BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.01.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.11544 of 2010

M/s.Vicnivaas Agency,
289D, Sivanthakulam Road,
Thoothukudi District,
Rep. by its partner,
T.P.S.Ponkumar. ... Petitioner

Vs.

1. The State of Tamil Nadu,
   Rep. by its Principal Secretary to Government,
   Industries Department, Fort St. George,
   Chennai - 600 009.

2. The Directorate of Industries and Commerce
   Rep. by the Industries Commissioner and
   Director of Industries and Commerce,
   Chepauk, Chennai - 600 005.

3. The General Manager,
   District Industries Centre,
   Palayamkottai Road,
   Near Bypass Road, Korampallam,
   Thoothukudi - 628 101.

4. The Commercial Tax Officer II,
   Office of the Commercial Tax Officer,
   Beach Road, Thoothukudi - 628 001.

5. The State Industries Promotion Corporation
   of Tamil Nadu,
   Rep. by the Chairman and Managing Director,
   19-A, Rukmani Lakshmipathy Road,
   Egmore, Chennai - 600 008. ... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the second respondent dated 18.03.2010 in R.C. No.40905/LC4/2000 and quash the same and direct the respondents to grant State Capital subsidy and sales tax waiver to the petitioner firm as requested in their applications both dated 09.12.1997 in accordance with G.O.Ms.No.500 dated 14.05.1990 Industries(MIG) (II) Department.

For Petitioner : Mr.N.Dilip Kumar

For R-4 : Ms.J.Padmavathi Devi

For R-1,R-2,R-3 & R-5 : No appearance.

O R D E R

The writ petitioner is a registered partnership firm that was manufacturing Poly Propylene Woven Sacks. The petitioner took part in the auction sale conducted by the SIPCOT Industrial Complex in October 1995. SIPCOT had allotted a plot bearing No.C-78 in their industrial estate in favour of one M/s.Tuticorin Oxygen Private Limited. The said company commenced construction of the unit. But then, it failed to complete the same. Therefore, the site with the incomplete construction was brought to sale on "as is where basis". The petitioner was the successful purchaser and all the allotment formalities were concluded in favour of the petitioner on 31.10.1995 and the site was handed over to the petitioner on 14.06.1996. The petitioner completed the construction and commenced their production of Poly Propylene Woven Sacks.

2. The industrial estate was located in a backward area. The petitioner therefore claimed concession available under G.O.Ms.No.500 Industries (MIG.II) Department dated 14.05.1990. The petitioner's request was rejected primarily on the ground that the parent assets of the petitioner were already owned by M/s.Tuticorin Oxygen Private Limited and therefore, they would be considered as a second hand machinery. The rejection order was put to challenge by the petitioner in W.P.No.6560 of 2000. Vide order dated 19.12.2006, the rejection order was set aside and the matter was remitted to the file of the second respondent to pass orders afresh in accordance with law. The reasons assigned by the learned Judge while allowing the writ petition are set out in the following paragraph:-

> *"9 . From the above, it is clear that the industry started by the petitioner is a new industry, which has commenced operation on 13.12.1996. For new industries, the only impediment in Clause 12 of the G.O. is that the second hand machinery will not be part of the investment eligible for the computation of*

deferral or waiver of sales tax. The one and only reason stated by the respondents is that part of the asset has been created by the other entrepreneur. It is obvious that even though the asset was partly created, subsequently, it has been acquired and allotted to the petitioner for valuable consideration by the SIPCOT itself. Hence, from the point of view of the petitioner that asset can only be regarded as a new asset which has been acquired by the petitioner for the purpose of putting up industry in the most backward area. Hence, I am of the view that the reason stated by the Industries Commissioner, which has been reproduced by General Manager, District Industries Centre to non-suit petitioner cannot be regarded as a reason and it cannot be legally sustainable in law and as such the reasoning stated in the impugned order is extraneous to the G.O with which reliance has been placed. For the foregoing reasons, the impugned order is set aside and the matter is remitted back to the respondent authorities to reconsider the issue and pass appropriate orders in accordance with law, having regard to the requirements as enunciated in G.O.Ms. No. 500 dated 14.5.1990, which has been considered in various Judgments including the Judgment in Sulochana Cotton Spinning Mills (P) Ltd. v. State of Tamil Nadu and Others. (98 STC 125.) ''

3. Pursuant to the order of rejection, the matter was reconsidered by the second respondent and once again, the petitioner's request for the grant of incentives and interest from sales tax waiver was rejected. The reasons for denial of the petitioner's request was that the petitioner has ceased to be in possession of the assets in question and that they have already sold the unit to M/s.Thim Poly Bags.

4. This rejection order dated 18.03.2010 is put to challenge in this writ petition.

5. Though the impugned order was passed by the second respondent itself, the third respondent has filed the counter affidavit. The stand of the third respondent is that the rejection order is very much in consonance with G.O.Ms.No.500 Industries (MIG.II) Department dated 14.05.1990. According to the respondents, the petitioner has failed to fulfill the eligibility criteria.

6. When the matter was taken up for disposal, there was no representation on the side of respondents 2 and 3. The matter was adjourned on more than one occasion. I do not know as to which the Government counsel has to enter appearance. Of course Ms.Padmavathi Devi, learned Special Government Pleader for Tax appeared for the fourth respondent. But then, she obviously cannot make submissions as regards the impugned order. In fact, the fourth respondent is more a formal party.

7. Therefore, I went through the materials on record and decided the issue.

8. The only reason for rejecting the petitioner's request is that the petitioner has already sold the unit to a third party. I called upon the petitioner to state as to when the sale of the unit took place. The unit appears to have been sold in the year 2002. The petitioner has made it clear that their request is confined to the period commencing from 14.06.1996 to the date when they sold the unit to M/s.Thim Poly Bags.

9. Clause 3 of G.O.Ms.No.500 Industries (MIG.II) Department dated 14.05.1990 reads as follows:-

> *"3. The Government direct that the new industries to be set up in the 30 most backward taluks ordered in para 2 above and also in the three industrial complexes of State Industries Promotion Corporation of Tamil Nadu at Pudukottai, Cuddalore and Manamadurai be eligible, apart form other existing concessions, for full waiver of sales tax dues for a period of five years upto a ceiling of the total investment made in fixed assets. Existing industries in the most backward taluks and in the three State Industries Promotion Corporation of Tamilnadu (SIPCOT) complexes, undertaking expansion/diversification are also eligible for full waiver of sales tax dues for a period of five years subject to a ceiling of the total investment made in fixed assets under expansion/diversification."*

10. It is obvious that the question of availing concessions and waiver is restricted to the period of five years. Applying the aforesaid Clause, the period would end on 13.06.2001. The sale of the unit had taken place in the year 2002. Therefore, the ground on which the impugned order is predicated is rather irrelevant. All the other aspects have already been adjudicated and decided in favour of the writ petitioner vide order dated 19.12.2006 in W.P.No.6560 of 2000.

11. In this view of the matter, the order impugned in this writ petition is quashed. This writ petition stands allowed. The respondents shall disburse the benefits payable to the petitioner within a period of three months from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1. The Principal Secretary to Government,
State of Tamil Nadu,
Industries Department, Fort St. George,
Chennai – 600 009.

2. The Industries Commissioner and
Director of Industries and Commerce,
Directorate of Industries and Commerce,
Chepauk, Chennai – 600 005.

3. The General Manager,
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4. The Commercial Tax Officer II,
Office of the Commercial Tax Officer,
Beach Road,
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5. The Chairman and Managing Director,
State Industries Promotion Corporation
of Tamil Nadu,
19-A, Rukmani Lakshmipathy Road,
Egmore, Chennai - 600 008.

+1 CC to SGP (SR-2409[F] dated 29/01/2021)

+1 CC to Mr.N.DILIP KUMAR, Advocate (SR-2488[F] dated 29/01/2021)

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