IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2020

CORAM:

THE HON'BLE MR. JUSTICE R.MAHADEVAN

Writ Petition No.46937 of 2002

S.S.D.Oil Mills Company Limited,
Rep. by its Director, Mr. D.Ramamoorthy,
No.132 Village Road, Iyyappanthangal,
Chennai 600 056 ... Petitioner

..vs..

1. The Chairman and Managing Director,
State Industries Promotion Corporation
of Tamil Nadu Limited,
No.19-A Rukmani Lakshmipathi Road,
Egmore, Chennai 600 008

2. The Special Commissioner and Commissioner of
Commercial Taxes, Ezhilagam,
Chepauk, Chennai 600 005

3. The Assistant Commissioner (CT), Kancheepuram,
Chengalpet District

4. The Deputy Commercial Tax Officer,
Sriperumbudur Assessment Circle,
Varadarajapuram, Poonamallee,
Chennai 600 056 ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the proceedings in Rc.No.18021/2001.A3, dated 13.12.2002 issued by the third respondent, quash the same and direct the third respondent to invite the petitioner to execute the agreement by incorporating the amendments dated 11.02.2002 and 25.02.2002 issued by the first respondent to the Eligibility Certificates, dated 31.08.1995 and 29.04.1999, respectively.

For Petitioner :Mr. A.S.Mujibur Rahman
For Respondents :Mr. Mohammed Shaffiq,
Spl.G.P. (Taxes)

ORDER

This writ petition has been filed by the petitioner company to quash the final order dated 13.12.2002 passed by the third respondent and consequently, direct the third respondent to invite the petitioner to execute the agreement by incorporating the amendments dated 11.02.2002 and 25.02.2002 issued by the first respondent with respect to the Eligibility Certificates, dated 31.08.1995 and 29.04.1999, respectively.

2.Brief facts of the case are as follows:

2.1 The petitioner is an assessee on the file of the fourth respondent under the TNGST Act and the CST Act. They are the manufacturer of refined oil, vanaspathi and allied products. They made an application on 16.02.1995 seeking eligibility certificate for availing deferment of Interest Free Sales Tax (IFST) under the scheme introduced in G.O.Ms.No.500 Industries Department, dated 14.05.1990. On 31.08.1995, the first respondent issued the eligibility certificate for five years from the date of commencement of production, i.e., from 01.04.1995 to 31.03.2000 for a sum not exceeding Rs.60.49 lakhs, which was subsequently increased to Rs.95.37 lakhs, by way of amendment issued by the first respondent on 03.04.1996. Consequent to the same, the petitioner executed a deed of agreement with the second respondent, in terms of the scheme. As per the eligibility certificate as well as the agreement, the repayment was started from 01.04.2000 and the petitioner paid the IFST availed upto 31.12.1997 i.e., Rs.56 lakhs, as per the repayment schedule.

2.2 While so, since they expanded their manufacturing activities by including Bakery shortening and Margarine, the petitioner vide proceedings of the first respondent dated 29.04.1999, obtained another Eligibility Certificate for the period from 01.05.1997 to 30.04.2002 for a sum of Rs.59.71 lakhs. As per the eligibility certificate, the petitioner has to repay the IFST availed from 01.05.2002. They availed the entire amount of Rs.59.71 lakhs on 31.03.2001 itself.

2.3 Be that as it may, the third respondent issued a show cause notice dated 18.12.2001 proposing to cancel the eligibility certificates issued by the first respondent. Upon receipt of the same, the petitioner requested time for filing their objections. During the interregnum period, they approached the first respondent and sought amendments to the eligibility certificates, with respect to the highest production / sales achieved by the petitioner company. Considering the same, the first respondent issued necessary amendments on 11.02.2002 and 25.02.2002 to the eligibility certificates dated 31.08.1995 and 29.04.1999 respectively.

2.4 Simultaneously, the petitioner challenged the said notice dated 18.12.2001 issued by the third respondent before the Tribunal in OP.No.279 of 2002, which was disposed of, vide order dated 02.08.2002. Without complying with the said order, the fourth respondent issued a notice dated 23.08.2002, directing the petitioner to pay the entire amount of deferral availed within a period of three days. Aggrieved over the same, the petitioner preferred OP.No.860 of 2002 before the Tribunal. By order dated 26.09.2002, the Tribunal allowed the said petition, setting aside the said notice and directing the fourth respondent to comply with the direction issued by the Tribunal in OP.No.279 of 2002 dated 02.08.2002.

2.5 Even thereafter, the third respondent passed the final order dated 13.12.2002, cancelling the agreements and directing the petitioner to pay the entire amount of deferral availed in one lumpsum with interest under Section 24(3) of the TNGST Act, 1959. Feeling aggrieved, the petitioner has approached this Court with the present writ petition for the aforesaid relief.

3.The learned counsel for the petitioner submitted that without complying with the orders passed by the Tribunal in OP.Nos.279 and 860 of 2002, wherein, the assessing officer was directed to give effect to the amendments issued by the first respondent in the eligibility certificates, with respect to the highest production / sale achieved by the company, the third respondent has passed the impugned order, cancelling the agreements and directing the petitioner to pay the entire amount of deferral availed in one lumpsum with interest. The learned counsel further submitted that at no point of time, the petitioner has violated any of the conditions mentioned in the eligibility certificates as well as in the agreements, as alleged in the impugned order. Adding further, it is submitted that as per the repayment schedule, in regard to the first IFST loan, the petitioner has paid 27 installments. The learned counsel also submitted that the third respondent has no jurisdiction to pass the order impugned herein. Stating so, it is prayed to set aside the order impugned herein.

4.The learned Special Government Pleader (Taxes) appearing for the respondents submitted that when clause 5.3 of the eligibility certificates specifically says that the petitioner is eligible for deferral of sales tax only on the increased volume of production / sale, they have to pay tax till reaching the base figure. He further submitted that the Revenue is not interested in mere sales, but only interested in the tax liability and hence, unless there is excess tax liability beyond the base stage, there was no intention to give any deferral facility and this has been made very clear in the agreement between the parties. It is also submitted that since the petitioner has violated the conditions stipulated in the original eligibility certificates as well as the revised eligibility certificates, the third respondent has passed the impugned final order and hence, the same does not require any interference by this Court.

5.Heard both sides and perused the materials placed before this Court.

6.The Government of Tamil Nadu, with a view to promote industrialization, introduced an Interest free Sales Tax Deferral Scheme vide G.O.Ms.No.500, Industries (MIG-II) Department, dated 14.5.1990, by which, the deferral of sales tax is available only on the increased volume of production/sales value and the base figure would be the highest volume of production/sales value in the Company in any one of the year during the last three years. Till reaching the volume of production/sales value specified, the company would continue to pay tax and any liability in excess of the production/sales specified alone will be eligible for deferment.

7.As per the said IFST Scheme, the petitioner was issued two eligibility certificates dated 31.08.1995 and 29.04.1999. While the first eligibility certificate was granted for the period from 1.4.1995 to 31.3.2000 for Rs.60.59 lakhs, which was subsequently, increased to Rs.95.37 lakhs, only in respect of manufacture of refined oil and that, the base value fixed for availing the deferral loan was Rs.1771.40 lakhs for 2778 tonnes, the second eligibility certificate was for Rs.59.71 lakhs for the period from 01.05.1997 to 30.04.2002 in respect of manufacturing bakery shortening and margarine and that the base value fixed for availing the deferral loan was Rs.3463.47 lakhs for 6839 tonnes.

8.Admittedly, the petitioner had availed the entire deferral loan and started to repay the deferral availed. While so, the third respondent issued a notice dated 18.12.2001, calling upon the petitioner to file their objections as against the proposal for cancelling the two agreements made for the IFST loan for the alleged violation of the conditions imposed in the eligibility certificates and also misusing the IFST loan.

9.In spite of filing objections to the aforesaid notice issued by the third respondent, the petitioner rushed to the first respondent and sought necessary amendments to the eligibility certificates. By amendments dated 11.02.2002 and 25.02.2002, the first respondent modified the base figure for availing deferment of Sales Tax to Rs.642.92 lakhs for 2778 tonnes in respect of manufacture of refined oil and to Rs.1237.47 lakhs for 6839 tonnes in respect of manufacture of refined oil, vanaspathy, bakery shortenings and margarine, respectively.

10.Thereafter, the petitioner challenged the notice dated

18.12.2001 issued by the third respondent by filing OP.No.279 of 2002 before the Tribunal, which, vide order dated 02.08.2002, disposed of the said Original Petition, in the following terms:

> (i) In case, the third respondent had already passed final orders without considering the said amendments dated 11.2.2002 and 25.2.2002 in respect of the Eligibility Certificates, he is directed to pass final order afresh, after considering those amendments.
>
> (ii) In case, no order has been passed so far, the third respondent is directed to pass appropriate orders in accordance with law, considering those two amendments to the Eligibility Certificates.
>
> (iii) If the third respondent has passed any orders after considering the Eligibility Certificate, the petitioner is directed to file revision petition before the concerned Deputy Commissioner u/s 33 of the TNGST Act 1959.

11.In the meanwhile, the fourth respondent issued a notice dated 23.08.2002 calling upon the petitioner to pay the entire amount availed by them by way of IFST Scheme within three days from the date of receipt of the said notice, against which, the petitioner filed yet another OP.No.860 of 2002, which was disposed of by the Tribunal, thereby directing the fourth respondent to comply with the directions issued in OP.No.279 of 2002 dated 02.08.2002.

12.Thereafter, the third respondent passed the final order dated 13.12.2002, cancelling the agreements made with the petitioner for the violation of the conditions stipulated in the original as well as revised eligibility certificates and directing the petitioner to pay the entire availed amount of deferral loan in one lumpsum with interest under Section 24(3) of the TNGST Act, 1959, which is impugned in this writ petition.

13.It is strenuously argued by the learned counsel for the petitioner that the first respondent, at the instance of the petitioner, issued the revised eligibility certificates, amending the base figure for availing the deferral loan; and the Tribunal vide order dated 02.08.2002 made in OP.No.279 of 2002, specifically directed the third respondent to pass final orders, after considering the revised eligibility certificates dated 11.02.2002 and 25.02.2002; however, the third respondent passed the impugned final order, without considering the revised eligibility certificates passed by the first respondent and without following the directions issued by the Tribunal. Besides questioning the jurisdiction of the third respondent to pass such final order, the learned counsel submitted that there was no violation of any of the conditions stipulated in the eligibility certificates, as alleged by the third respondent.

14.Repudiating the contentions so raised on the side of the petitioner, the learned Special Government Pleader (Taxes) made his submissions, supporting the order passed by the third respondent.

15.On a perusal of the order impugned herein, the details furnished with respect to total and taxable turnover for the years from 1995-96 to 2000-2001, have not been disputed by the petitioner by filing objections, it is apparent that the petitioner has not reached the base figures of Rs.1771.40 lakhs as fixed in the original eligibility certificate and Rs.642.92 lakhs as fixed in the revised eligibility certificate for the years 1995-96 and 1996-97 and Rs.3463.47 lakhs as fixed in the original eligibility certificate and Rs.1237.47 lakhs as fixed in the revised eligibility certificate for the years 1997-98 to 2000-01, whereas, they have availed deferral loan of Rs.1,57,05,808/-, the details of which read thus:

Year	Deferral loan availed
1995-96	Rs. 4,00,000.00
1996-97	Rs. 25,00,000.00
1997-98	Rs. 36,50,000.00
1998-99	Rs. 24,00,000.00
1999-2000	Rs. 23,84,808.00
2000-2001	Rs. 43,71,000.00
Total	Rs.1,57,05,808.00

But, the actual deferral loan sanctioned was Rs.155.08 lakhs, only. Thus, the petitioner has availed deferral loan more than the sanctioned; further, the amount so sanctioned under deferral scheme was only for the manufacture of refined oil and for the manufacture of bakery shortening and margarine, as per the respective eligibility certificates, whereas the petitioner has availed the deferral against the demand raised in respect of sale of other goods, such as oil cake, cotton waste, soap shell, paddy ash, cotton seed husk and Vanaspathy and they have not manufactured the bakery shortening and margarine for any year upto 2002; and hence, there was violation of the conditions stipulated in the eligibility certificates, as rightly pointed out in the final order passed by the third respondent.

16.That apart, the amendments ordered by the first respondent with respect to the base figure of highest volume of production/sale value in the eligibility certificates and the orders passed by the Tribunal in OP.Nos.279 of 2002 and 860 of 2002 at the instance of the petitioner, were only after detection of the violation of the conditions stipulated in the eligibility certificates, that too, after availing the entire deferral loan. The observation made by the third respondent against the first respondent and the manner in which the eligibility certificates was amended, cannot be ignored and the exercises so undertaken by the petitioner are only to avoid / circumvent the payment of sales tax due to the Government and the same cannot be countenanced, in the opinion of this Court.

17.It is common law that all taxes are levied by the State in public interest and where a citizen/corporate seeks to circumvent its obligation to pay taxes by subterfuges and even misuse and abuse of salutary provisions dehors their context and purpose, the enterprise should not be promoted. Now, the Courts are concerning themselves not merely with the genuineness of a transaction, but with the intended effect of it on fiscal purposes. No one can get away with a tax avoidance project with the mere statement that there is nothing illegal about it. At this juncture, it is apropos to quote the observation of the Supreme Court in Mc Dowell & Company Ltd v. The Commercial Tax Officer [1986 AIR 649], which reads thus:

> "...The evil consequences of tax avoidance are manifold. First there is substantial loss of much needed public revenue, particularly in a welfare state like ours. Next, there is the serious disturbance caused to the economy of the country by the piling up of mountains of blackmoney, directly causing inflation. Then there is "the large hidden loss" to the community (as pointed out by Master Sheatcraft in 18 Modern Law Review 209) by some of the best brains in the country being involved in the perpetual war waged between the tax-avoider and his expert team of advisers, lawyers and accountants on one side and the tax-gatherer and his perhaps not so skilful, advisers on the other side. Then again there is the 'sense of injustice and inequality which tax avoidance arouses in the breasts of those who are unwilling or unable to profit by it'. Last but not the least is the ethics (to be precise, the lack of it) of transferring the burden of tax liability to the shoulders of the guideless good citizens from those of the 'artful dodgers'. It may, indeed, be difficult for lesser mortals to attain the state of mind of Mr. Justice Holmes, who said, "Taxes are what we pay for civilized society. I like to pay taxes. With them I buy civilization." But, surely, it is high time for tho judiciary in India too to part its ways from the principle of Westminister and the alluring logic of tax avoidance. We now live in a welfare state whose financial needs, if backed by the law, have to be respected and met. We must recognise that there is

behind taxation laws as much moral sanction as behind any other welfare legislation and it is a pretence to say that avoidance of taxation is not unethical and that It stands on no less moral plane than honest payment of taxation. In our view, the proper way to construe a taking statute, while considering a device to avoid tax, is not to ask whether the provisions should be construed literally, or liberally, nor whether the transaction is not unreal and not prohibited by the statute, but whether the transaction is a device to avoid tax, and whether the transaction is such that the judicial process may accord its approval to it. A hint of this approach is to be found in the judgment of Desai, J. in Wood Polymer Ltd. v. Bengal Hotels Limited [(1977) 47 Company Cases, 597], where the learned judge refused to accord sanction to the amalgamation of companies as it would lead to avoidance of tax.

It is neither fair nor desirable to expect the legislature to intervene and take care of every device and scheme to avoid taxation. It is upto the Court to take stock to determine the nature of the new and sophisticated legal devices to avoid tax and consider whether the situation created by the devices could be related to the existing legislation with the aid of 'emerging' techniques of interpretation as was done in Ramsay, Burma Oil and Dawson, to expose the devices for what they really are and to refuse to give judicial benediction.”

18.In the ultimate analysis, this Court does not find any good reason to interfere with the final order passed by the third respondent. Hence, the third respondent, being the authority under the law, shall have the right to demand and collect the sales tax assessed for all the years covered by the scheme and the petitioner is liable to pay the same in one lump sum. This writ petition stands dismissed accordingly. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

srk

To

1. The Chairman and Managing Director,
   State Industries Promotion Corporation of Tamil Nadu Limited,
   No.19-A Rukmani Lakshmipathi Road,
   Egmore, Chennai 600 008

2. The Special Commissioner and Commissioner of
   Commercial Taxes, Ezhilagam,
   Chepauk, Chennai 600 005

3. The Assistant Commissioner (CT), Kancheepuram,
   Chengalpet District

4. The Deputy Commercial Tax Officer,
   Sriperumbudur Assessment Circle,
   Varadarajapuram, Poonamallee, Chennai 600 056

+1 cc to The Government Pleader, Sr.No. 24032

Writ Petition No.46937 of 2002

KS(CO)
RMP(02/09/2020)