IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2019

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THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.NOS.30221 AND 30222 OF 2005
AND
W.M.P.NO.33140 OF 2005

M/s.Maxwell Industries Ltd.,
(Spinning Division),
Kolappalur - 638 456,
Gobichettipalayam Taluk,
Erode District. ...Petitioner in both WPs

Vs

1. The State of Tamil Nadu,
   Rep. by the Secretary to Government,
   Commercial Taxes and Religious
   Endowments Department,
   Fort St. George, Chennai.

2. The Managing Director,
   The State Industries Promotion,
   Corporation of Tamil Nadu Limited,
   (SIPCOT), 19-A, Rukmini Lakshmipathy Road,
   Egmore, Chennai - 600 008.

3. The Assistant Commissioner (CT),
   Erode.

4. The Deputy Commercial Tax Officer,
   Gobichettipalayam.

... Respondents in both WPs

Prayer in 30221 of 2005:

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ or order of direction or any other Writ in the nature Writ of Certiorarified Mandamus to call for the records of the impugned proceedings of the fourth respondent herein in TNGST/2961277/2004-05 (Roc.1449/2005/A4) in his files, quash the proceedings dated 29.08.2005 issued therein and to further direct the fourth respondent to refund a sum of Rs.44,09,577/- paid under mistake of law.

Prayer in 30222 of 2005:

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ or order of direction or any other Writ in the nature Writ of Mandamus, directing the respondent to extend to the petitioner the benefit of IFST deferral amount for the sum of Rs.2499.43 lakhs for the extended period 01.08.2004 to 31.03.2006 in accordance with the State Government's Letter No.(MS) 229 Industries (MIG-II) Department dated 27.05.1991.

For Petitioner :Mr.C.Subramanian
for Mr.K.J.Chandran in both WPs

For Respondents :Mr.V.Haribabu,
Additional Government Pleader
for R1, 3 and 4 in both WPs
Mr.Ramesh Venkatachalapathy for R2
in both WPs

COMMON ORDER

The issue arising in these cases is on the restriction of sales tax deferral benefit by the Commercial Tax Department.

2. Mr.Haribabu, learned Additional Government Pleader for the Revenue fairly concedes that the issue is covered by a decision of the Division Bench of this Court in Thiru Arooran Sugars Limited, V. State Industries Promotion Corporation of Tamil Nadu Limited and others [(2007) 9 VST 614 (Mad)] and that Special Leave Petitions filed by the Revenue challenging the aforesaid decision before the Supreme Court have also been dismissed in C.A. Nos.6636 to 6640 of 1983 and 175 to 177 of 1985 and S.L.P. No.2611 of 1988 dated 30.03.1997. The Bench states as follows:

> '23. In the instant case, it is not in dispute that the total investment of the petitioner is Rs.1,044,21 lakhs and the commercial production was commenced on September 1, 1993 and consequently, they are eligible for waiver of sales tax for a period from September 1, 1993 to August 31, 1998 subject to the ceiling of total investment made in fixed assets. But, merely because the eligibility certificate was issued by the SIPCOT on December 16, 1994, whereunder, the above factual details were not disputed, the

certifying authority cannot, at any stretch of imagination, by the impugned proceedings, while rescheduling the period of five years from November 1, 1994 to October 31, 1999, restrict the quantum of waiver of sales tax benefit to the actual sales tax remitted during the period from September 1, 1993 to October 31, 1994, as such attempt would be contrary to the spirit and substance of G.O.Ms.No.500, Industries (MIG-II) Department dated May 14 1990.'

3. The restriction imposed vide communication dated 26.03.1997 is thus held to be bad in law. The respondent has, pursuant to communication dated 23.03.1997, issued proceedings dated 27.01.1998 and by notice dated 28.07.2005 calling upon the petitioner to pay the excess availed deferral amount of Rs.44,997/- within a period of 3 days. The subsequent proceedings and notice are based on the restriction imposed under communication dated 26.03.1997 that has been set aside by me under this order.

4. The petitioner may thus approach the respondents to seek refund of the amount paid in excess and such representation of the petitioner, if filed, shall be disposed by the respondents, on merits, after hearing the petitioner and in accordance with law within a period of four (4) weeks from date of receipt thereof.

5. The impugned orders are set aside and these writ petitions are allowed. Connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

rkp

To

1. The Secretary to Government,
The State of Tamil Nadu,
Commercial Taxes and Religious
Endowments Department,
Fort St. George, Chennai.

2. The Managing Director,
   The State Industries Promotion,
   Corporation of Tamil Nadu Limited,
   (SIPCOT), 19-A, Rukmini Lakshmipathy Road,
   Egmore, Chennai - 600 008.

3. The Assistant Commissioner (CT),
   Erode.

4. The Deputy Commercial Tax Officer,
   Gobichettipalayam.

+2cc to Mr.Ramesh Venkatachalapathy, Advocate, S.R.No.79501
+1cc to Mr.C.Subramanian, Advocate, S.R.No.79007
+1cc to the Government Pleader, S.R.No.79263

W.P.Nos.30221 and 30222 of 2005
and
W.M.P.No.33140 of 2005

CS/31/10/2019
CS/19/11/2019