IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2017

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

W.P.No.18947 of 2003
and WPMP No.23719 of 2003

M/s Progen Systems and Technologies Ltd.,
rep by its Company Secretary
304-305, Guna Building
Anna Salai
Teynampet
Chennai 18.

Petitioner

vs.

1.The Secretary to Government
Industries Department
State of Tamil Nadu
Secretariat
Fort St.George
Chennai-9.

2.The Managing Director
State Industries Promotion Corporation
of Tamil Nadu Ltd.
19-A, Rukmani Lakshmipathy Road
Egmore, Chennai-8.

3.The Assistant Commissioner of
Commercial Taxes
Kancheepuram.

4.The Commercial Tax Officer
Ponneri Assessment Circle
Ponneri, Pin 601 204.
Thiruvallur District.

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records of the first respondent relating to the letter No.18057/MIG II/95-4 dated 30.09.1996 and the consequential letter issued by the 1st respondent in Letter No.27686/MIG-2/99-2 dated 10.11.99 and quash the same as illegal, arbitrary and against the terms of the G.O.Ms.No.500 Industries (MIG-II)

Department dated 14.05.1990 and G.O.Ms.No.41 Industries (MIG-II) Department dated 18.03.1996 and further direct the second respondent to issue a fresh Eligibility Certificate as per G.O.Ms.No.500 Industries (MIG-II) Department dated 14.05.90 for a period of 9 years with the maximum ceiling of 100% of the total investments made in fixed assets.

For petitioner Mr.K. Soundararajan
For RR 1,3,4 Mr.S.Kanmani Annamalai
Additional Government Pleader (Taxes)
For R2 Mr.Ramesh Venkatachalapathi

ORDER

In order to develop industries in the State, the Government issued G.O.Ms.No.423, Industries Department dated 07.07.1989 declaring 105 Taluks in the State as industrially backward for the purpose of extending various concessions like interest free sales tax loan, interest free sales tax deferral, State capital subsidy etc.

2 The Government followed it up with G.O.Ms.No.500, Industries Department dated 14.05.1990, in which, out of 105 industrially backward Taluks, 30 Taluks were declared as industrially most backward Taluks. On the strength of G.O.Ms.No.500, the petitioner decided to establish an industrial unit for manufacturing high frequency heat resistency welded finned tube in Ponneri Taluk which was classified as industrially backward Taluk. The petitioner started taking steps for establishing the unit from February 1995 by purchasing land in Ponneri, obtaining licence from Pollution Control Board; seeking loan from various financial institutions, etc. While the petitioner was actively processing the establishment of his unit in Ponneri, the Government, vide G.O.Ms.No.41 Industries (MIG-II) Department, dated 18.03.1996, changed the rules of the game. Instead of declaring a Taluk as a backward or most backward area, the Government decided to declare a block comprising several Taluks as backward or most backward.

3 On account of this change in the game rule, Ponneri which was hitherto an industrially backward area, became an industrially forward area, thereby disentitling the petitioner to certain concessions that were provided by G.O.Ms.No.500. In G.O.Ms.No.500, the unit will be entitled to interest free sales tax deferral for a period of 9 years which benefit the petitioner lost on account of Ponneri being declared as industrially forward area by virtue of G.O.Ms.No.41. A unit falling within an industrially forward block would be entitled to only 5 years of interest free sales tax deferral.

4 As stated above, an industrially backward area would be entitled to 9 years of sales tax deferral. The sudden change in the rule of the game had caused serious prejudice to several entrepreneurs who had, on the strength of the assurance given under G.O.Ms.No.500, had taken steps to establish production units in the backward and most backward Taluks like the petitioner. This was realised by the Government and the Secretary to Government, by communication dated 30.09.1996, has referred to this anomaly and in order to alleviate the hardships, had directed that the units in backward Taluks which had commenced production on before 18.09.1997 will be entitled to 9 years interest free sales tax deferral. Unfortunately, the petitioner commenced his production in December 1997 and therefore, the petitioner's unit became disentitled to the benefits of 9 years interest free sales tax deferral, whereas, he was given 5 years interest free sales tax deferral.

5 The petitioner made a representation dated 26.08.1999 to SIPCOT for extension of his eligibility certificate for availing 9 years interest free sales tax under G.O.Ms.No.500, which was negatived by order dated 10.11.1999, challenging which, the petitioner is before this Court.

6 At the time of admission, on 08.10.2003, this Court had passed the following interim order:

> "Interim injunction on condition, the petitioner pays 40% of the demanded amount, as per the repayment schedule, to the fourth respondent, within a period of eight weeks from today and continues to pay 40% of the future demand on or before 5th of every succeeding month, to the fourth respondent, failing which, the interim injunction granted shall stand automatically vacated. Notice."

7 Not satisfied with the conditional interim injunction granted by this Court by order dated 08.10.2003 in W.P.M.P. No.23719 of 2003, the petitioner filed a writ appeal in W.A. No.3794 of 2003 and obtained interim order on 23.12.2003. The said writ appeal was finally disposed of on 31.03.2011 in the following terms:

> "3. The present writ appeal is preferred against the conditional order of stay passed in the Miscellaneous Petition by the learned single Judge. While admitting the writ petition, this Court had passed an order of interim stay on 23.12.2003. The respondents had not taken any steps to vacate the interim order granted by this Court on 23.12.2003.

4. Considering the fact that the interim order granted by this Court is not vacated for more than seven years, the said order is made final. However, taking into consideration the facts of the case, the hearing of the writ petition may be expedited. The writ appeal is accordingly disposed of. No costs. The Miscellaneous Petition is closed."

8 Heard Mr.Soundararajan, learned counsel for the petitioner and Mr.Kanmani Annamalai, learned Additional Government Pleader (Taxes) for respondents 1,3 and 4.

9 This writ petition was admitted in the year 2003 and more than 9 years have lapsed. After lapse of 9 years, the petitioner has paid the sales tax to a tune of Rs.1,50,97,285/- to the Department. Thus, in effect, even without any Government Order, the petitioner has availed the benefits of the interest free deferral scheme. In the light of the above, nothing survives in this writ petition. However, there is some justification in the contention of the petitioner that after having invested so much of money on the assurance given by the Government in G.O.Ms.No.500, he cannot be suddenly denied the benefits of the said Government Order on the ground that he had not started production on 18.09.1997.

With the above observation, this petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

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Ponneri Assessment Circle
Ponneri, Pin 601 204.
Thiruvallur District.

+1 cc to Mr.K.Soundararajan Advocate sr 5191
+1 cc to Special Government Pleader (Taxes) High Court
Madras sr-5258

W.P.No.18947 of 2003

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