approval of the Commissioner of Industries/State Level Committee, cancellation of the incentives sanctioned to the petitioner was recommended; the report of the Standing Scrutiny Committee was placed before the State Level Committee in its meeting held on 9.8.2005; and the decision of the State Level Committee was to cancel the sanctioned incentives to the unit under Target-2000.

The Final Eligibility Certificate dated 26.12.2000, fixing the eligibility to sales tax exemption, prescribes certain conditions, among which are that the unit should be in continuous production till 17.3.2007; and the unit should not change its location or management till 17.3.2007. Admittedly, the petitioner's unit was shifted from Kondapalli in Krishna District to Hyderabad without prior permission of the Commissioner of Industries or the State Level Committee; and the unit was not in continuous production at Kondapalli, to which unit the Final Eligibility Certificate provides for exemption from sales tax.

It is not in dispute that the aforementioned conditions of the Final Eligibility Certificate have been violated by the petitioner herein. Reliance placed by Sri G. Gopala Rao, learned counsel for the petitioner, on **MRF Limited**[1], is misplaced as, in the aforesaid judgment, it has been held that, as the Government had itself recognised that the benefit of tax exemption for the fixed period of seven years would remain available to the units which had fulfilled the prescribed conditions and had obtained the Eligibility Certificate, the exemption granted could not be denied to the industrial unit concerned.

While the right to be granted exemption from sales tax accrues to the assessee because of the Final Eligibility Certificate, the right conferred under the said Certificate is hedged by the conditions prescribed therein, which included the condition that the location of the unit should not be shifted till 17.3.2007, and the unit should be in continuous production till that date. The Final Eligibility Certificate was given to the petitioner at their address at Industrial Development Area, Kondapalli in Krishna District. It is not in dispute that the petitioner has not only failed to continue production at that site till 17.3.2007, but had also shifted their unit to Hyderabad before that date.

In **Visakha Cements Private Limited vs. The Commissioner of Industries, A.P. & Others**[2], a Division Bench of this Court held that an industrial unit availing sales tax exemption should be in continuous production from the date of commencement of commercial production till expiry of the incentive period stipulated in the Final Eligibility Certificate for eligibility/repayment except in cases where the unit remains out of production for a short period not exceeding one year due to reasons beyond its control.

It is not even the petitioner's case that failure to continue production at Kondapalli, Vijayawada, was due to reasons beyond their control. They admit having shifted their unit to Hyderabad in violation of the conditions prescribed in the Final Eligibility Certificate. As grant of exemption from sales tax is hedged by the condition that the unit should be at the location where it is established and it should not shift its location, both of which the

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[2] 2006 (43) APSTJ 129

petitioner has violated, the impugned notice, calling upon the petitioner to pay the sales tax dues, is valid and does not necessitate interference.

The writ petition fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(A. SHANKAR NARAYANA, J)

21st November, 2016

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