

## Madras Cements Limited, Vijayawada Vs State of Andhra Pradesh and others

**Court:** Andhra Pradesh High Court

**Date of Decision:** June 20, 2001

**Acts Referred:** Andhra Pradesh General Sales Tax Act, 1957 " Section 33(E), 9  
Andhra Pradesh General Sales Tax Rules, 1957 " Rule 35  
Constitution of India, 1950 " Article 14

**Citation:** (2001) 4 ALD 401 : (2002) 125 STC 1

**Hon'ble Judges:** S.R. Nayak, J; S. Ananda Reddy, J

**Bench:** Division Bench

**Advocate:** M/s. K. Raji Reddy and N. Venugopal, for the Appellant; Mr. Bhaskar Reddy, Special Government Pleader for Taxes, for the Respondent

**Final Decision:** Dismissed

### Judgement

@JUDGMENTTAG-ORDER

S.R. Nayak, J.

The petitioner is a public limited company incorporated under the Companies Act, having its registered office in Tamil

Nadu and factory at Jayanthipuram in the State of Andhra Pradesh. The petitioner company is engaged in the manufacture of cement and is a

registered dealer on the rolls of the Commercial Tax Officer, Nandigama, the 5th respondent herein. The petitioner company applied for deferment

of sale tax under G.O. Ms. No.117 Industries and Commerce Department dated 17-3-1993 as amended by G.O. Ms. No.386 Industries and

Commerce (IFR) Department dated 26-9-1994. The petitioner expanded the unit in order to increase the production of cement. By virtue of G.O.

Ms. No.117, as amended G.O. Ms. No.386, referred to above, the petitioner is entitled for deferment of tax in respect of additional quantity of

cement produced consequent to the expansion of the unit. The expansion of the unit leading to increase in production of cement took place with

effect from 15-2-1995. Under the deferment of sales tax scheme, the petitioner company was entitled for deferment of sales tax/tax holiday even in

respect of additional quantity produced consequent to the expansion of its unit. The petitioner company, therefore, applied for deferment of the

sales tax on 10-8-1995. The said application was filed before the Commissioner of Industries, Andhra Pradesh, Hyderabad, the 3rd respondent

herein. The 3rd respondent on consideration of the said application issued the proceeding No.20/3/6/0734, dated 15-5-1996. It reads:

1. Name of the Industrial Unit: M/s Madras Cements Ltd.

2. Full address(with pin code) Jayanthipuram vil.,

Jaggaiahpet Mandal,

Krishna District

3. Constitution of Indl. Concern (pvt) Ltd (Partnership Limited Company

firm/Proprietary)

4. Pmt/SSI/IEM/Acknowledgement IL/LI No. and dt. 1451/SIA/IMO/91,dated 11-5-

1994 of Govt. of India

5. Name(S) of products with capacities Original/Expansion

7.5 lakhs Tpa 11.00 lakhs Tpa

(base production) Qty Value

Year Qty Value

1993-94 824161.00 tons Rs. 9,716.49 Rs. 2,737.09

7. Option entertained by the Tiny SSI Unit Sales Tax Department

8. Regn. under APGST and CST

(a) Regn. under APGST VJA/06/3/1458,dt.1-4-98

(b) Regn. under CST VJA/06/10693,dt.1-4-88

9. (a) Fixed capital investment in the approved project Rs. 3168,29.00

under expansion

(b) Loans sanctioned by financing institutions for raising Rs. 6241.00 lakhs

fixed assets under expansion/MID

(c) Tentative eligibility fixed for Sales Tax Department

under expansion

The SSI unit is not entitled to collect sales tax from the consumers if they opt for exemption and further they would be liable to remit the sales tax

collected to Government in case they collect sales tax during the avallment period of sale tax exemption.

The 3rd respondent vide the above proceeding issued the Final Eligibility Certificate taking the year 1993-94 as the base year and the base

quantity as 8,24,161 metric tonnes.

2. The Commissioner of Commercial Taxes, A.P., Hyderabad, the 2nd respondent herein issued Circular No.CCT"s Ref.All (3)/ 2846 of 1996

dated 12-5-1997 clarifying that the industrial units availing sales tax deferments are eligible for deferment as and when the dealers exceed the

production with reference to local sales and directing the Deputy Commissioners (CT) to recover the tax due on base production first with

reference to local sales and then to allow the deferment on turnover goods in excess of base production. In pursuance of the above circular of the

3rd respondent, the 5th respondent-Commercial Tax Officer, Nandigama issued notice bearing No.GI No. 12285/97-98, dated 20-6-1997 to the

petitioner directing the petitioner company to pay sales tax of Rs. 14,06,100/- for the month of April, 1997 within seven days from the date of

receipt of the notice while administering the threat that if the petitioner company fails to pay the tax as demanded, action would be taken in terms of

the APGST Act and Rules framed thereunder. In the same notice, the petitioner was also informed that it is liable to pay the entire monthly tax till it

crosses 3,33,600 metric tonnes and only when that target is reached, the company is eligible to avail the facility of deferment of sales tax. Hence,

this writ petition assailing the validity of the Circular dated 12-5-1997 issued by the 2nd respondent and the notice issued by the Commercial Tax

Officer, Nandigama, 5th respondent herein dated 20-6-1997, as well as G.O.Ms .No.18, dated 30-1-1997.

3. Sri K. Raji Reddy, learned Counsel for the petitioner placed two contentions before us for consideration. The 1st contention is that the tax paid

by the petitioner pending the issuance of the Final Eligibility Certificate for the period from 15-2-1996 to 30-4-1996 is required to be adjusted

towards the tax payable by the petitioner company for the month of April, 1997 and for subsequent period, but only during the period of Final

Eligibility Certificate and the stand taken by the Commercial Tax Department, that the said tax paid during the above period would be adjusted

towards the future sales tax dues only after the expiry of the eligibility period is totally irrational, arbitrary, violative of Article 14 of the Constitution

and against the very object of the scheme of deferment granted to industries in terms of G.O. Ms. No.117, dated 17-3-1993 as amended by G.O.

Ms.No.386, dated 26-9-1994. The learned Counsel would also maintain that the provisions contained in G.O. Ms. No.18, dated 30-1-1997 that

the tax paid by the industrial units pending issuance of Final Eligibility Certificate would be adjusted against the future sales tax dues payable only

after the expiry of the eligibility period, is totally irrational, arbitrary and cannot be given effect to literally. Secondly, the learned Counsel would

contend that G.O. Ms. No.18, dated 30-1-1997 would be applicable only prospectively and that G.O. cannot be pressed into service by the

respondent authorities in respect of sales effected in the past. In other words, the learned Counsel would maintain that G.O. Ms. No.18 is only

prospective and not retrospective in its operation. The learned Counsel would further contend that the deferment can be claimed on the basis of the

monthly average production also, and not necessarily on the basis of the annual production. The learned Counsel would also attack the mode of

computation of base production by the respondents. On the other hand, Sri Bhakar Reddy, learned Special Government Pleader for Taxes would

support the impugned circular and notice issued by the 2nd respondent and 5th respondent respectively and also the validity of G.O. Ms. No.18,

dated 30-1-1997.

4. In view of the rival contentions, two main questions arise for our consideration apart from some incidental questions. The 1st question is that

whether in terms of G.O. Ms. No.18, dated 30-1-1997, the tax paid by the petitioner company during the pendency of the issuance of the final

eligibility certificate issued under G.O. Ms. No.117, dated 17-3-1993 as amended by G.O. Ms. No.386, dated 26-9-1994 for the period from

15-2-1996 to 30-4-1996 is required to be adjusted against the future sales tax dues payable only after the expiry of the eligibility period in terms

of G.O. Ms. No.18, dated 30-1-1997, and if so, whether such a prescription in G.O. Ms. No.18, dated 30-1-1997 would render it invalid and

illegal as contended by the learned Counsel for the petitioner. The second question that arises for our consideration is whether G.O. Ms. No.18,

dated 30-1-1997 is prospective only and it has no application to the facts of this case.

5. The Government of Andhra Pradesh by issuing G.O. Ms. No.117, Industries and Commerce Department, dated 17-3-1993 introduced the

New Comprehensive Scheme of State Incentives (NCSSI 92) for new industries with effect from 3-10-1992. The scheme inter alia provides

Sales Tax Concession to the existing industries undertaking substantial Expansion/Modernisation/Diversification for a period of 10 years from the

date of deferment for the original unit. Para 5B (iii) of the above G.O. stipulates that the existing industrial units who have been allowed Sales Tax

deferment under the earlier deferment scheme would be eligible for Sales Tax deferment on their substantial Expansion/ Modernisation

/Diversification projects. It was realised that this limited facility afforded in the G.O. for substantial Expansion /Modernisation/Diversification may

help the industry coming up under later parts of NSIS 84 and LSIS 89 if the industries undertaking Expansion/ Modernisation/Diversification and

the scope for such units going on for Expansion/. Modernisation/Diversification is very limited, the units having been recently established and as it

takes substantial period for stabilization during the period of post production. In that view of the matter, the Government after having examined the

matter in detail issued G.O. Ms. No.386, Industries and Commerce (IFR) Department, dated 26-9-1994 directing extension of the Sales Tax

Concession to existing units undertaking substantial Expansion/ Modernisation/Diversification subject to eligibility etc., criteria laid down in the

G.O. Relevant portion of para (3) of that G.O. Ms. No.386, dated 26-9-1994 reads:

3. The Government have examined the matter in detail and hereby order to extend the Sales Tax Concession to existing units undertaking

substantial Expansion/Modernisation/Diversification subject to eligibility etc., criteria laid down below:

1. Eligibility: Date of commencement of Commercial Production of the expanded/modernised/diversified product shall be on or after 2-10-1992.

2. Eligible Area: Eligible Areas means the three areas viz., Area I area II and Area III as specified in G.O. Ms. No.117 Industries and Commerce

Department dated 17-3-1993.

3. Operative Period: This scheme shall take effect from 2-10-1992 will be in force upto 31-3-1997.

4. Definitions:

Expansion: Expansion means the enhancement of capacity of the same product line:

Modernisation: Modernisation means adoption of a new and upgraded process by an existing industrial unit which leads to saving in energy or

reduction in pollution and improvement in production capacity by installation of new machinery, balancing equipment etc., as may be required. If

the existing industrial unit merely replaces plant and machinery it will not be considered modernisation eligible for incentives.

Diversification: Diversification means a new product to that of existing product.

Original Investment: All investments ineligible fixed assets prior to diversification will be termed as original investment which excludes depreciation

and revaluation.

\*[Base Turnover: The best annual turnover in terms of value in the preceding three years period to expansion/modernisation/diversification is

termed as base turnover.

In terms of the Final Eligibility Certificate I and G.O. Ms. No.386, the deferment of sales tax has to be claimed on the basis of the annual

production and not on the basis of the monthly production because the Final Eligibility Certificate only gives the total quantum of sales tax

deferment and it does not contain any direction that the deferment can be claimed on the basis of the monthly average production. Therefore, no

exception can be taken to the circular dated 12-5-1997 issued by the 2nd respondent and that circular is in conformity with the Final Eligibility

Certificate issued by the 3rd respondent. If the contention of the petitioner that the deferment can be claimed on the basis of the monthly average

production is accepted, I that would tantamount to alteration of the very terms and conditions of the eligibility certificates. As per the eligibility

certificate, deferment has to be claimed on the basis of the annual production, but not on the basis of monthly production. Similarly, the mode of

computation of base production by respondents is in line with the direction issued in G.O.Ms.No.386 and the circular dated 12-5-1997 issued by

the 2nd respondent in pursuance of the G.O. Ms. No.386. G.O. Ms. No.386 defines the base turnover as the best annual turnover in terms of

value in the preceding three years period to expansion/modernization/ diversification. In that view of the matter, we do not find any merit in the

contention of the petitioner that the base turnover should be on the basis of monthly production. The Commissioner of Industries had granted Final

Eligibility Certificate to the petitioner-company for availing sales tax deferment for a sum of Rs. 13,68,54,630/- and this eligibility was for the

period from 15-2-1995 to 14-2-2000. The petitioner"s claim that the tax paid by them pending the issuance of Final Eligibility Certificate from 15-

2-1995 to 30-4-1996 should be adjusted against the tax payable for the month of April, 1997 is untenable, particularly having regard to clear,

plain and unambiguous provisions of G.O. Ms. No. 18. Therefore, we hold that the tax paid by the petitioner-company pending the issuance of the

final eligibility certificate during the period from 15-2-1995 to 30-4-1996 could be adjusted against the future dues payable only after the expiry of

the final eligibility certificate and reject the 1st contention of the learned Counsel for the petitioner.

6. This takes us to the 2nd contention of the learned Counsel for the petitioner. Before dealing with the 2nd contention of the learned Counsel, it is

appropriate to notice G.O. Ms. No. 18. It reads:

Industries and Commerce (I.P.) Department

Read the following:

1. G.O.Ms.No.498, Industries and Commerce (IA) Department, dated 16-10-1989
2. G.O.Ms.No.117, Industries and Commerce (IFT) Department dated 17-3-1993
3. G.O.Ms.No.108, Industries and Commerce (IF) Department, dated 20-5-1996
4. Minutes of SIPC meeting held on 8-1-1997
5. Minutes of the SIPC meeting held on 18-1-1997

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ORDER :--

In the G.O. first read above, Government has introduced certain incentives for setting up of new industries in the State under ISIS, 1989.

2. In the G.O. second read above, Government have introduced New Comprehensive Scheme of State incentives for setting up new Industries in

A.P. under NCSSI, 1992.

3. In the G.O. third read above, Government introduced a scheme of State incentives for setting up of new industries in the State, under TARGET

2000.

4. Several Industrial Units have representing that due to delay in issue of final eligibility certificate they have already paid sales tax during the

intervening period between the date of expiry of temporary eligibility certificate and date of final sanction of sales tax eligibility on demand from

Commercial Taxes Department and have requested that the amount so paid may be adjusted against future dues, after expiry of the final eligibility

certificate in case it is not possible to refund the sales tax already paid.

5. The proposal was placed before the SIPB meeting held on 18-1-1997 and the Board approved the proposal for adjusting sales tax paid by the

units during the intervening period against the future sales tax dues after expiry of the eligibility period provided that the amount adjusted is limited

to the un-utilised balance amount of exemption deferment sanctioned to the units under the State Incentive Scheme.

6. The Government after careful examination of the above proposal during the intervening period i.e., time gap between the date of expiry of

temporary eligibility certificate and date of final sanction of sales tax eligibility be adjusted against the future sales tax dues payable after expiry of

the eligibility period provided that the amount of such adjustment is limited to the un-utilised balance amount of exempt/deferment sanctioned to the

units under the incentive scheme, whichever is applicable to them.

7. This order issued with the concurrence of Finance and Planning (FW) Department, vide their U.O No. Secretary, Finance (R & E) No.174,

dated 27-1-1997.

(By order and in the name of the Governor of Andhra Pradesh)

Principal Secretary to Government and Commissioner of Industrial Promotion

This G.O. makes it abundantly clear that it came to be issued by the Government in pursuance of the representations made by the industrial units

complaining that due to delay in issue of final eligibility certificate they have already paid sales tax during the intervening period between the date of

expiry of temporary eligibility certificate and date of final sanction of sales tax eligibility on demand from Commercial Taxes Department and

requesting that the amount so paid may be adjusted against future dues, after expiry of the final eligibility certificate, in case it is not possible to

refund the sales tax already paid. In the context of this particular request of the several industrial units to which reference is made in para (4) of the

G.O., the direction contained in para (6) thereof should be held to apply to the petitioner's case also. It is quite surprising that the petitioner

company has chosen to question the validity of G.O. Ms. No. 18, dated 30-1-1997 as opposing to the very deferment scheme without realising

that the attempt is self-destructive. It is trite to state that, but for the G.O. Ms. No.18 issued by the Government, the petitioner company could not

have claimed even adjustment of the tax paid by them pending issuance of the eligibility certificates even after the expiry of the final eligibility

certificate. In that view of the matter, we do not find any merit in the 2nd contention too. Similarly, we do not find merit in the contention of the

learned Counsel that the direction issue by the Government in G.O. Ms. No.18, dated 30-1-1997 that the tax paid pending issuance of final

eligibility certificate would be adjusted against the future sales tax dues payable only after the expiry of the eligibility period is irrational and violative

of Article 14 of the Constitution. The petitioner has no vested right to claim that the tax paid by it pending issuance of final eligibility certificate

should be adjusted before the expiry of the period of final eligibility. The learned Counsel for the petitioner has utterly failed to trace such right with

reference to any provisions of the Constitution or that of any statute or even otherwise. The petitioner can only claim the incentives provided under

the relevant G.O.S only within the parameters of those G.Os and not de hors the G.Os on the basis of the principles of rationality, equity or

fairness.

7. The judgment of the Division Bench of this Court in L.C.K. Cements Limited v. CCT(APHC) (1997) 24 APSTG 124, on which the learned

Counsel has placed reliance in support of his submission has absolutely no application to the issue that arises for decision in this case. Firstly in that

case, G.O. Ms. No.18 did not fall for consideration and decision. The question that arises for decision in that writ petition was whether the

deferment of tax in terms of G.O. Ms. No.498, Industries and Commerce Department, dated 15-10-1995 starts from the date of commercial

production of the unit or the date of issuance of the Final Eligibility Certificate. In that case, the Commercial Tax Officer by notice dated 9-4-1996

notified that the petitioner therein was entitled to the incentive from the date of issuance of the Final Eligibility Certificate with effect from 31-10-

1995 and called upon the petitioner to pay back the deferred tax for the period from 28-11-1994 to 30-10-1995. The Division Bench of this

Court held that the Commercial Tax Officer has no authority to deprive the petitioner of the benefit of tax for a period of 5 years commencing from



28-12-1994 i.e., the date of commencement of commercial production as noted in column 10 (b) of the Final Eligibility Certificate. We are at a

loss to understand as to how that opinion of the Court in any way advance the contention urged by the learned Counsel in this case while attacking

the validity of G.O. Ms. No.18 and the circular dated 12-5-1997 and notice dated 20-6-1997 issued by the 2nd respondent and the 5th

respondent respectively. Similarly, the unreported judgment of this Court dated 14-9-1994 in W.P No.13355 of 1994 placed before us by the

learned Counsel for the petitioner after the argument was over, with the permission of the Court, has no bearing at all on the decision-making in the

present case. It appears that in the said writ petition, the petitioner therein sought a direction to the Commercial Tax Officer, Peddapuram East

Godavari District, the 1st respondent therein, to comply with the direction issued by the Sales Tax Appellate Tribunal, Andhra Pradesh,

Hyderabad in Tribunal Appeal No.715 of 1993 dated 12-4-1994 directing refund of the tax of Rs.15,07,914/- relating to the assessment year

1991-92 to the petitioner. The relief sought by the petitioner in that writ petition was not opposed by the respondents therein. The Division Bench

of this Court disposed of that writ petition by the following order:

The petitioner has to get certain amount by way of refund in pursuance of Tribunal's order dated 12-4-1994. As per Rule 35 of the A.P General

Sales Tax Rules, 1957, the first respondent was obliged to give effect to that order within two months from the date of receipt of the order. We do

not know when the copy of the order was received by the first respondent. Several opportunities were given to the learned Government Pleader to

inform us about the date when the Tribunal's order was communicated to the first respondent and why there was delay in making the refund. We

are informed that inspite of repeated requests and reminders, the first respondent has not cared even to contact the Government Pleader and that is

how we are not in a position to know about the exact date of receipt of Tribunal's order by the first respondent. However, we believe that the

order must have been received by the first respondent in the month of April, 1994 itself, taking into account the usual procedure and the time taken

in sending and receiving such correspondence. We are, therefore, left with no alternative but to direct the first respondent to give effect to the

Tribunal's order dated 12-4-1994 within a period of one week from the date of receipt of this order together with interest as per Section 33(E) of

the A.P. General Sales Tax Act, 1957.

This writ petition is accordingly, hereby disposed of. The respondents are directed to pay a sum of Rs.500/- by way of costs to the petitioner.

As could be seen from the above order, the question that arise for decision in the present case did not arise in that case and secondly, the Court

too did not advert to any of the relevant G.Os. There is absolutely no ratio decidendi in the said judgment. As quite often said and reiterated, the

relief granted by a Court in a legal action is not the ratio decidendi; ratio decided is the rationale of the decision.

8. In the result and for the foregoing reasons, we dismiss the writ petition with no order as to costs.