IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2019

CORAM:

THE HON'BLE MR. JUSTICE M.S. RAMESH

W.P.No.4930 of 2012
and M.P.No.1 of 2012

Ruchi Soya Industries Private Ltd.,
[rep. by its Power of Attorney Holder,
Mr.A.R.Prasad]
40/41, East Mada Church Street,
Royapuram,
Chennai - 600 043. ...Petitioner

vs.

1.The State Industries Promotion
Corporation of Tamil Nadu Ltd.,
19-A, Rukmani Lakshmipathy Road,
Post Bag No.7223, Egmore,
Chennai - 600 008.

2.The Assistant Commissioner (CT),
Royapuram Assessment Circle,
114, Angappa Naicken Street,
Chennai - 600 001. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus, direction under Article 226 of the Constitution of India, and quash the same, and direct the first respondent to delete the words "the sales tax benefit for the period 01.01.2010 to 30.06.2015 will be restricted to actual sales tax remitted during the period 1.1.2002 to 30.06.2005" found in the proceedings of the first respondent in ID/ST/RHFL/05 dated 22.07.2005.

For Petitioner : Mr.K.A.Parthasarathy
for M/s.N.Inbarajan

For Respondents : Mr.Ramesh Venkatachalapathy
Standing Counsel for SIPCOT/R1
Mr.Mohammed Shaffiq
Special Government Pleader for R2

ORDER

The petitioner was issued with the Eligibility Certificate under Sales Tax Deferral Scheme on 04.07.2005 for a period of 10 years, commencing from 01.01.2000 to 31.12.2009.

2.In view of the delay in issuing the Eligibility Certificate from the date of commencement of the commercial production, the petitioner had remitted the Sales Tax upto June 2005 and had requested for reschedulement.

3.The respondent had rescheduled the 10 period from 01.07.2005 to 30.06.2015 and while doing so, had restricted the Sales Tax benefit for a period from 01.01.2010 to 30.06.2015 to the actual Sales Tax remitted during the period from 01.01.2002 to 30.06.2005. Since the delay in issuing Eligibility Certificate was attributable only on account of the respondents, the present Writ Petition has been filed.

4.The learned counsel for the petitioner relied upon a decision of the Division Bench of this Court in the case of Thiru Arooran Sugars Ltd., vs. State Industries Promotion Corporation of Tamil Nadu Limited and Others reported in [2007] 9 VST 614 Mad, wherein on an identical set of facts, the Division Bench had held that the certifying Authority cannot restrict the quantum of waiver of Sales Tax benefit to the actual Sales Tax remitted while rescheduling the deferral period.

5.The relevant portions of the said decisions are as follows:

> Accordingly, the writ petitioner applied for eligibility certificate for availing waiver of sales tax on November 20, 1993 for their new industrial unit set up in Papanasam Taluk, Thanjavur District. After scrutinising the said application, the SIPCOT, by their proceedings dated December 6, 1994, issued eligibility certificate for waiver of sales tax for a sum not exceeding Rs.1,044.21 lakhs for a period of five years from the month in which the holder's unit commenced its commercial production, i.e., from September 1, 1993 to August 31, 1998. Obviously, there was a delay in issuing the eligibility certificate.
>
> With the above background, the SIPCOT, by proceedings dated August 16, 1995, rescheduled the waiver period from November 1, 1994 to October 31, 1999 and also directed that the sales tax benefit for the period from September 1, 1998 to October 31, 1999 would be restricted to actual sales tax remitted during the period from September 1, 1993 to October 31, 1994.

Pursuant to the above proceedings rescheduling the period of eligibility of waiver of sales tax, the SIPCOT, again, by proceedings dated March 1, 1999, stipulated that the sales tax benefit for the period September 1, 1998 to October 31, 1999 would be restricted to actual sales tax remitted during the period from September 1, 1993 to October 31, 1994.

Aggrieved by the said proceedings, the petitioner filed W.P.No.4275 of 1999 seeking a writ of certiorarified mandamus to call for the records on the file of the first respondent therein in letter No.IT/ST/TASL/99 dated March 1, 1999, quash the same and to direct the first respondent to amend from September 1, 1998 to October 31, 1999 would be restricted to actual sales tax remitted during the period from September 1, 1993 to October 31, 1994" occuring in the amendment certificate dated August 16, 1995.

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.

We, therefore, have no hesitation to hold that the petitioner is entitled to the maximum extent of waiver of Rs.1,044.21 lakhs without any restriction.

On the other hand, since there is no dispute as to the entitlement of the petitioner for the waiver of sales tax to the tune of Rs.1,044.21 lakhs for a period of five years, as rescheduled in the proceedings dated August 16, 1995, from November 1, 1994 to October 31, 1999 subject to the ceiling of total investment made in the fixed assets, viz., Rs.1,044.21 lakhs, in our considered opinion, suffice it to strike down the restriction that the sales tax benefit for a period from September 1, 1998 to October 31,1999 would be restricted to actual sales tax remitted during the period from September 1, 1993 to October 31, 1994, which would in turn qualify G.O.Ms.No.500, Industries (MIG-II) Department, dated May 14, 1990 in spirit and substance. Consequently, the order of the learned single judge is set aside and the writ appeal is allowed.

6.The aforesaid findings are self-explanatory and as such the respondents may not be justified in restricting the quantum of waiver of Sales Tax benefit to the actual Sales Tax remitted by the petitioner herein. The facts as well as the decisions rendered in the aforesaid case before the Division Bench squarely applies to the petitioner's case also and as such the petitioner is entitled to succeed.

7.It is also brought to the notice of this Court as against the decision in Thiru Arooran Sugars Ltd., vs. State Industries Promotion Corporation of Tamil Nadu Limited and Others, the respondents had preferred an SLP (Civil) CC.No.14731 of 2008 before the Hon'ble Supreme Court which also came to be dismissed on 14.11.2008.

8.In the light of the above observations, the phrase "sales tax benefit for the period 01.01.2010 to 30.06.2015 will be restricted to actual sales tax remitted during the period 1.1.2002 to 30.06.2005" found in the proceedings of the first respondent in ID/ST/RHFL/05 dated 22.07.2005, shall stand deleted and the present Writ Petition stands allowed accordingly. However, there shall be no order as to costs. Consequently, connection miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

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+1c to Mr.Ramesh Venkatachalapathy, Advocate Sr.71665
+1cc to the Special Government Pleader Sr.72202

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mp[co]
srg 04/10/2019