

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.2.2021

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MS.JUSTICE R.N.MANJULA

Writ Petition Nos.42967, 42991 & 42992 of 2002 &
WPMP.Nos.63312, 63352 & 63354 of 2002

M/s.Aruppukottai Sri Jayavilas
Ltd., Aruppukottai

...Petitioner in
all the WPs

Vs

1.The Commercial Tax Officer,
Aruppukottai Assessment Circle,
Aruppukottai.

2.The Assistant Commissioner of
Commercial Taxes, Virudhunagar.

3.The State Industries Corporation
of Tamil Nadu Limited, Egmore,
Chennai-8.

4.The Tamil Nadu Taxation Special
Tribunal, rep.by its Registrar,
Chennai-1.

...Respondents
in all the WPs

PETITIONS under Article 226 of The Constitution of India
praying for the issuance of Writs of Certiorari to call for the
records on the file of the fourth respondent herein O.P.Nos.682
to 684 of 2002 dated 23.10.2002 upholding the proceedings of the
first respondent herein respectfully in TNGST/923159/1994-95,
TNGST/5800332/1995-96 and TNGST/5800332/1996-97, all dated
21.6.2002 and quash the same.

For Petitioner : Mr.N.Inbarajan

For R1 & R2 : Mrs.G.Dhanamadhri, GA

For R3 : Mr.Ramesh Venkatachalapathy

COMMON ORDER
(Order of the Court was made by T.S.SIVAGNANAM,J)

These writ petitions have been filed by the petitioner - a registered dealer on the file of the first respondent under the provisions of the then Tamil Nadu General Sales Tax Act, 1959 (for short, the Act) challenging the common order dated 23.10.2002 passed in O.P.Nos. 682 to 684 of 2002 by the Tamil Nadu Taxation Special Tribunal, Chennai (for brevity, the Tribunal).

2. We have elaborately heard Mr.N.Inbarajan, learned counsel for the petitioner, Mrs.G.Dhanamadhri, learned Government Advocate appearing for respondents 1 and 2 and Mr.Ramesh Venkatachalapathy,, learned counsel appearing for the third respondent.

3. The petitioner challenged the assessment order passed by the Assessing Officer namely the first respondent herein confirming the proposal in the notice dated 18.4.2002 stating that the petitioner wrongly availed the Interest Free Sales Tax (IFST) deferral loan of Rs.70,31,851/- and repaid the same belatedly. In spite of an elaborate reply/objections dated 06.5.2002, filed by the petitioner, the Assessing Officer did not agree with the stand taken by the petitioner and accordingly rejected the objections and confirmed the proposal. The first respondent issued the proceedings dated 21.6.2002 demanding interest under Section 24(3) of the Act.

4. Aggrieved by that, the petitioner was before the Tribunal seeking to quash the order dated 21.6.2002 by filing O.P.Nos.682 to 684 of 2002 and to direct the Assessing Officer to follow the conditions in the Notification issued by the Government in G.O.Ms.No.500 Industries (MIG II) Department dated 14.5.1990, which announced incentive scheme for industries and more particularly the IFST deferral scheme. However, the Tribunal, by the common impugned order dated 23.10.2002, dismissed the said petitions. Aggrieved by the same, the petitioner is before us by way of these three writ petitions.

5. The short issue, which falls for consideration, is as to whether the Notification issued in G.O.Ms.No.119 Commercial Taxes and Religious Endowments Department dated 13.4.1994, which stipulated a benchmark for enjoying the benefit of IFST deferral scheme can be made applicable to the petitioner. As noted above, the Government in the said Government Order in G.O.Ms.No.500 dated 14.5.1990, with a view to encourage more industries in the State of Tamil Nadu, decided to grant several concessions to industries, which were to be started in 75 backward taluks i.e

other than 30 most backward taluks from among the 150 backward taluks. The Government also thought fit to grant certain benefits to the existing units undertaking expansion or diversification, for whom, the deferral of sales tax would be given for nine years and the total amount thus given should not exceed 80% of the additional investment made in fixed assets. The Government Order further stated that the application for IFST deferral scheme should be filed before the General Manager, District Industries Centre (DIC) concerned in the case of small scale industries and before the SIPCOT in the case of medium and major industries before commencement of commercial production.

6. It is not disputed by the respondent - Department that the petitioner commenced commercial production on 01.10.1991 and submitted their application to the SIPCOT for grant of eligibility certificate. In the meantime, there were representations given by the industries stating that the condition that they had to apply before the commencement of commercial production was working hard and requested for amendment. Accordingly, the Government, by letter dated 06.11.1990, deleted the said condition and substituted the same with the wordings that 'application for interest free sales tax deferral should be made within one year from the date of commencement of commercial production'. However, this may not be very relevant to the case on hand.

7. As mentioned above, the petitioner commenced commercial production on 01.10.1991 and applied for eligibility certificate to the SIPCOT. The eligibility certificate was not granted within a reasonable time and therefore, the petitioner continued to remit sales tax. This has been admitted by the Department. However, the eligibility certificate was granted on 17.6.1993 stating that the petitioner would be entitled to deferral sales tax not exceeding Rs.123.59 lakhs interest free for five years from the month, in which, the holder's unit commenced its commercial production i.e. from 01.10.1991 to 30.9.1996.

8. The said eligibility certificate dated 17.6.1993 also contained the condition that the sales tax deferral benefit was subject to the sales tax payable on products manufactured by the capacity created by expansion scheme at Melakandamangalam village, Aruppukottai Taluk, that the petitioner should continue to pay tax at the level it was paying to the Commercial Tax Department prior to taking up this expansion and that only the incremental sales tax liability that would arise due to the additional production out of the envisaged expansion scheme had to be allowed for the deferment facility.

9. Since the petitioner commenced commercial production on 01.10.1991 and though they applied for the eligibility certificate immediately and the same having been granted only on 17.6.1993, they submitted a representation for rescheduling the period of deferral. In the meantime, an inspection was conducted in the business premises of the petitioner on 17.1.2002 and the need for inspection was stated to be for verification of the correctness of the accounts. Pursuant to the said inspection, a proposal was given by the Deputy Commercial Tax Officer, Sivakasi dated 31.5.2002, which was termed as a D3 proposal. In paragraph 'V' of the proposal, which dealt with availment of the IFST Deferral Loan, the Inspecting Officer rightly took note of the rescheduling of the IFST deferral period and held that there was no deviation nor wrong availment was noticed and that the entire amount of Rs.123.59 lakhs was also repaid from December 1999 to May 2001.

10. Though this was the state of affairs, the Assessing Officer, on his own volition, issued the show cause notice dated 18.4.2002 to the petitioner stating that the petitioner wrongly availed the IFST deferral scheme. On perusal of the said notice dated 18.4.2002, we find that the Assessing Officer had not stated as to on what basis, he alleged wrong availment of the IFST deferral loan to the tune of Rs.70,31,851/-.

11. Be that as it may, the petitioner submitted their objections and also referred to the D3 proposal wherein the Inspecting Officer clearly recorded that there was no violation of the IFST deferral scheme conditions. The petitioner objected to the said notice dated 18.4.2002. However, the Assessing Officer did not agree with the same, rejected the objections and confirmed the proposal vide proceedings dated 21.6.2002 demanding interest under Section 24(3) of the Act. Ultimately, the matter landed up before the Tribunal by way of the said original petitions.

12. Unfortunately, the Tribunal also did not take note of this factual position and more particularly the findings given in the D3 proposal, to which, the Sales Tax Department attached a very high importance. The legal issue is no longer res integra in the sense that the effect of G.O.Ms.No.119 dated 13.4.1994 qua the benefit granted to the industries under G.O.Ms.No.500 dated 14.5.1990 was considered by several Hon'ble Division Benches of this Court.

13. First of such decisions is in the case of Thiagarajar Mills Ltd., Singanallur Vs. ACCT, Central Assessment Circle-I, Coimbatore [W.A.No.509 of 1994 dated 22.2.1995]. An identical case as in the case on hand arose before the Hon'ble First Bench

of this Court and the appeal filed by the dealer was allowed. It would be beneficial to refer to the entire text of that judgment, which reads as follows :

"In view of our order in W.P.No.16952 of 1994 passed by us today, this writ appeal is entitled to succeed. We may also make it clear that G.O.Ms.No.119 CT & RE Department dated 13.4.1994 is prospective and such of the expansion units or diversified units, which are set up after 13.4.1994 will only be governed by G.O.Ms.No.119 dated 13.4.1994. As the expansion unit involved in this writ appeal had come into existence long before 13.4.1994, it will not be governed by G.O.Ms.No.119 dated 13.4.1994 and as such, its sales tax liability has to be determined without reference to the said Government Order and only as per G.O. Ms.No.500 dated 14.5.1990. Accordingly, the writ appeal is allowed and the order of the learned Single Judge is set aside. The demand made by the first respondent is quashed. The respondents are directed to determine the tax liability of the petitioner - appellant in respect of the expansion unit without reference to the existing unit."

14. In terms of the above decision, G.O.Ms.No.119 dated 13.4.1994 can have only prospective application. In G.O.Ms.No.119 dated 13.4.1994, for the first time the Government imposed a condition for eligibility to avail deferral sales tax and this was termed as Base Production Volume (BPV) and Base Sales Volume (BSV) and in actual parlance, it has been referred to as benchmark.

15. It was argued by the Department that if the benchmark was not achieved by the concerned industry, then they were not entitled to the benefit of the deferral scheme and any availment of the same would be construed as a wrong availment.

16. The correctness of this stand was tested by the Hon'ble First Bench of this Court in the said decision and it was held that G.O.Ms. No.119 dated 13.4.1994 would have prospective effect. In other words, the industries, which were granted eligibility certificate in terms of G.O.Ms.No.500 dated 14.5.1990 cannot be imposed with the benchmark condition introduced for the first time in G.O.Ms.No.119 dated 13.4.1994. The Assessing Officer as well as the Tribunal appeared to have been guided by the rescheduled date of eligibility as mentioned

in the eligibility certificate dated 31.1.1995, by which, the period was rescheduled from 01.12.1994 to 30.11.1999.

17. Admittedly, this period falls much after the Notification in G.O.Ms.No.119 dated 13.4.1994. What is interesting to note is that in G.O.Ms.No.119 dated 13.4.1994, a specific direction was issued to the State Government and the District Industries Centre to work out BPV and BSV and incorporate the same in the eligibility certificate at the time of issuance by the SIPCOT and the District Industries Centre. The wordings in paragraph 3(v) of the Government Order in G.O.Ms.No. 119 dated 13.4.1994 were that the BPV and the BSV would have to be worked out and incorporated in the eligibility certificates at the time of issue by the SIPCOT and the District Industries Centre.

18. If such is the position and the date of eligibility certificate of the petitioner being 17.6.1993, G.O.Ms.No.119 dated 13.4.1994 could not have been applied to the petitioner. Therefore, even though the rescheduled period was from 01.12.1994 to 30.11.1999, the eligibility for the deferral scheme would date back to the date of the original eligibility certificate dated 17.6.1993, as in that certificate, conditions have been imposed and the reschedulement dated 31.1.1995 was only reschedulement of dates and nothing else.

19. In fact, the respondent - Department initially understood the position clearly and therefore, they did not amend the eligibility certificate by incorporating the BPV and the BSV in the eligibility certificate. We also take note of the decision of this Court in the case of M/s.Sulochana Cotton Spinning Mills (P) Ltd. Vs. State of Tamil Nadu [reported in (1995) 98 STC 125] wherein the Hon'ble First Bench of this Court framed three questions for consideration, the first of which was with regard to scope and ambit of G.O.Ms.No.500 dated 14.5.1990 and the second question was as to what was the effect of another Government Order in G.O.Ms.No.92 dated 22.2.1991 on G.O.Ms.No.500 dated 14.5.1990, as G.O.Ms.No.92 dated 22.2.1991 brought in certain conditions. The Hon'ble First Bench of this Court, after explaining the scope and ambit of G.O.Ms.No.500 dated 14.5.1990, while answering the second question, held that G.O.Ms.No. 92 dated 22.2.1991 would have only prospective effect. The reasons assigned by the Hon'ble First Bench of this Court in the said judgment would fully apply to the facts of this case.

20. As pointed out by Mr.N.Inbarajan, learned counsel for the petitioner, the respondent - Department does not dispute the fact that the Inspecting Officer gave a clean chit to the petitioner and in no uncertain terms stated that the IFST

deferral availed by the petitioner in 'A' unit was found to be in order and that no deviation or wrong availment was noticed. We are of the clear view that the Tribunal committed a serious error in not granting relief to the petitioner.

21. For all the above reasons, the writ petitions are allowed, the common impugned order is set aside and the orders passed by the first and the second respondents in this regard are quashed. No costs. Consequently, all connected pending WPMPs are closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Commercial Tax Officer, Aruppukottai Assessment Circle,
Aruppukottai.

2.The Assistant Commissioner of Commercial Taxes, Virudhunagar.

3.The State Industries Corporation of Tamil Nadu Limited,
Egmore,
Chennai-8.

4.The Registrar, Tamil Nadu Taxation Special Tribunal, Chennai-1.

+1 CC to Mr.M. Inbarajan, Advocate sr 6321.

+1 CC to The Special Government Pleader sr 6949.

W.P.Nos.42967, 42991 & 42992
of 2002 & WPMP.Nos.63312,
63352 & 63354 of 2002

BS (CO)
SP(01/03/2021)

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