
(2011) 07 MAD CK 0506

Madras High Court

Case No: Writ Petition (MD) No"s. 571 to 576 of 2011

Kumar Spinning Mills
Private Ltd.

APPELLANT

Vs

The Commercial Tax
Officer

RESPONDENT

Date of Decision: July 8, 2011

Citation: (2011) 07 MAD CK 0506

Hon'ble Judges: Vinod K. Sharma, J

Bench: Single Bench

Advocate: A. Thiyagarajan, for the Appellant; D. Muruganandham, A.G.P., for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Vinod K. Sharma, J.

Since common question of law is involved in these writ petitions, they were heard together and disposed of by common order.

2. The Petitioner, a registered Company under the Companies Act, is carrying on the business of manufacturing of hank yarn and cone yarn etc.

3. The Petitioner is a registered dealer under TNGST and CST Act. The Petitioner applied for interest free deferral scheme, under G.O.Ms. 500 industries (mig II) department dated 14.05.1990.

4. The Government of Tamil Nadu had given authority to the Commercial Tax and Religious Endowment Department for issuance of eligibility certificate to new competent industries, and also to expansion of industries.

5. The industries were entitled to interest free deferral scheme. This benefit was available to the new industry as well as existing industries, while undertaking expansion or diversification of unit. The deferral benefit were to be given to the extent of the investment made in the fixed assets of the new industry or the new unit under expansion.

6. The deferral amount was to be treated as loan given to the Assessee by the Government.

7. The Petitioner was issued eligibility certificate vide certificate No. 160/TX/D/E dated 04.12.1997. Under the eligibility certificate, the deferral periods were to commence from 31.03.1997 to 01.04.2005 and 31.01.2006. The Petitioner executed the deed of agreement, in terms of the scheme.

8. As per terms of agreement, the eligibility certificate, issued under EFST Deferral Scheme, stipulated as under:

3. Based on the above, the holder of this E.C. will be eligible for deferral of sales tax not exceeding Rs. 129.40 lakhs (Rupees One hundred and twenty nine lakhs and forty thousand only) interest free for NINE YEARS from the month in which the holder's unit commenced its commercial production i.e. from 01.02.1997 to 31.01.2006.

4. The actual shall however be the least of the amounts mentioned in 4.1 and 4.2 below:

4.1 (a) Actual sales tax liability on account of General Sales Tax, Central Sales Tax, Additional Sales Tax, Surcharge and Additional Surcharge liability accruing the favour of Government during the period of deferral on the sale of finished goods manufactured by the unit.

4.2. 80% of the value of initial gross fixed assets i.e. Rs. 129.40 lakhs (Rupees One hundred and twenty nine lakhs and forty thousand only)

5. Conditions:

5.1. The sales tax deferred will be repaid as follows:

DEFERRAL PERIOD	FINANCIAL YEAR OF REPAYMENT
1.2.1997-31.3.1997	1.2.2006-31.3.2006
1.4.1997-31.3.1998	1.4.2006-31.3.2007
1.4.1998-31.3.1999	1.4.2007-31.3.2008
1.4.1999-31.3.2000	1.4.2008-31.3.2009
1.4.2000-31.3.2001	1.4.2009-31.3.2010
1.4.2001-31.3.2002	1.4.2010-31.3.2011
1.4.2002-31.3.2003	1.4.2011-31.3.2012

1.4.2003-31.3.2004

1.4.2012-31.3.2013

1.4.2004-31.3.2005

1.4.2013-31.3.2014

1.4.2005-31.3.2006

1.4.2014-31.3.2015

5.2. The unit shall enter into an agreement with the Assistant Commissioner (Commercial Taxes) concerned as per terms and conditions stipulated by that Department.

5.3. The company is eligible for deferral of sales tax only on the increased volume of production/sale. For the purpose of determining the increased volume of production, the base figure would be the highest of the volume of production/sale in the company in any one of the year during the last 3 years. Till reaching the volume of production/sale specified earlier the company would continue to pay tax and any liability in excess of the production/sale specified above alone will be eligible for deferment. The highest production/sales achieved by the company prior to the proposed expansion/diversification in the last three years is:4.21 lakhs Kgs. of yarn / Rs. 385.13 lakhs for the year 1995-96.

5.4. The subject company has furnished the production/turnover details of its Group Companies vide its Lr.dt.15.9.1996. The highest production/turn over of the Group Company"s is given below:

Name & Location	Product	Sales T.O. Year(Tonnes) /Rs in lacs/
-Nil-		

6. The deferral scheme will be applicable to the unit/company only as long as it manufactures products for which the E.C. has been issued. If the unit/company fails to manufacture the produce for which the E.C. has been issued or manufactures any other goods under the guise of the products of which the certificate has been issued or if the Commercial Tax Department is of the opinion that, the unit/company is not manufacturing the product for which the E.C has been issued, the E.C issued shall stand cancelled. The commercial tax department shall have the right to demand and collect the tax assessed for all the years covered by the scheme and the unit/company is liable to pay the same in one lump sum.

7. Violation of any of the conditions in the Eligibility Certificate and the connected Government Orders will be result in withdrawal of deferral entirely.

9 In terms of the eligibility certificate issued, after the execution of agreement, the Petitioner availed benefit under deferral scheme.

10. The Petitioner was issued a notice on 09.12.2005, pointing out therein that the Petitioner had installed additional spindles for manufacture of hank yarn and cone yarn,

for the assessment years 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004 and 2004-2005.

11. In view of the inspection carried out, a show cause notice was issued calling upon the Petitioner as to why additional tax be not recovered.

12. The Petitioner submitted a reply to the the show cause notice, pointing out therein, that whatever yarn was manufactured out of the spindles referred, in the notice were duly included in the sale turnover filed in the monthly return.

13. It was also stated that the Petitioner would pay the deferral amount from the date of commencement of repayment.

14. A request was made for further time to file detail objections. The request was also made for personal hearing. The Commercial Tax Officer passed the impugned order on 06.01.2006, without giving an opportunity of hearing to the Petitioner or meeting with the objections raised and a reply to the show cause notice.

15. The impugned order reads as hereunder:

ORDER:

Tvl.Kumar Spinning Mills (P) Ltd., Palayamkottai were availing Interest Free Sales Tax Deferral fro the year 1999-2000. As per the eligibility certificate issued by the SIndian Penal Code, 1860OT, the dealers were in possession of 7864 spindles only and on the above basis I.F.S.T. Deferral was sanctioned for a total sum of Rs. 129.40 lakhs.

Their place of business was inspected by the Officers of the Enforcement wing on 02.12.2005. At the time of inspection it was noticed that the dealers were found to have created more number of spindles year by year in addition to the existing 7864 Spindles as follows:

YEAR	NEW	EXISTING	TOTAL
1999-2000	1416	7864	9280

Thus they have availed the deferral of sales tax for the commodities manufactured by the new capacities created after the date of 1st expansion permitted based on the eligibility certificate issued by the SIndian Penal Code, 1860OT. They have therefore, availed the deferral of the sales tax on the sales of yarn manufactured out of the spindles created in excess over and above the existing capacity as follows:

Hank Yarn Turnover Rs.6,80,74,492. Cone Yarn Turnover Rs. 73,41,846. -----
Rs.7,54,16,338. No. of additional spindles used 1416 Total No. of spindles used 9280
Rs.7,54,16,338- ----- = Rs.8,127- 9280 1416x8127 = 1,15,07,832- 6,80,74,492

----- = Rs.1,03,87,535-@ 2% 7,54,16,338 73,41,846 ----- = Rs. 11,20,297-@4%
7,54,16,338 ----- Rs.1,15,07,835- Hank yarn sales turnover @ 2% Rs.
2,07,751- Cone yarn sales turnover @ 4% Rs. 44,812- ----- Rs. 2,52,563/-

It was therefore proposed to require the dealers to remit the following tax as the amount has been wrongly availed by them in excess of eligibility certificate.

Tax Rs. 2,52,563/-

As the amount should have been remitted before the 20th of April 2000, a penalty at 2% per month from the due date was also proposed to be levied u/s 12(3)(c) of the Act.

A notice was issued to the dealers accordingly and the notice was duly served. On receipt of the notice the dealers have filed a petition on 02.01.2006. In the petition they have admitted their liability and assured that they would repay the deferral amount only on the date of commencement of repayment. They have also requested further time for filing objections and required further opportunity for their personal hearings. Their 2.01.2006 dated statement was taken for consideration. They have admitted the additional liability for their excess availment of sales tax due to expansion of their unit year by year before the Enforcement officers during inspection on 2.12.2005. As there had been sufficient time and opportunity granted to them, their present petition is considerable as nothing but a time gaining for the postponement of government dues. In the above circumstances, it is hereby ordered for the payment of tax of Rs. 2,52,563/- for the year 1999-2000. The above balance amount should be remitted within three days of receipt of this proceedings.

16. The other orders are not being reproduced for the sake of brevity, as all the orders are similar to one reproduced above.

17. Though the orders under challenge are appealable under the Act, therefore, normally writ is not competent on account of availability of alternative statutory remedy.

18. However, keeping in view the fact, that the writs were admitted in the year 2006, No. useful purpose would be served, to relegate the Petitioner to avail the alternative statutory remedy at this stage, specially when the impugned orders have been passed in violation of principles of natural justice.

19. In view of the facts that orders have been passed in violation of principles of natural justice, the impugned orders deserve to be set aside and cases are remitted back to the Commercial Tax Officer for re-determination, after giving an opportunity of hearing to the Petitioner.

20. The learned Senior counsel for the Petitioner is prima facie right in contending, that under the scheme, there was No. restriction regarding number of spindles. The deferral benefit, was given to the Petitioner for the fixed amount, which is also to be repaid back,

after the completion of deferral period.

21. The impugned order does not disclose as to how, because of the number of spindles being increased, it would not fall under the scheme for the deferral benefit.

22. The order is completely silent on this point. The order also does not disclose basis for adopting the formula, in coming to the conclusion, that the tax demanded is payable.

23. Once the fixed amount of tax was to be deferred, the order prima facie is out come of non application of mind. As already observed above, before passing the impugned order, No. personal hearing was granted to the Petitioner. The order is also silent on the point raised, in reply thus it is a non speaking order, this is against settled law that quasi judicial orders are to be speaking orders.

24. Consequently all the Writ Petitions are allowed, and the impugned orders are set aside. The cases are remitted back to the Commercial Tax Officer to pass fresh orders, after giving an opportunity of hearing to the Petitioner.

25. Keeping in view that matters are pending for almost five years, in this Court, the Petitioner is directed to appear before the Commercial Tax Officer on 01.08.2011 at 10.30 a.m.

26. The Commercial Tax Officer is directed to pass speaking orders afresh, within a period of two months thereafter. No. costs.

27. Consequently connected miscellaneous petitions are closed.