IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:03.02.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.A.Nos.1104 and 1105 of 2012 and
M.P.No.1 of 2012 in WA.No.1104 of 2012

Tamilnadu Petroproducts Limited,
Manali Express Highway,
Manali, Chennai 600 068. ... Appellant in both Appeals

Vs.

1. The Deputy Commissioner (CT)
   Fast Track Assessment Circle II
   PAPJM Building, Third Floor,
   Greams Road, Chennai 600 006.

2. The State Industries Promotion
   Corporation of Tamil Nadu Limited,
   19-A, Rukmani Lakshmipathy Road,
   Egmore, Chennai - 600 008.

3. The Assistant Commissioner (CT),
   Zone XI
   Chennai 600 006.

4. The State of Tamil Nadu
   Represented by the Secretary to Govt.
   CT & RE (B1) Department,
   Fort St. George,
   Chennai 600 009. ... Respondents in both Appeals

Appeals filed under Clause 15 of the Letters Patent against the common order passed in W.P.Nos.22321 and 22322 of 2009 dated 26.04.2012.

W.P.No.22321/2009:

Writ Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorari to call for the records on the file of the first Respondent herein in R.C. No. 401/2008/A2 dated 29.09.2009, culminating in the Demand vide in R.C. No. 401/2008/A2 dated 20.10.2009, and quash the said proceedings dated 29.09.2009 as illegal and contratry to law.

W.P.No.22322/2009:

Writ Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorari to call for the records on the files of the Second Respondent herein in the Eligibility Certificate No.8/X/D/D dated 28.12.2009 and quashing Paragraph 5.3 of the said Eligibility Certificate issued by the Second Respondent as contrary to the scheme of deferral available to new industry which is an independent diversification industry apart from being ultra vires the Notification No.II(1)/CTRE/157/91 (G.O.P.No.396) dated 10.09.1991 issued under Section 17-A of the Tamil Nadu General Sales Tax Act 1959 and the Notification No.II(1)/CTRE/210/92 (G.O.Ms.No.376) dated 27.10.1992 issued under Section 9(2) of the Central Sales Tax Act 1956 read with Section 17-A of the Tamil Nadu General Sales Tax Act 1959.

For Appellant : Mr.N.Prasad
For Respondents: Mr.Mohammed Shaffiq
Special Government Pleader
Assisted by Mr.ARN.Jayaprathap

COMMON JUDGMENT

(Judgment of the Court was delivered by DR.VINEET KOTHARI, J.)

These Appeals arise from the order of the learned Single Judge dated 26.04.2012 whereby the learned Single Judge dismissed the Writ Petitions filed by the petitioner company/Tamil Nadu Petroproducts Limited on the issues arising out of Interest Free Sales Tax Deferral Scheme promulgated vide G.O.Ms.No.500, Industries (MIG.II) Department, dated 14.05.1990.

2.The controversy in brief revolves around the interpretation of the terms 'Base Production Volume and the Base Sales Volume as eligibility for claiming the sales tax by the Assessee'.

3.In another G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13.04.1994 issued by the State Government, the State Government giving illustration of the Company of M/s.Ashok Leyland Limited pointed out that the criteria of Base Production Volume and Base Sales Volume may be claimed deferral of sales tax, as such falling under the said G.O.Ms.No.500 dated 14.05.1990 to protect the past revenue and only the surplus thereafter may be deferred for payment for a period of 10 years for which agreement was entered into by the Assessee and the Department. The criteria laid down in

G.O.Ms.No.119 dated 13.04.1994 is quoted below for ready reference.

"3. The Government after careful examination, have decided to accept the suggestions of the Special Commissioner and Commissioner of Commercial Taxes and they protect the reason and also help to increase the production level of the industries availing the concession. Accordingly, the Government direct that –

i) The industry will be eligible for sales tax deferral only if in a financial year production exceeds the Base Production Volume which is the highest annual production in the 3 years prior to expansion.

ii) When the actual production in the industry in any financial year exceeds the Base Production Volume, the industry would be eligible for deferral of sales tax for sales made in that year in excess of the Base Sales Volume under Tamil Nadu General Sales Tax, which is the highest of the actual annual sales in the last 3 years prior to expansion.

iii) The above conditions are applicable in cases where expansion unit is a separate unit located elsewhere or a part of the existing plant.

iv) The specifications of base Production/Sales volumes are applicable even in the case of allegedly new unit having been started by the same management or ownership or where the substantial controlling capital is put in by the same group of companies.

v) The Base Production Volume and the Base Sales Volume will have to be worked out and incorporated in the eligibility certificates at the time of issue by SIPCOT and District Industries Centres."

4.The Eligibility Certificate (E.C.) was issued to the appellant/ petitioner by the Competent Body viz., State Industries Promotion Corporation of Tamil Nadu Limited (SIPCOT) on 28.12.1999 and Clause 5.3 of that Eligibility Certificate computed the benefit of deferral available to Assessee on the following basis:

"5.2 The unit shall enter into an agreement with the Assistant Commissioner (Commercial Taxes) concerned as per terms and conditions stipulated by that department.

5.3 The company is eligible for deferral of sales tax only on the increased volume of production/sales. For the purpose of determining the increased volume of production, the base figure would be the highest of the volume of production/sale of the company in any one of the year during the last 3 years. Till reaching the volume of production /sales specified earlier the company would continue to pay tax and any liability in excess of the production/sale specified above alone will be eligible for department. The highest production / sales achieved by the company prior to the proposed expansion/ diversification in the last 3 year is Linear Alkyl Benzene 85995 MT/Rs.34981.84 Lkhs for the year 1993-94."

5.The Deputy Commissioner of Commercial Taxes - II however issued a notice to the petitioner/appellant/Assessee on 29.09.2009 calling upon the petitioner to stop the availment of deferral as they had not maintained BPV (Base Production Volume) in excess of BSV (Base Sales Volume) under expansion/diversification scheme, when branch transfer and export are excluded and therefore, the Department took a view that the Company is availing the IFST/ Deferral under the violation of conditions of Eligibility Certificate.

6.The appellant/petitioner challenged the said notice dated 29.09.2009 by way of W.P.No.22321 of 2009 and Clause 5.3 of Eligibility Certificate, by another W.P.No.22322 of 2009, which have been disposed of and dismissed by the learned Single Judge, by a common order dated 26.04.2012, aggrieved by which, the petitioner/ Assessee has approached this Court by filing the intra-Court Appeals before us.

7.Having heard the learned counsel for the parties and upon perusal of the materials placed before us, we are of the opinion that while no valid exception can be taken to the Clause 5.3 of the Eligibility Certificate issued in terms of the G.O.Ms.No.119 dated 13.04.1994 read with original notification G.O.Ms.No.500 dated 14.05.1990, but they seems to have genuine confusion which is arising on the computation of the Base Production Volume/Base Sales Volume on availing taxable turnover in the present case. Whether the Base Sales Volume comprises only local sales taxable under the TNGST Act or would include the Global Sales made by the Assessee viz., Branch transfers, interstate sales and even Export Sales. Since there was no clarity with regard to the same, in the Eligibility Certificate issued to the petitioner, the Revenue has taken a different stand in the Notice dated 29.09.2009 and which resulted in this litigation. The clarity about the inclusion of the sales which are not taxable under the provisions of the TNGST Act to be taken as Base Sales Volume or not, it ought to have been discussed even before issuance of the Eligibility Certificate itself, so that any confusion with regard to availment of the benefit of deferral in terms of the EC could have been removed at that time itself. But neither the Assessee seems to have presented its calculation of different types of turnovers and raised this issue before the Competent Body viz., SIPCOT at that stage, nor there seems to have been any coordination between the concerned Revenue Authorities of the Commercial Taxes Department and SIPCOT with regard to the clarity on the Base Turnover and Base Production Volume, so that exact amount of deferral could be determined in the facts of the case and the Agreement for deferral of such sales tax eligibility over and above the Base Turnover and protecting the earlier average revenue given by the Assessee, the same could be reflected in the Agreement entered into between the Assessee and the Department under the said Scheme as per clause 5.2 of the Eligibility Certificate dated 28.12.1999 quoted above.

8.Obviously, this factual exercise based on the questions of interpretation of terms of the Scheme itself cannot be undertaken by this Court in its extraordinary jurisdiction conferred under Article 226 of the Constitution of India. We are also constrained to observe that after long lapse of the period right from the Eligibility Certificate issued in favour of the petitioner form the year 1999 by now almost 20 years have passed by and in past 10 years even the deferral amount of the surplus revenue over and above the Base Turnover was required to be collected by the Revenue Department. But we are informed by the learned counsel for the Appellant/Assessee that tax part of the deferral sum has been paid by the Assessee, but however the issue of interest etc. remains pending.

9.We are therefore of the opinion that we should relegate the Appellant/Assessee back to the stage where the confusion about determination of the Base Production Volume/Base Turnover arose and the respondents/SIPCOT as well as the Commercial Tax Department should take a joint decision in the matter with regard to the said terms definite in the Scheme itself after giving an opportunity of hearing to the Appellant/Assessee.

10.Therefore, without expressing any opinion on our part, we direct the respondents/SIPCOT and Commercial Taxes Department to constitute a Joint Committee of the two Senior Officials of the respective Departments to re-decide the issue of the Base Turnover in the light of the contentions raised by the Appellant/Assessee in this Court. We make it clear that the Assessee will be free to raise all the contentions raised before us, also before the said Committee and uninfluenced by any observations made by us or by the learned Single Judge or by any of the authorities prior to this point of time, the said Committee will re-decide the said issue afresh in accordance with law. The issue of determination of Base Production Volume (BPV) and Base Sales Volume (BSV) is also left open for the said Committee to decide again. In view of the long lapse of time, we expect the said Committee to conclude the issue within a period of six months from today and within one month from today, both the bodies viz., SIPCOT and Commercial Tax Department will nominate two respective Senior Officials to constitute the aforesaid Committee and the said Committee shall re-decide the issue, after affording an opportunity of hearing to the Assessee in this regard and clarify and modify the Eligibility Certificate of the petitioner.

11.With the aforesaid observations, both the Writ Appeals are disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

Sgl
To

1.The Deputy Commissioner (CT)
Fast Track Assessment Circle II
PAPJM Building, Third Floor,
Greams Road, Chennai 600 006.

2.The State Industries Promotion
Corporation of Tamil Nadu Limited,
19-A, Rukmani Lakshmipathy Road,
Egmore, Chennai - 600 008.

3.The Assistant Commissioner (CT),
Zone XI, Chennai 600 006.

4.The State of Tamil Nadu
Represented by the Secretary to Govt.
CT & RE (B1) Department,
Fort St. George,
Chennai 600 009.

5.The Government Advocate,
High Court, Madras.

+1 CC to Mr.N.Inbarajan, Advocate sr 8297.

W.A.Nos.1104 and 1105 of 2012

RGN(CO)
SP(02/03/2020)