IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.06.2022

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THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.21931 of 2003

Sambandam Solvent Extraction Ltd.
No.97, Thulasingam Street
Perambur, Chennai. .... Petitioner

Vs.

1.The State Industries Promotion
Corporation of Tamil Nadu Ltd.
Represented by Chairman &
Managing Director
19-A, Rukmani Lakshmipathy Road
Egmore, Chennai – 600 008.

2.The Assistant Commissioner
Commercial Taxes, Zone VIII
Greams Road, Chennai – 600 006.

3.The Commercial Tax Officer
Perambur-I Circle Office
Paper Mills Road, Perambur,
Chennai – 600 0011. .... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the case on the file of the first respondent herein in Letter No.ID/ST/SSEL/2002 dated 03.07.2003 and quash the same.

For Petitioner : Ms.Lakshmi Sriram

For Respondents : Mr.Ramesh Venkatachalapathy for R1

Mr.V.Prashanth Kiran

Government Advocate for R2 & R3.

ORDER

Heard Ms. Lakshmi Sriram, learned counsel for the petitioner, Mr. Ramesh Venkatachalapathy, learned Counsel for the State Industries Promotion Corporation of Tamil Nadu Ltd. (SIPCOT) and Mr. V. Prashanth Kiran for the Assistant Commissioner & the Commercial Tax Officer, Chennai.

2. The petitioner has entered in to an agreement for waiver of sales tax in terms of the Tamil Nadu General Sales tax Act 1959 (in short 'Act') for the period 01.03.2000 to 28.02.2005 (in short 'period in question').

3. Eligibility certificate dated 02.12.2000 had been issued by SIPCOT and the relevant clauses read as follows:-

> "*3.Based on the above, the holder of this eligibility certificate will be eligible for waiver of sales tax for a sum not exceeding Rs.232.35 Lakhs (Rupees Two hundred and thirty two lakhs and thirty five thousand only) under the waiver the holder's unit commenced its commercial production i.e., from 01.03.2000 to 28.02.2005.*

3.1.Based on the above, the holder of this Eligibility Certificate will be eligible for waiver of sales tax for a sum not exceeding Rs.232.35 Lakhs (Rupees Two Hundred and Thirty Two Lakhs and Thirty Five Thousand Only) under the waiver scheme for the five years from the month in which the holder's unit commenced its commercial production i.e., from 1.03.2000 to 28.2.2005.

4. The actual amount waived shall however, be the lease of the amount mentioned in 4.1 and 4.2 below:

4.1. Notional Sales tax liability on account of Tamil Nadu General Sales Tax Additional Sales Tax, Surcharge and Additional Surcharge which would have accrued during the period of waiver in favour of Government, but for the waiver on the sale of finished goods manufactured by the unit.

4.2.100% of the value of the initial gross fixed assets i.e., Rs.232.35 Lakhs (Rupees Two Hundred and Thirty Two Lakhs and Thirty Five Thousand Only).”

4. An agreement came to entered into by and between the petitioner and the Commercial taxes department to the effect that the holder of the eligibility certificate would be eligible for waiver of sales tax for a sum not exceeding Rs.232.35 Lakhs (Rupees Two Hundred and Thirty Two Lakhs and Thirty Five Thousand Only). The agreement also provides for waiver, as a consequence of the tax benefit, of liability to Additional Sales Tax, Surcharge and Additional Surcharge.

5. The present challenge is to a letter issued by SIPCOT to the petitioner dated 03.07.2003 in terms of which the eligibility certificate issued for the period stood

modified by virtue of insertion of an additional clause, paragraph 5 below, that reads as under:

> "*5.The period of operation of sales tax waiver scheme shall be within the period of full availment of the eligible amount or five years period, whichever is earlier. During the period of operation, the company shall not collect sales tax on the sales of its manufactured products.*"

6. The impugned communication has come to be issued by SIPCOT midway during the period of deferral, and without any notice or opportunity in that regard. Moreover, the petitioner would submit that the ceiling imposed by the agreement, of a sum of Rs.232.35 Lakhs, had already been achieved by the petitioner even prior to the issuance of the impugned amendment.

7. Learned counsel for SIPCOT does not dispute the aforesaid position. I thus of the view that if at all an amendment was warranted, it was for SIPCOT to have issued notice of the same to the petitioner, hear it and thereafter proceed in accordance with law. Since this has not been done, the impugned order fails and is set aside. This writ petition is allowed. No costs.

10.06.2022

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Index : Yes / No
Speaking Order

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Dr.ANITA SUMANTH,J.

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