THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.2801 of 2018

ORDER: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

Heard Sri S.Dwarakanath, learned counsel for the petitioner, and Sri Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes and, with their consent, the Writ Petition is disposed of at the stage of admission.

The short question, which necessitates examination in this Writ Petition, is regarding the date by which the sales tax deferment amount is required to be re-paid. The dispute, in the present case, relates to sales tax deferment of the year 2003-04.

In terms of the policy notified in G.O.Ms.No.108 dated 20.05.1996, and the Final Eligibility Certificate issued to the petitioner on 29.06.2002, the sales tax deferment amount for a particular year is to be paid at the end of the 14th year. Consequently, for the year 2003-04, the 14th year would end on 31.03.2018. A similar view was taken by a Division Bench of this Court in W.P.No.1261 of 2018 dated 22.01.2018.

Sri Shaik Jeelnai Basha, learned Special Standing Counsel for Commercial Taxes, would, however, contend that the Division bench, while disposing of W.P.No.1261 of 2018 by its order dated 22.01.2018, did not notice the memo of the Commissioner dated 19.12.2012.

As reliance is placed by the learned Special Standing Counsel, on the memo dated 19.12.2012 issued by the Commissioner, it is necessary to note its contents which read thus:

> "The attention of M/s Integrated Thermoplastics Ltd, Hyderabad, is invited to the reference cited, wherein, it was requested for the clarification with regard to the due date for the repayment of sales tax already deferred for the assessment years from 1997-98 to 1999-2000.

> In this regard, it is to inform that Final Eligibility Certificate was issued by the Industries Department for a period of 14 years commencing from 9-4-1996 to 1-4-2010 and "as per Final Eligibility Certificate issued by the Industries Department at Column 11(1), the dealer should have to repay the sales tax deferred in a year at the end of 14th year without interest".
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> Further, it is to inform that as per Note (C) of para 6.03 of GO Ms.No.108, Industries & Commerce(IP) Department, dt 20.05.1996, "Now Industrial units, availing Sales Tax Deferment option, can avail deferment on sales tax to the extent of eligibility fixed, in a period of 14 years or less. The amount deferred by the beneficiary unit in the first year should be paid back in lumpsum at the end of 14th year thereof without interest. Similarly, the deferred amount in the 2nd year should be paid back in lumpsum at the end of 15th year, and so on. Belated payment will carry 21.5% interest or as decided by Government from time to time (from the due date)".
>
> Therefore, the due date for repayment of sales tax deferred in the year 1996-97 is 31.03.2010. The due date for the payment of the sales tax deferred in the year 1997-98 is 31.3.2011 and so on."

In the afore-extracted memo, the Commissioner has rightly noted that repayment of sales tax, deferred in a year, must be made at the end of the 14th year without interest. However, while computing the 14 year period in the aforesaid memo which relates to sales tax dues of the year 1996-97, the Commissioner has erroneously computed the 14 year period as ending on 31.03.2010, though the 14 year period, after the assessment year 1996-97, would end only on 31.03.2011. The 14 year period, for repayment of the sales tax deferment amount, should be computed from 31.03.1997 and, when so computed, the end of the 14th year would only be on 31.03.2011 and not 31.03.2010. The Commissioner has, in effect, computed the period of repayment to be made at the end of the 13th year, and not at the end of the 14th year.

As the Commissioner's memo also notes that repayment of the sales tax deferred amount should be made only at the end of the 14th year, the error in computing the 14 year period, in the said memo, cannot form the basis for denying relief to the petitioner.

The terms and conditions of the Final Eligibility Certificate, which are binding both on the Commercial Tax Department and the petitioner, expressly require repayment of the sales tax deferment amount, for a particular year, to be made at the end of the 14th year without interest. The word used therein is "end of the year", and not "beginning of the year"; and, consequently, the sales tax deferment of the year 2003-04 is liable to be repaid only at the end of 2017-18 i.e by 31.03.2018, and not in the beginning of the said year. The mere fact that the petitioner had, on their own accord, paid a sum of Rs.8.8 crores, as against the sales tax deferred amount of Rs.11.94 crores, during the course of the 14th year, and did not wait till the end of the year to do so, would not justify the Commercial Tax Officer insisting on payment of the entire amount before 31.03.2018. While the petitioner is still entitled, if they so choose, to repay the entire amount even before the end of the financial year 2017-18, i.e before 31.03.2018, the authorities can take coercive steps, for recovery of the said amount, only thereafter and not before.

The impugned demand notice, is therefore set aside. The petitioner shall pay the sales tax deferment amount due, for the assessment year 2003-04, on or before 31.03.2018, failing which it is open to the respondents to take steps for recovery of the said amount on or after 01.04.2018.

The Writ Petition is disposed of accordingly. Miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

21st February, 2018
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<u>Writ Petition No.2801 of 2018</u>

<u>Date: 21.02.2018</u>

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