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W.P.No. 27710 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on	28.03.2024
Order pronounced on	16.08.2024

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No. 27710 of 2022

&

WMP No. 26978 of 2022

M/s. Motorola Mobility (Chennai) Private Limited
 Represented by its Authorised Signatory
 Mr. Ramesh Rajendran AWFIS Spaces Solutions,
 Primus, SP-7A, South Phase,
 Guindy Industrial Estate,
 Chennai,
 Tamil Nadu- 600 032.

... Petitioner

-vs-

1. State Industries Promotion Corporation of Tamil Nadu Limited
 A Government of Tamil Nadu Undertaking
 CIN: U74999TN197ISGC0005967
 19-A, Rukmani Lakshmipathy Road, Post Box No.7223
 Egmore, Chennai- 600 008.

2. Secretary to Government of Tamil Nadu
 Department of Industries
 Secreteriat, Government of Tamil Nadu
 Fort St, George,
 Chennai- 600 009.

3. Commercial Tax Department,



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Assistant Commissioner (ST)
Valluvarkottam Assessment Circle,
Chennai-600 006.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus calling for the records contained in letter bearing Ref: P-IV/SAP/Motorola/IPS/105/2008 dated March 17, 2021, and all letters, orders, and notices issued consequent thereto, including letter bearing Ref. ID/SAP/Motorola/IPS/105/2008 dated September 1, 2021 issued by Respondent No. 1, and to quash the same as arbitrary, unjust, unreasonable, and illegal, and to consequentially direct the Respondents to grant the benefit of the 'Investment Promotion Subsidy' to the Petitioner by reimbursing the Petitioner with the amount of VAT and CST paid by the Petitioner during the period from February 1, 2008 to January 31, 2013 as verified, and endorsed by Respondent No.3., and pass such further or other orders as this Hon'ble Court may deem fit and necessary and thus render justice.

For Petitioner : Mr. Satish Parasaran,
Senior Advocate
for M/s. Arun Karthick Mohan &
Mr. Suhrith Parthasarathy

For Respondents : Mr. P.S. Raman, Advocate General
Assisted by Mr. K. Palaniappan

ORDER



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The facts of the case are summarized as follows: Motorola India

Private Limited (MIPL) entered into a Memorandum of Understanding (the MoU) with the Government of Tamil Nadu/second respondent on 07.06.2006 to invest USD 30 million for establishing a manufacturing facility to produce various telecommunication equipments and products and undertake software development, trading, systems integration and logistics activities and for provision of engineering and IT-enabled services within three years of signing of the MoU. Subsequently, on 12.06.2006, the second respondent issued G.O. (Ms.) No.58 Industries (MIB.1) Department, Government of Tamil Nadu dated 12.06.2006 (GO Ms. No.58) approving MIPL's proposal and provided exemption from the Tamil Nadu General Sales Tax (TNGST) and Central Sales Tax (CST) for 5 years on the first sale to the Domestic Tariff Area(DTA). On 12.09.2006, SIPCOT/the first respondent issued the Allotment Order whereby MIPL was allocated 70 acres in the Special Economic Zone (SEZ) to establish the manufacturing facility with a lease period of 99 years. MIPL commenced operations from 04.02.2008. The MoU imposed a minimum investment



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obligation of Rs.135 crore and a maximum time limit for such investment on MIPL and also imposed obligations on the second respondent to provide concessions to MIPL, *inter alia*, by way of exemption from TNGST and CST.

2. After the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) came into force in 2007, the second respondent issued G.O. (Ms.) No. 80 Industries (MIF1) Department, Government of Tamil Nadu dated 26.03.2008 (GO Ms. No.80), stating, *inter alia*, that the companies that executed MoUs would be paid 'Investment Promotion Subsidy' equivalent to the TNVAT paid by them subject to a sliding scale and other conditions and that a cell would be especially established for the purpose of collecting taxes and issuing necessary certificates for refund and soft loan for MoU companies. MIPL applied for an eligibility certificate (EC) on 16.12.2008 for the Investment Promotion Subsidy and the EC was granted on 12.06.2009. The EC *inter alia* promised the reimbursement of TNGST and CST up to Rs. 135 crores under the Structured Assistance Package. For financial years 2007-08, 2008-09, 2009-10, MIPL paid



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applicable VAT/CST towards the products manufactured in the facility and sold to the DTA and thereafter claimed reimbursement thereof. On 21.06.2010, after providing clarifications and the VAT/CST certificates sought by the first respondent, the petitioner requested the latter to issue the refund certificate through the MoU cell.

3. After the Motorola group's decision to reorganize its business and operate its mobile device manufacturing and enterprise-oriented business, respectively, as separate entities, the facility in the SEZ was transferred to and vested in the petitioner company, Motorola Mobility Chennai Private Limited (MMCPL) under a scheme of arrangement. The scheme of arrangement, by which the transfer was effected, was sanctioned by the High Court of Punjab and Haryana (PHHC) by its order dated 17.09.2010 in C.P.Nos 46-48 of 2010. After taking over the manufacturing operations in July 2010, the petitioner informed the second respondent about the said transfer by its letter dated 30.08.2010 and requested the name of the entity to be changed from MIPL to MMCPL in the MoU. By letters dated 28.09.2010 and



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22.12.2010, the first respondent was requested to incorporate the name change in the lease deed, EC and other documents. Thereafter, on 28.12.2010, the Development Commissioner, in-charge, SEZ, approved the name change in the letter of approval (LoA) dated 27.02.2007.

4. On 12.1.2011, the Joint Commissioner (CT), MoU cell, refused the claim of reimbursement of VAT and CST for the period 1.2.2008 to 31.12.2009 citing non-compliance with the requirements of notice dated 24.8.2010. The petitioner replied on 20.01.2011 by stating that it had submitted the requisite details on 27.09.2010. On 20.12.2011, the petitioner again requested for processing the refund claims by asserting that MoU obligations had been completed. This was followed by a reminder for release of VAT refund on 14.02.2012. Meanwhile, on 6.1.2012, the second respondent informed the petitioner that the request for name change had been accepted at department level but was pending at the cabinet level. On 04.04.2012, the first respondent sent a letter to the petitioner stating that the EC issued earlier in the name of MIPL would be amended by



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substituting the name of the petitioner for MIPL and that since the petitioner has already fulfilled its obligations, it need not furnish a corporate guarantee and can avail the Structured Assistance Package after complying with the basic legal formalities. The petitioner was further directed to approach the MoU cell for obtaining a certificate for the eligible refund amount.

5. In a significant turn of events, the petitioner passed a board resolution on 24.12.2012 and eventually suspended the company's operations on 03.02.2013 at the SEZ facility indefinitely. On 11.1.2013, prior to the actual suspension of operations, the second respondent issued GO (Ms.) No.2, Industries (MIB.1) Department, Government of Tamil Nadu dated 11.01.2013 (GO Ms. No.2) amending the name from MIPL to MMCPL in GO Ms. No. 58. On 10.12.2020, the petitioner wrote to the Industrial Guidance and Export Promotion Bureau (GUIDANCE), with copies marked to the first and second respondents, about the proposed divestment of the factory and the transfer of lease rights over the facility to LuxShare India Private Limited(LuxShare). This was approved by the first respondent on



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20.2.2021. On 26.02.2021, the petitioner again requested for the promised incentive, i.e. refund of amounts paid towards VAT and CST. Thereafter, in March 2021, the third respondent issued certificates acknowledging the petitioner's payment of CST/VAT from 2008 to 2013. In response to the petitioner's letter dated 26.02.2021, the first respondent issued the impugned letter on 17.03.2021 rejecting the petitioner's claim on the ground that the petitioner should be in regular production at the time of disbursement of the incentive and since the petitioner had indefinitely closed the facility from 24.12.2012 and is in the process of transferring control over the facility, its request cannot be entertained.

6. On 29.04.2021, the petitioner replied to the first respondent's refusal letter by reiterating that the reasons mentioned in the letter are not in line with the original requirements as per the EC for availing the Investment Promotion Subsidy. On 05.05.2021, the petitioner wrote to the Deputy Commissioner and requested for processing the claim by enclosing *inter alia* the EC, SIPCOT's waiver of corporate guarantee, and a copy of GO Ms. No.2. In response, on



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1.09.2021, the first respondent again denied the petitioner's claim stating that the reasons mentioned in the petitioner's letter dated 05.05.2021 are not in line with the EC conditions thereby confirming the earlier denial. Pursuant thereto, the petitioner filed an RTI application dated 17.03.2022 seeking details regarding the eligibility to receive tax exemptions, incentives, and benefits under the Structured Assistance Package, and the first respondent replied that the conditions are as mentioned in the EC. Against this backdrop, the present writ petition arises.

7. Oral arguments on behalf of the petitioner were advanced by Mr. Satish Parasaran, learned Senior Advocate, and on behalf of the respondents by Mr. P.S. Raman, learned Advocate General, assisted by Mr. Palaniappan. Both the petitioner and the respondents filed written submissions.

8. Mr. Satish Parasaran submitted the following:

a) The impugned letters of the first respondent are in direct



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contravention of the MoU and GO Ms. No.58 read with the EC.

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b) As per the statutory auditor's certificate, the company had invested Rs. 199.66 crores as on 31.03.2008. By investing more than Rs.135 crores and establishing the facility within the prescribed time limit of three years of signing the MoU, the petitioner has fulfilled all the obligations under the EC and the MoU and is therefore entitled to be reimbursed in respect of amounts paid towards VAT and CST from 01.02.2008 to 31.01.2013.

c) The respondents' refusal of the refund on the grounds that the petitioner is not in continuous production in the facility is extra-contractual; the petitioner actively manufactured the products and provided services from 01.02.2008 to 31.01.2013 and only stopped manufacturing activity on 03.02.2013 as opposed to the respondent's contention that it stopped such activity on 24.12.2012.

d) Because the period of the reimbursement claim pertains to 01.02.2008 to 31.01.2013, the fact that the petitioner was in the process of transferring the facility's operations to Luxshare in 2020-21 is immaterial in approving the petitioner's claim for reimbursement.



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9. The petitioner relied on *Commissioner of Customs (Imports) v.*

Tullow India Operations Ltd. (2005) 13 SCC 789; Jai Beverages (P) Ltd. v.

State of J&K (2006) 5 SCC 772; and State of Jharkhand v. Brahmputra

Metallics Ltd. 2020 SCC OnLine SC 968 to substantiate contentions

regarding eligibility for the subsidy.

10. On behalf of the respondents, learned Advocate General submitted the following in response:

a) GO Ms. No. 58 offers the following incentives if the MoU company fulfils the investment commitment of Rs.135 crore in eligible fixed assets within three years from the date of MoU: 1) exemption from sales tax and CST for the period of five years only on the first sale by MIPL from the SEZ into the DTA, subject to capping eligible investment in fixed assets, 2) capital subsidy of Rs.75.00 lakh as per NIP 2003, 3) ETP subsidy of 25% of capital cost of ETP or Rs.25 lakhs, whichever is lower, and 4) training subsidy with the ceiling of Rs.35 lakh or 30% of total cost of training abroad to the local labour



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force, whichever is lower. The EC towards TNGST and CST reimbursement was issued with a direction to execute the agreement and other documents with the respondent corporation. Till November 2011, the petitioner company failed to furnish the particulars called for by the respondent on 16.06.2009 and by reminders issued subsequently on 18.02.2010 and 21.04.2010.

b) The petitioner furnished certificates from the jurisdictional officer of the Commercial Taxes Department and not from the Special Cell for MoU companies, which is the competent authority to issue certificates, as per GO Ms No.80. Without furnishing tax certificates from the MoU cell, the petitioner company made a representation to the first respondent requesting to process the refund stating that it had submitted the requisite documents. Such request was correctly rejected.

c) In its letters dated 25.05.2009 and 28.05.2009 to the respondent, the petitioner has not furnished details regarding the claimed remittance of Rs. 73,30,424/- towards output VAT/CST.

d) The petitioner failed to complete the execution of legal documents, such as the Deed of Agreement for Investment



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Promotion Subsidy Sanctioned under the Structured Package Assistance Scheme, by furnishing the details called for by the respondent via letter dated 16.6.2009 and reminders dated 18.02.2010 and 21.04.2010.

e) The petitioner's claims for VAT and CST reimbursement are unsustainable because the company has sold the assets to a third party after suspending the operations and thereby violated the conditions of the EC. For claiming benefits, the beneficiary unit should be in regular production at the time of disbursement of the eligible incentive and should also be in possession of the assets considered for the issue of EC.

f) The petitioner has approached the Court belatedly in September 2022 seeking reimbursement of VAT/CST for the period February 2008 to January 2013. Therefore, the writ petition is liable to be dismissed on the ground of laches.

11. The judgment of the Division Bench of this Court in *M/s Divyam Spinners v. State of Tamil Nadu and others*, W.A.No.1152 of 2021, Judgment dated 14.07.2021 (*Divyam Spinners*), was relied on to



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contend that a subsidy should not be granted for defunct assets.

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Discussion, analysis and conclusion:

12. At the outset, I consider the plea of laches. On perusing the counter affidavit of the first respondent, it is noticeable that the plea of laches was not raised directly or by laying the factual foundation for such plea. Both limitation and laches are typically mixed questions of fact and law unless all relevant facts are admitted. Therefore, in the absence of a pleading on the factual foundation, such contention is liable to be rejected. In any event, in this case, all earlier communications, including letter dated 22.08.2017, only called for the execution of legal documentation. Thereafter, the impugned letters rejecting the claim for reimbursement were issued on 17.03.2021 and 01.09.2021 and the writ petition was filed in September 2022. For both these reasons, the contention regarding laches is rejected.

13. In order to decide whether the petitioner company has fulfilled the conditions to claim the refund, it is necessary to set out



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and examine the relevant parts of the MoU, GO and EC. The relevant clauses thereof are set out below:

1. Memorandum of Understanding ('MoU')

"1. Obligation of Motorola:

(a)

Motorola hereby commits to establish the Facility with investments in the range of US\$ 30 million (about Rs.135 crores at current exchange rate of INR 45 for one US\$) in Eligible Fixed Asset within 3 years from the date of this MoU, which will be contingent on the State fulfilling its obligations as stated hereunder. Hence, the primary obligation of Motorola is to establish Facility with a direct investment of not less than US\$ 30 million (about Rs.135 crores at current exchange rate) within 3 years from the date of this MoU.

2. Obligation of the GoTN:

(a) The State Government hereby acknowledges and confirms that Motorola's investment in the state of Tamil Nadu are based entirely on the benefits, concessions, incentives and facilities set forth in the MoU



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being granted in a timely manner by the State Government.

(c) It shall be the sole and absolute responsibility of the State Government to perform or caused to be performed all the obligations hereunder, whether undertaken by itself or on behalf of any of its agencies, including but not limited to agencies such as the municipality or municipal corporation, the Tamil Nadu Electricity Board, Pollution Control Board, SIPCOT, the Guidance Bureau (hereinafter defined as "Agencies") or any other entities/departments/ministries responsible for facilitating or providing Motorola the relevant benefits, concessions, incentives and facilities as undertaken by the State Government hereunder. The State Government shall ensure that all required clearances and approvals to be provided by the State Government or its agencies are given in a timely manner provided Motorola has submitted the required applications or information and complies with regulations prescribed under various statutes as applicable. Upon making of the



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requisite applications and furnishing of the relevant information, the State Government further undertakes, in good faith, to in a timely manner notify Motorola of any inadequacies or insufficiencies in the application made or information furnished and agrees to assist Motorola in taking all necessary steps for completion of the requisite application form(s) and furnishing of the relevant information in order to facilitate completion of the approval process expeditiously.

3. General Provisions:

(k) Unless otherwise agreed by the Parties in writing, this MoU including Schedules attached hereto, constitutes the entire understanding between the Parties concerning the subject manner hereof and supersedes all prior communications or agreement, written or oral.

(emphasis added)

THE SCHEDULE

GOVERNMENT OF TAMILNADU (GoTN)

SUPPORT

Sales Tax exemption

31. Motorola will be manufacturing Products



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that are classified as Information Technology Agreement (ITA) products and hence direct imports of ITA products into India by dealers will not suffer basic customs duty. Therefore, direct imports by dealer have market competitiveness in DTA. Motorola informed that the local manufacturing suffers a cost disadvantage vis-à-vis direct imports from Motorola Inc's China facility. The sales tax exemption on its products sale to the Domestic Tariff Area ("DTA") will help to minimize this cost disadvantage and to help its products to be competitive in DTA. Otherwise, direct imports become cheaper and advantageous vis-à-vis local manufacturing.

33. Accepting the request of Motorola, the State Government offers exemption from TNGST and CST to Motorola on the first sale from SEZ to DTA for a period of five (5) years from the date of commencement of manufacture subject to the ceiling on eligible investments made by Motorola within three (3) years from the date of MoU. This exemption will not be available for subsequent sales. In effect, Motorola at the SEZ can claim tax exemption on its first sales from SEZ to DTA and



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subsequent sales in DTA will be taxable.

34. *In case the State Government introduces VAT, then the State Government guarantees to fully protect the existing TNGST and CST benefits extended to Motorola in a suitable manner so that the value of exemption benefits will not diminish in the post-VAT scenario. A suitable mechanism will be formulated for this."*

**2. G.O. (Ms) No.58 dated 12.06.2006 issued
by Industries (MIB.1) Department,
Government of Tamil Nadu**

"(iv) Exemption from Tamil Nadu Government Sales Tax and Central Sales Tax

Exemption from Tamil Nadu Government Sales Tax and Central Sales Tax will be given for 5 years. This exemption will be available only on the first sale by M/s. Motorola from the Special Economic Zone (SEZ) into the Domestic Tariff Area (DTA). Subsequent sales in Domestic Tariff Area will be taxable. This exemption will be subject to capping at eligible investment in Fixed Assets."

3. Eligibility Certificate for Investment



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Promotion Subsidy No. 3/V/IPS/N/2009

dated 12.06.2009

“2. The holder of this certificate shall be entitled for reimbursement of TNGST and CST paid by the company as Investment Promotion Subsidy based on G.O.(Ms.) No.58, Industries (MIB.1) Department, dated 12.06.2006 that has indicated the following:

I. TNGST and CST REFUND:

TNGST and CST will be exempted for 5 years. This exemption will be available only on the first sale by MIPL from SEZ into the Domestic Tariff Area (DTA). Subsequent sales in DTA will be taxable. This exemption will be subject to capping at eligible investment in fixed assets.

3. Based on the above, the holder of this eligibility certificate can approach SIPCOT for reimbursement of TNGST and CST paid by the company for a sum not exceeding Rs. 135.00 Crores (Rupees One Hundred and Thirty Five Crores Only) under Structured Assistance Package taking into consideration investment in “Eligible Fixed Assets” for a period of 5 years



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(from 01.02.2008 to 31.01.2013) as per above cited G.O. The period of operation of this Eligibility Certificate shall be within the period of full availment of eligible amount or the above said period whichever is earlier.

4. The company shall not sell or otherwise dispose of wholly or in part or lease out wholly or in part of or effect any change in the ownership of the fixed assets of the company or encumber the same in any manner other than the charges created or to be created in favour of SIPCOT without the prior written permission from SIPCOT.

5. The company shall not close or shift the unit to a new location without obtaining prior written permission from SIPCOT.

6. The company shall not change the name and/ or constitution / or management without obtaining prior written permission of SIPCOT.

8. The Investment Promotion Subsidy shall be secured by way of first charge on the fixed assets



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created/proposed to be created and the same shall be on pari passu with other first charge holders. The company shall execute necessary documents/agreements as required for the Investment Promotion Subsidy.

9. The company shall undertake to comply any other conditions stipulated by Government/SIPCOT with reference to Structured Package of Assistance.

10. The company shall be eligible for Investment Promotion Subsidy as long as it manufactures products for which the E.C. has been issued. If the company fails to manufacture the product for which the E.C. has been issued or manufactures any other goods under the guise of the products for which the eligibility certificate has been issued shall stand cancelled and the Investment Promotion Subsidy disbursed will be recalled together with penal interest.

11. In case of furnishing false information/documents for obtaining Investment Promotion



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Subsidy, SIPCOT reserves the right to cancel the EC and initiate legal action for recovery of entire Investment Promotion Subsidy with interest.

13. Violation of any of the conditions of the Eligibility Certificate and/or connected Govt. Orders will result in a cancellation of EC and withdrawal of Investment Promotion Subsidy entirely and company is liable to pay the entire Investment Promotion Subsidy in one lump sum with interest."

(emphasis added)

Thus, on reading the MoU, it is evident that the primary obligation of MIPL was to invest about Rs.135 crore in eligible fixed assets within three years from the date of the MoU. The corresponding obligation of the State Government was to provide all the benefits, concessions, incentives and facilities set out in the schedule thereto. Paragraph 33 of such schedule, which is extracted above, provides for exemption from TNGST and CST for the first five years on the first sale from the SEZ to the DTA. When the MoU is read with GO Ms. No. 58 and the



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EC, it follows that the MoU company is eligible for refund of VAT/CST by way of Investment Promotion Subsidy for five years on the first sale to the DTA upon satisfying *inter alia* the following conditions: (i) investment of Rs. 135 crores in eligible fixed assets within three years of signing the MoU; (ii) no change in ownership of the fixed assets or closure or change in the location, name, constitution or management of the company without the prior written permission from the first respondent; (iii) securing the Investment Promotion Subsidy by way of a first charge over the fixed assets; (iv) manufacturing only telecommunication equipments and products, especially ITA products; and (v) execution of necessary documents/agreements as required for the Investment Promotion Subsidy. As regards the EC, which is limited in scope to the Investment Promotion Subsidy of refund of specific taxes, it should also be noticed that the entitlement to subsidy is limited not only by value (a maximum of Rs.135 crore) but also by time (01.02.2008 to 31.01.2013). Indeed, the EC states categorically that the period of operation is only up to the earlier of the above.



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14. The petitioner has placed on record about three certificates dated 10.12.2008 from BSR & Co., Chartered Accountants. These certificates clearly evidence that MIPL invested about Rs.199.66 crores as on 31.03.2008 in the fixed assets. The list of fixed assets is specified in one of such certificates. It is further certified therein that the company commenced commercial production on 04.02.2008. These facts are admitted in paragraph 1(iii) of the first respondent's counter affidavit. Indeed, in GO Ms. No.2, the Government records as under:

"....The company has made an investment of Rs.205.21 crores and provided employment to about 289 persons within the investment period, thereby fulfilling its obligation committed in the MoU dated 7.6.2006."

Hence, the petitioner's predecessor-in-interest fulfilled the first condition of investing more than the minimum threshold of Rs. 135 crores within three years from the date of signing the MoU (07.06.2006).

15. The EC also stipulates that MIPL should not, *inter alia*,



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transfer the fixed assets or close the unit or change the name of the enterprise without the prior approval of the first respondent, SIPCOT. MIPL informed the second respondent about the scheme of arrangement by which MIPL merged with MMCPL/petitioner on 30.08.2010 before the PHHC sanctioned the scheme of arrangement via order dated 17.09.2010. The petitioner also informed the first respondent about the change via letters dated 28.09.2010 and 22.12.2010. Thereafter, on 04.04.2012, the first respondent acknowledged that the petitioner had established the facility in accordance with the MoU and GO Ms. No. 58, and that it is eligible to claim the refund on compliance with basic legal formalities. Subsequently, GO Ms. No. 2 was issued by the second respondent to incorporate the amendment from MIPL to MMCPL in GO Ms. No.58. Therefore, the second condition has also been fulfilled as regards this transfer and the petitioner cannot be denied the refund on this ground.

16. As for the subsequent transfer from the petitioner to LuxShare, such transfer was made in late 2020, which is much later



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than the five year period of operation of the EC. Even otherwise, both the respondents were informed about such transfer prior thereto by communication dated 10.12.2020. In response thereto, SIPCOT/ the first respondent on 20.2.2021 communicated its approval for the transfer of leasehold rights for the remaining lease period of 84 years. When viewed in the context of the date of the petitioner's request and the response thereto, it cannot be said that the condition in the EC regarding prior approval for transfer was violated. Before turning to the remaining conditions, I consider the tenability of the rejection on the grounds of the petitioner not being in continuous operation and that the certificates were not issued by the competent authority.

17. Clause 10 of the EC stipulates that “(t)he company shall be eligible for Investment Promotion Subsidy as long as it manufactures products for which the E.C. has been issued” and not that the company should be in continuous operation at the time of reimbursement. Indeed, such a condition is not prescribed in the MoU, GO Ms No.58, GO Ms. No.2 or the EC. The refund claim is with respect to the period running from 01.02.2008 to 31.01.2013 when the petitioner



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company was in continuous operation and had paid VAT and CST on goods sold to the DTA. Such refund claim was made from time to time during the period of operation, such as by letters dated 21.06.2010, 14.02.2012 and 11.04.2012. In response, for instance, by communication dated 04.04.2012, the first respondent acknowledged fulfilment of obligations by MIPL and called for compliance with basic legal formalities as a prerequisite for availing the Structured Assistance Package. The company ceased operations on 03.02.2013 subsequent to the board resolution on 24.12.2012. In this contractual and factual context, the transfer of lease rights and operations to the third party, LuxShare, for which the first respondent granted approval on 20.02.2021, cannot be cited as a reason to reject the claim for refund. The reliance on *Divya Spinners* also does not advance the cause of the respondents because there is no indication therein, unlike in this case, that the investment was made on the basis of an express representation by the Government of Tamil Nadu that the investment is based entirely on the benefits, concessions, incentives and facilities set forth in the MoU being granted in a timely manner by the State Government. Besides, although the fixed assets were not



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used for a few years, it appears that such assets are being used by LuxShare currently pursuant to the transfer.

18. Next, I turn to the contention that the petitioner is not entitled to the reimbursement claim as the certificates were not issued by the competent authority. While dealing with this issue, it bears repetition that the MoU records that the second respondent acknowledges that MIPL's investment was based entirely on the benefits, concessions, incentives and facilities extended thereunder. Such MoU also imposed an obligation on the second respondent to facilitate the expeditious grant of benefits, concessions, incentives and facilities by assisting in the processing of applications. The record shows that the certificates were issued by the Assistant Commissioner, Commercial Taxes Department. As per GO Ms. No.80, the MoU cell comprises the Deputy Commissioner, Assistant Commissioner, two commercial tax officers, and three system operators from the Commercial Taxes Department. The relevant parts of GO Ms. No.80 read as under:



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“c) Necessary certificate for making refund and soft loan to the MoU companies will be issued by this cell, after receiving tax from MoU companies.

d) the refund and soft loan will be made by SIPCOT on the basis of the certificates issued by the above mentioned cell, after applying the terms and conditions as given in the MoU or the G.O sanctioning the structural package.”

Thus, these tax certificates - which were issued by the Assistant Commissioner and addressed to the Deputy Commissioner of the MoU cell with a copy to the petitioner - concerning the tax period 2008-13 certify the petitioner's payment of the tax amount of Rs. 28,55,58,008 towards VAT/CST for the said period and thereby establish the petitioner's eligibility for the refund claim. Absent any explicit stipulation in GO Ms. No. 80 about the issuing authority's rank in the MoU cell, the refund claim cannot be denied on the ground that the tax certificates were not issued by the competent authority especially in light of the obligations imposed on the second respondent under the MoU.



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19. As regards the third condition discussed in paragraph 13 *supra*, i.e. the creation of a charge over the fixed assets, the first aspect to be noticed is that the impugned letters of rejection do not contain an assertion of breach thereof. As discussed earlier, the period of operation of the EC was from 01.02.2008 to 31.01.2013 because no subsidy is payable thereafter. The intention appears to be to ensure that there is security for the disbursed subsidy so as to enable recovery of such disbursed amount if the EC is cancelled on account of breach during the five year period running from 2008 to 2013. None of the documents on record indicate that MIPL or the petitioner manufactured ineligible products or that they invested in ineligible fixed assets or that they provided false information. Therefore, there has been no breach of the EC, especially conditions specified in paragraphs 10, 11 or 13 thereof.

20. With regard to the submission and execution of documents, the respondents have placed on record letters dated 16.06.2009, 29.05.2013 and a few reminders in relation thereto. There is reference to execution of necessary documents or compliance with



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basic legal formalities in the EC and other documents, such as letter dated 04.04.2012 from the first respondent; however, there is nothing on record to indicate that the Deed of Agreement for Investment Promotion Subsidy Sanctioned under the Structured Package Assistance Scheme was forwarded to the petitioner and that the petitioner refused to execute the same. Therefore, on these counts also, the rejection cannot be sustained. Moreover, in the reply dated 17.05.2022 to the RTI query by the petitioner, the respondent confirmed that the conditions to be fulfilled for availing tax exemptions under the Structured Assistance Package are those enumerated in the EC. The upshot of this discussion is that the petitioner has substantially fulfilled conditions for refund and would be entitled thereto subject to execution of necessary documents in accordance with the MoU, EC and applicable Government Orders.

21. For the reasons stated above, the impugned letters rejecting the petitioner's refund claim are quashed and the respondents are directed to grant the benefit of the 'Investment Promotion Subsidy' to the Petitioner subject to the submission or execution of necessary



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documents, including an agreement, in conformity with the MoU, GO Ms. Nos.58 and 2 and the EC. The respondents are, therefore, directed to forward to the petitioner the draft Deed of Agreement prepared in accordance with the MoU and applicable Government Orders and call for any other documents, if required, within 15 days from the date of receipt of a copy of this order. The reimbursement shall be made within two months from the date of execution/submission of such agreement and documents. W.P.No. 27710 of 2022 is disposed of on these terms without any order as to costs. Consequently, connected miscellaneous petition is closed.

16.08.2024

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/ No

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To

1. State Industries Promotion Corporation of Tamil Nadu Limited

33/35



W.P.No. 27710 of 2022

A Government of Tamil Nadu Undertaking

CIN: U74999TN197ISGC0005967

19-A, Rukmani Lakshmipathy Road, Post Box No.7223

Egmore, Chennai- 600 008

2. Secretary to Government of Tamil Nadu

Department of Industries

Secreteriat, Government of Tamil Nadu

Fort St, George,

Chennai- 600 009

3. Commercial Tax Department,

Assistant Commissioner (ST)

Valluvarkottam Assessment Circle,

Chennai-600 006.

SENTHILKUMAR RAMAMOORTHY J.

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W.P.No. 27710 of 2022

Pre-delivery order made in

W.P.No. 27710 of 2022
&
WMP No. 26978 of 2022

16.08.2024