IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2020

CORAM:

THE HON'BLE Mr. JUSTICE R.MAHADEVAN

Writ Petition No.23861 of 2012
& M.P.No.1 of 2012

Shanmugapriya Textiles (P) Limited,
Dharapuram Road, Udumalpet,
Represented by its Managing Director,
R.Arunkarthik ... Petitioner

..vs..

The Assistant Commissioner, Commercial Taxes,
Udumalpet (North), Tiruppur District ... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the respondent in TNGST-2480448/2000-01, dated 25.05.2012 and to quash the same.

For Petitioner : Mr. P.Srinivas

For Respondent : Mr. A.N.R.Prathap,
Govt. Advocate (Taxes)

O R D E R

The tax and penal interest, in respect of the deferral availed before reaching the volumes of base sale and base production fixed by the TIIC Limited, Chennai, imposed on the petitioner, by way of the show cause notice dated 25.05.2012 under Section 24 (3) of the erstwhile TNGST Act, (now TNVAT Act) is challenged in this writ petition.

2. The case of the petitioner is that as per the terms and conditions of the scheme, once the industry crosses the base volume of production, the interest free deferral scheme would come into operation. The petitioner reached the base value of production and from then onwards has been availing the deferral scheme for the full period of five years. After the expiry of deferral period, the petitioner has also paid the tax due for the deferred period and all such payments were also completed in the year 2002 itself. Hence, the impugned notice is arbitrary and illegal and it is liable to be set-aside.

3. According to the averments made in the counter affidavit filed by the respondent, as per Eligibility Certificate No.IFST/D/004/V/E/CBE(S)/1996-97, dated 21.02.1997 issued by the TIIC Limited, Chennai, the deferral of tax was sanctioned not exceeding Rs.70.15 lakhs for five years i.e, from 01.03.1997 to 28.02.2002 and repayment to be made from 01.03.2002 to 28.02.2007. As per G.O.(Ms) No.119, CT&RE Department, dated 13.04.1994, in the case of expansion category, the dealer is eligible for deferral of sales tax only on the increased volume of production / base sale volume. For the purpose of determining the increased volume of production / base sale volume, the base figure should be the highest volume of production / sales in the company in any one of the year during the last three years. The highest sales achieved by the petitioner prior to the proposed expansion in the last three years was 6,11,294 Kgs / Rs.625.01 lakhs. Till reaching the volume of production / sales specified above, the petitioner has to pay the tax and any liability in excess of the sales specified above would be

eligible for deferment. A check of deferral register and ledger for the year 2000-01 reveals that the petitioner has reached the ceiling fixed at Rs.625.01 lakhs during November 2000. Hence the petitioner is eligible for availing concession under deferral scheme from November 2000 only. Therefore, notice dated 25.05.2012 under Section 24 (3) of the TNGST Act was issued by the respondent in respect of the incorrect availment of deferral, which works out to Rs.15,30,300/-, with liberty to the petitioner to file their objections within 15 days of such notice. Without filing the objection, the writ petition came to be filed. Hence, the writ petition is liable to be dismissed.

4. Heard both sides and perused the materials available on record.

5. Today, when the matter is taken up for consideration, the learned counsel for the petitioner restricted the relief sought for in this writ petition to the effect of seeking permission to the petitioner to file objection to the show cause notice.

6. The learned Government Advocate (Taxes) for the respondent has no serious objections for granting such relief to the petitioner.

7. Having regard to the facts and circumstances of the case and considering the submissions made by the learned counsel for both sides, this Court passes the following order:-

> " The petitioner is granted two weeks time from the date of receipt of a copy of this order for filing appropriate objections. The petitioner is also permitted to adduce evidence and file necessary documents / forms along with their objections. On receipt of the objections, the respondent / authority shall consider the same and pass orders, on merits and in accordance with law, that too, after affording an opportunity of personal hearing to the petitioner. Such an exercise shall be completed by the respondent within a period of four weeks from the date of receipt of a copy of the objections from the petitioner."

8. Accordingly, this writ petition is disposed of. No costs. Consequently the connected MP is closed.

09.03.2020

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R.MAHADEVAN, J.

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To
1. The Assistant Commissioner, Commercial Taxes,
Udumalpet (North), Tiruppur District

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