IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.02.2018

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

W.P.Nos.12275 & 12276 of 2006
and
W.M.P.Nos.13846 & 13847 of 2006

Chamundi Steel Castings (India) Limited,
rep.by its Director,
Mahendrakumar Gupta,
Thally Road,
Kalukondapalli,
Belagondapalli P.O.
Hosur - 635 114.

...Petitioner in both W.Ps.

Vs.

1.The Commercial Tax Officer,
Hosur (South),
Hosur.

2.The Assistant Commissioner (CT),
Dharmapuri.

3.The State Industries Promotion
Corporation of Tamil Nadu Limited,
rep.by its Managing Director,
19-A, Rukmani Lakshmipathy Road,
Egmore, Chennai - 600 008.

...Respondents in both W.Ps.

Prayer in both W.Ps:- Writ Petitions, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus, to call for the records on the files of the First pleased to call for the records on the files of the first respondent herein in TNGST No.3360959/2000-01 and 2001-02, dated 05.04.2006, and to quash the same, directing the first respondent herein to forbear from recovering any tax referring to the Bench Mark level till the disposal of the petition dated 17.04.2006 filed before the third respondent.

For Petitioner in both W.Ps. : Mr.N.Inbarajan

For Respondents in both W.Ps.: Mr. M. Hariharan,
Additional Government Pleader

COMMON ORDER

Heard Mr.N.Inbarajan, the learned counsel appearing for the petitioner and Mr.M. Hariharan, the learned Additional Government Pleader for the respondents.

2. The legal issue involved in these Writ Petitions is as to whether the deferment of tax based on the eligibility certificate issued in favour of the petitioner should be construed to become eligible only on increased volume of production/sale and not to be construed to mean benefit only from the date of reaching base produce volume and not from the date of reaching base sales volume.

3. The issue has been settled by the Hon'ble Supreme Court, in the case of State of Tamilnadu and another versus India Cements Ltd., and another, reported in [(2011) 40 VST 225 (SC)] wherein, it is held as follows:-

> "19. A conjoint reading of clauses 3(i) and (ii) of G.O.Ms.No.119 dated April 13, 1994, and paragraph 5.3 of eligibility certificate dated February 13, 1998 would show that the object of the conditions with reference to reaching of BPV is to ensure that the concerned unit achieves the highest production and sale of the existing unit in the last three years prior to the commencement of the commercial production in the expansion unit, resulting in higher revenue on higher sales. The benchmark for availing of the benefit of the sales tax deferral scheme having been fixed both with reference to the production as also to the sales, in our opinion, it is immaterial whether the unit concerned reaches BPV or the BSV earlier. In our view, the word "when"employed in clause 3 9ii) of G.O.Sm.No.119, whether read as "if"or "after"only signifies that in order to avail of the benefit of sales tax deferral or sales made in the year in excess of the BSV, the industry must achieve in that year the BPV, which is the highest production of the last three years prior to the expansion, for every assessment year of the total number of years, viz., 12 years, besides reaching BSV in that particular year. It is obvious that by insisting that the BSV should also be reached, the revenue of the State gets protected in every assessment year during the

entire period of deferral and, in fact, the industry gets the benefit of deferral only on sales which are in excess of the BSV. It is the pertinent to note that if for any reason the beneficiary ultimately fails to achieve the BPV during the financial year, the benefit of deferral of sales tax availed of by it on achieving BSV becomes refundable forthwith along with interest thereon. In our opinion, in the light of the intention behind the schemes, clause 3(ii) of G.O.Ms.No.119 cannot be construed to mean the benefit which would flow only from the date of reaching the BPV and not from the date of reaching the BSV, particularly when the main object of the schemes is to increase the productivity without compromising with the revenue of the State. Any other interpretation of the said G.O.Ms. Would frustrate the object of the scheme. It is now well established principle of law that if a plain meaning given to the provision for the purpose of considering as to whether the applicant had fulfilled the eligibility criteria as laid down in the notification or not is found to be clear, purpose and object the notification seeks to achieve must be given effect to."

4. In the light of the above decision of the Hon'ble Supreme Court, the assessment has to be re-done by applying the law laid down by the Hon'ble Supreme Court.

5. For the above reasons, these Writ Petitions are allowed, the impugned orders are set aside and the matters are remanded to the first respondent for fresh consideration, who shall apply the decision in the case of State of Tamilnadu and another versus India Cements Ltd. (supra), consider the facts of the petitioner's case, afford an opportunity of personal hearing and redo the assessment in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are closed.

klt/s

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1.The Commercial Tax Officer,
Hosur (South),
Hosur.

2.The Assistant Commissioner (CT),
Dharmapuri.

3.The State Industries Promotion
Corporation of Tamil Nadu Limited,
rep.by its Managing Director,
19-A, Rukmani Lakshmipathy Road,
Egmore, Chennai - 600 008.

+1cc to Mr.N.Inbarajan, Advocate Sr.No.9137
+1cc to Special Government Pleader SR.No.9930

LRS(CO)
sm:27.2.2018

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