

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.03.2017

Coram

The Honourable Mr.Justice S.M.Subramaniam

W.P. No. 20070 of 2003

Mira Textiles and Industries
(India) Ltd.,
237, Kilpauk Garden Road,
Kilpauk, Chennai 600 010.

... Petitioners

-vs-

1. The Commercial Tax Officer,
Annasalai III Assessment Circle,
No.621, Annasalai,
Chennai 600 006.
2. State Industries Promotion,
Corporation of Tamil Nadu Limited,
19-A, Rukmani Lakshmipathi Road,
Egmore, Chennai 600 008.
3. The Special Commissioner &
Commissioner of Commercial Taxes,
'Ezhilagam', Chepauk,
Chennai 600 005.
4. The State of Tamil Nadu,
rep. by the Secretary to Government,
Department of Commercial Taxes
and Religious Endowments,
Fort St.George,
Chennai - 600 009.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari, to call for the records from the file of the first respondent herein in CST/33492/2001-2002, dated 09.06.2003 and to quash the same, insofar as it provides for the recovery of the deferred tax on the deferral enjoyed by the petitioners herein.

For Petitioners : Mr.N.Prasad
For Respondents 1, 3 & 4 : Mr.S.Kanmani Annamalai
Additional Government Pleader
(Taxes)
For Respondent-2 : Mr.Ramesh Venkatachalapathy

ORDER

The petitioner, Tvl.Mira Textiles and Industries India Limited, is an assessee on the files of the Commercial Tax Officer, Annasalai III Assessment Circle, the first respondent, under the provisions of Central Sales Tax Act 1956 (for short, 'CST Act').

2. The challenge in this Writ Petition is to the assessment order passed by the first respondent, vide proceedings, dated 09.06.2003, in CST/33492, for the assessment year 2001-2002, whereby and whereunder, the petitioner's claim for availing the deferral scheme has been denied.

3. The learned counsel appearing for the petitioner has submitted that the issue involved in this Writ Petition is covered by the decision rendered by the Hon'ble Division Bench of this Court, reported in (2007) 6 VST 140 (Mad) in re (India Cements Limited Vs. Assistant Commissioner (CT) Fast Track, Assessment Circle -II, Chennai and others), wherein, the Hon'ble Division Bench, interpreted the aspect of availing of the benefits under the deferral scheme. The learned counsel further submitted that against the said decision, the Commercial Taxes Department preferred an Appeal before the Hon'ble Supreme Court, in Civil Appeal No.4233 of 2007, which was dismissed, vide judgment, dated 21.04.2011, and the said judgment was reported in (2011) 13 S.C.C. 247 in re (State of Tamil Nadu and another Vs. India Cements Ltd., and another). Therefore, the learned counsel prays that in the light of the aforesaid judgments, the present impugned order is liable to be set aside.

4. The learned Additional Government Pleader for the respondents justified the impugned order passed by the first respondent, by stating that the assessment order was passed in accordance with the guidelines issued by the Government, vide G.O.Ms.No.119 of Commercial Taxes and Religious Endowments Department, dated 13.04.1994, wherein, it is stated that the Company has to achieve its production volume and base sales volume in order to avail itself of the interest free sales tax deferral facilities, and in view of the abovesaid Government Order, the petitioner is not entitled to the benefit under the existing deferral scheme.

5. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader for respondents 1, 3 and 4 and perused counter affidavit 'filed by the second respondent and the judgments relied upon by the learned counsel for the petitioner, as cited supra.

6. As rightly pointed out by the learned counsel for the petitioner, the issue involved in this Writ Petition is covered by the aforementioned decisions. In the decision rendered by the Hon'ble Division Bench of this Court in India Cements Limited's case, (cited supra), the aspect regarding the eligibility for sales tax deferral scheme has been interpreted, and it would be beneficial to quote the relevant para from the said judgment, which reads as follows:-

" In view of the elaborate discussions made above, we are of the considered opinion that the benefit of deferral of sales tax for the sales made in excess of the base sales volume cannot be denied to the holder of the eligibility certificate, if the actual production of the industry in any financial year during the period of deferral exceeds the base production volume. Therefore, the directions in clauses 3(i) and 3 (ii) of G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated April, 13, 1994 and para 5.3 of eligibility certificate dated February, 13, 1998, if read harmoniously, the only conclusion that would follow is that the dealer will be eligible for sales tax deferral in any financial year if the production exceeds the base production volume for the sales made in that year in excess of the base sales volume or base production volume, whichever is earlier. "

7. Challenging the abovesaid proposition, when the matter went on Appeal before the Hon'ble Supreme Court, the Hon'ble Supreme Court concurred with the view expressed by the Hon'ble Division Bench and the operative portion of the judgement would read as follows:-

"7. In any event, we feel that the decision of the High Court cannot be flawed with in light of the circular dated 1st May, 2000 issued by the office of the Principal Commissioner and Commissioner of Commercial Taxes, Chennai, in exercise of power conferred on him under Section 28A of the TNGST Act. For the sake of ready reference,

the relevant portion of the circular is extracted below:

"As per GOMs No.119, CT & RE/13.4.1994 as regards expansion cases it was decided that the past revenue shall be protected obtained prior to expansion. The BPV/BSV is fixed on the basis of highest annual production/sales in the 3 years prior to expansion. Thus the industries will have to pay the taxes due upon the turnover and until the Base Production Volume/Base Sales volume mentioned in the Eligibility Certificate is achieved. The BPV/BSV shall have to be worked out and incorporated in the Eligibility Certificate by SIPCOT and other district centres as per above Government order. Hence if the details are not available the particulars of production/sales for prior three years shall be ascertained from the books of the dealers and Eligibility Certificate got amended to incorporate the particulars to avoid any dispute. As per decision of Tamil Nadu Taxation Special Tribunal in 2 (2009) 2 SCC 90 O.P.1229/1230/1231/98 dated 23.11.1998. Mercury Fittings (P) Ltd. It was held that GOM No.119/CTRE/13.4.1994 (sic) contemplate the liability to pay tax with reference to Base Production Volume or Base Sales Volume whichever is reached earlier and the liability for deferral is only with reference to volume of Sales and not with reference to taxes paid on sales for the base year. Thus all Deputy Commissioners and Assistant Commissioners shall thoroughly verify all expansion cases and satisfy themselves that taxes have

been paid until the BPV/BSV has been achieved." (Emphasis supplied by us)

25. It is manifest from the highlighted portion of the circular that as per the clarification issued by the Commissioner of Commercial Taxes, in exercise of the power conferred on him under Section 28A of the TNGST Act, the benefit of sales tax deferral scheme would be available to a dealer from the date of reaching of BPV or BSV, whichever is earlier, as is pleaded on behalf of the first respondent. It is trite law that circulars issued by the revenue are binding on the departmental authorities and they cannot be permitted to repudiate the same on the plea that it is inconsistent with the statutory provisions or it mitigates the rigour of the law. "

8. Thus, in the light of the principles laid down by the Hon'ble Supreme Court and the Hon'ble Division Bench of this Court in the cases referred to supra, the impugned order has to be set aside and the matter requires fresh consideration. Accordingly, the Writ Petition is allowed, the impugned order, dated 09.06.2003, stands quashed and the matter is remitted back to the first respondent for fresh consideration by taking into consideration the judgments referred to supra, and pass appropriate orders within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

Sd/-

सत्यमेव जयते
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Commercial Tax Officer,
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The Secretary to Government,
Department of Commercial Taxes
and Religious Endowments,
Fort St.George,
Chennai - 600 009.

+1cc to M/s.N.Inbarajan, Advocate, S.R.No.19056

+1cc to M/s.Ramesh Venkatachalapathy, Advocate, S.R.No.19183

+1cc to the Special Government Pleader, S.R.No.19222

W.P. No.20070 of 2003

MP (CO)
CS/05/06/17

सत्यमेव जयते

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