IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2019

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.40393 of 2005

BAPL Industries Ltd.,
rep. by its Managing Director
Bhuradia Chambers ... Petitioner

Vs.

1.Government of Tamil Nadu
rep by its Secretary
Industries Department,
Fort St.George,
Chennai 600 009.

2.State Industries Promotion
Corporation of Tamilnadu Limited,
rep by its Deputy General Manager (ID),
No.19A, Rukmani Lakshmipathy Road,
Egmore, Chennai 600 008.

3.The Tamilnadu Industrial Investment
Corporation Limited,
rep by its Manager (Project),
692, Anna Salai,
Nandanam,
Chennai 600 035. ... Respondents

Prayer:
Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the concerned records from the 2nd and 3rd respondent, quash the order of the 2nd respondent bearing Lr.No.ID/ST/BAPL/2005 dated 24.08.2005 and the order of the 3rd respondent bearing TIIC/HO/SUBSIDY/ 2005-06 dated 19.09.2005 and consequently direct the respondents to issue Eligibility Certificate under IFST Defferral Scheme as issued to other industries which commenced operation prior to 23.01.2000.

For Petitioner : Mr.Balan Haridas

For Respondents: Mr.J.Ramesh for R1
Additional Government Pleader
Mr.M.Devaraj for R2
M/s.Rita Chandrasekar
for M/s.Aiyar and Dolia
for R3

O R D E R

The petitioner has filed this petition seeking issuance of Writ of Certiorarified Mandamus calling for the records from the respondents 2 and 3, to quash the order of the second respondent bearing Lr.No.ID/ ST/BAPL/2005 dated 24.08.2005 and the order of the third respondent bearing TIIC/HO/SUBSIDY/ 2005-06 dated 19.09.2005 and consequently to direct the respondents to issue Eligibility Certificate under IFST Defferral Scheme as issued to other industries which commenced operation prior to 23.01.2000.

2.The case of the petitioner is that the petitioner is a public limited company registered under the Companies Act, 1956 and it is represented by its Managing Director. The petitioner company is engaged in the manufacture of 100% cotton yarn and its manufacturing unit is located at Pollachi Taluk, a designated backward Taluk of Coimbatore, which is eligible for nine years of sale tax deferral. The petitioner commenced its operation on 05.02.1999 as a 100% Export Oriented unit and invested a sum of Rs.905.85 Lakhs on the project assisted by M/s.Rafiffeisen Zentral Bank, Vienna, Austria, guaranteed by M/s.Canara Bank, R.S.Puram Branch, Coimbatore.

3.It is the further case of the petitioner that the Government of Tamil Nadu vide G.O.Ms.No.500, dated 14.05.1990, directed that deferral of sales tax will be given for new industries while undertaking expansion/ diversification of units for a period of nine years and the total amount thus given as deferral shall not exceed the total investment made in fixed assets in such new unit under expansion/ diversification.

4.It is the further case of the petitioner that the Government of Tamil Nadu vide G.O.Ms.No.4, Commercial taxes and Religious Endowments Department, dated 11.02.1994 had confirmed that the amount of sales tax deferred shall be treated as deemed to have been paid on condition that an identical amount is treated as Government loan extended to the assessee which shall be payable to the Government by the assessee after the completion of period of deferral i.e., on 31.12.2003. The petitioner having commenced its operation on 05.02.1999, was not issued with the eligibility certificate under IFST Defferral

Scheme, however, when the petitioner approached the respondents 2 and 3 in this regard, the impugned letters came to be passed. Aggrieved by the same, the petitioner has filed this writ petition.

5.The learned counsel for the petitioner would submit that in the impugned letter of the third respondent, it is stated that the Government has discontinued the offer or grant of any new incentive based on sales tax for industries with effect from 23.01.2000, however, the fact remains that the petitioner commenced its operation on 05.02.1999 and the benefit was extended to other industries which had commenced its operations.

6.The learned counsels appearing for the respondents would submit that the Government has discontinued the offer or grant of any new incentive based on sales tax for industries with effect from 23.01.2000 and would further submit that the petitioner started making production to cater the need of the local market only after 23.01.2000 and hence, the petitioner was not issued with the eligibility certificate under IFST Defferral Scheme.

7.Heard both sides.

8.Perusal of the impugned letters reveal that the Government has discontinued the offer or grant of any new incentive based on sales tax for industries with effect from 23.01.2000. Though the petitioner company aver that it commenced its operation on 05.02.1999, the petitioner did not take any steps to secure the eligibility certificate under IFST Defferral Scheme. On a perusal of the impugned letter dated 24.08.2005, in the reference the petitioner's letter is stated to be dated 18.08.2005. Even on perusal of the affidavit filed by the petitioner, it reveals that the petitioner did not take any steps to secure the eligibility certificate before withdrawal of the Scheme i.e.,23.01.2000 and the petitioner made representation to the concerned Authorities for availing the eligibility certificate under IFST Defferral Scheme only on 18.08.2005 and on 29.08.2005.

9.Hence, in the absence of any material to show that the petitioner applied for eligibility certificate under IFST Defferral Scheme before the withdrawal of the Scheme i.e., 23.01.2000, this Court is not inclined to exercise its jurisdiction under Article 226 of the Constitution of India to extend the benefit which was withdrawn in the year 2000 to the petitioner. Further, the writ petition is of the year 2005. In the absence of any interim order, after a lapse of nearly 14 years, this Court finds nothing survives for adjudication in this writ petition.

10.The writ petition is accordingly dismissed. No costs. Consequently, the connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

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To

1.The Secretary
Industries Department,
Fort St.George,
Chennai 600 009.

2. The Deputy General Manager (ID),
State Industries Promotion
Corporation of Tamilnadu Limited,
No.19A, Rukmani Lakshmipathy Road,
Egmore, Chennai 600 008.

3.The Manager (Project),
The Tamilnadu Industrial Investment
Corporation Limited,
692, Anna Salai,
Nandanam, Chennai 600 035.

+1cc to M/s.Aiyar and Dolia, Advocate SR.No.50740

+1cc to Government Pleader SR.No.50125

W.P.No.40393 of 2005

VP(CO)
GMY(19/07/2019)