IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2016

CORAM:

THE HON 'BLE MR. **JUSTICE T.S.SIVAGNANAM**

Writ Petition Nos.24349, 28371, 28359,
24504 & 20589 of 2004
and W.P.M.P.No.29778 of 2004

Padmashri Oil Refineries Pvt. Ltd.,
3/180, Sathya Nagar, Arni Road,
Tajpura Village, Arcot Taluk – 632 521,
Vellore District, Represented herein,
by its Managing Director,
A.Gopal ... Petitioner in all W.Ps.

Versus

1. The Deputy Commercial Tax Officer, Arcot
2. The Assistant Commissioner of
Commercial Taxes,
Tiruvannamalai .. Respondent in all W.Ps.

Prayer in W.P.No.24349 & 28359 of 2004:- Writ Petitions filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, to call for the records on the file of the respondents relating to the impugned assessment orders, dated 28.07.2004, made by the first respondent in CST:373589/01-02 and CST:373589/03-04, respectively, made on the petitioner and to quash the same.

Prayer in W.P.No.28371 & 24504 of 2004:- Writ Petitions filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, to call for the records on the file of the respondents relating to the impugned assessment orders, dated 28.07.2004, made by the first respondent in TNGST:4581155/03-04 and TNGST:4581155/01-02, respectively, and the demand made on the petitioner and to quash the same.

Prayer in W.P.No.20589 of 2004:- Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus, forbearing the respondents from demanding any tax in respect of the petitioner's turnover pending disposal of O.P.No.1464 of 2003 on the file of the Tamil Nadu Taxation Special Tribunal, Chennai.

For Petitioner in all W.Ps. : Mr.K.S.Natarajan
For Respondents in all W.Ps. : Mr.S.Kanmani Annamalai, AGP.,

COMMON ORDER

Heard Mr.K.S.Natarajan, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader, appearing for the respondents, in all the writ petitions.

2. The petitioner, in all these writ petitions, M/s.Padmashri Oil Refineries Pvt. Ltd., is a registered dealer, on the file of the second respondent, under the provisions of the Tamil Nadu General Sales Tax Act, 1959, and Central Sales Tax Act, 1956.

3. In W.P.Nos.24349, 28371, 28359 and 24504 of 2004, the petitioner has challenged the orders of assessment, dated 28.07.2004 and in W.P.No.20589 of 2004, the petitioner seeks for a

Mandamus, not to demand any tax, till the petitioner's application, before the Tamil Nadu Taxation Special Tribunal, Chennai, is disposed of. As of now, the learned counsel for both sides are unable to report as to what is the status of O.P. No.1464 of 2003, filed before the Tribunal. Nevertheless, since four writ petitions have been filed challenging the assessment orders, the legal issue involved in these cases is taken-up for consideration.

4. The undisputed facts are that the petitioner was granted an eligibility certificate under the Sales Tax Waiver Scheme, by a Certificate, dated 14.05.1999, by the Industries Department. By virtue of the said certificate, the petitioner was entitled for waiver of sales tax, for the sum, not exceeding Rs.80,41,000/-, for the period of five years, from the month in which the petitioner's unit commenced its commercial production, i.e., from 06.08.1998 to 05.08.2003. The petitioner-industry was established for manufacturing of refined oil from kernals with oil coke and soap stocks. Pursuant to the eligibility certificate granted to the petitioner, the Assessing Officer, namely, the second respondent passed a consequential order on 11.02.2000, permitting the petitioner to avail the waiver of sales tax to a sum of Rs.80,41,000/-, for five years from 06.08.1998 to 05.08.2003, as per the conditions prescribed therein. It appears that the petitioner

was unable to procure sufficient quantity of kernals / seeds, as a result of which without raw material, they could not undertake manufacturing process to manufacture edible oil. Therefore, they approached the Industries Department to amend the Eligibility Certificate, requesting them to manufacture edible oil for kernals / seeds as well as Refined edible oils from seed / crude oil, like, sunflower, soya and palmolein etc., and bye-products as well as oil and oil cake and oil waste muddy (soap stock). This request made by the petitioner was accepted by the Industries and Commerce Department and Eligibility Certificate, issued on 14.05.1999, was amended to the following effect:-

> "This Eligibility Certificate is hereby granted to M/s. PADMASHRI OIL REFINERS PRIVATE LIMITED located at 223/2, 3, 24/2, ARNI ROAD, TAJPURA VILLAGE, ARCOT TALUK, VELLORE DISTRCT IS MANUFACTURING (1) manufacturing of edible oil from Kernals/Seeds (2) Refined Edible Oils from Seed/Crude Oil, like Sunflower, Soya and Palmolein etc. bye-products (3) oil cakes and oil waste muddy (soap stock) only".

5. Thus, by virtue of the amended Eligibility Certificate, the petitioner was entitled for waiver on the manufacture of edible oil from Kernals/Seeds or from Seed/Crude oil like Sunflower, Soya Palmolein.

6. The petitioner, thus, effected, import of crude oil,

palmolein and sunflower oil, from Malaysia and had been effecting manufacture of edible oil. At that juncture, a notice was issued by the first respondent, on 24.07.2002, stating that the petitioner has reported the sales turnover of the refined sunflower oil and RBD Palmolein oil, liable to be taxed at 4%, from 2001-02 and 2002-03. Further, they have not paid the tax. On a perusal of the Eligibility Certificate, it revealed that the petitioner was granted waiver of sales tax and sales of oil cake manufacture, out of kernals / seeds soap cakes only. Therefore, the first respondent proposed to deny the benefit of waiver to the petitioner. Immediately, the petitioner rushed to this Court and filed a writ petition in W.P.No.35140 of 2002 to quash the said notice. The said writ petition was disposed of, by an order, dated 11.09.2002, directing the petitioner to produce the Amended Certificate, before the respondents and to pursue the matter before the first respondent. Subsequently, the General Manager of the District Industries Center, Vellore, addressed a letter to the petitioner's Assessing Officer, namely, the second respondent, on 03.03.2003, stating that the petitioner is entitled to the benefit of IFST deferral / waiver benefit. This communication, i.e., the effect of the amended certificate, was brought to the notice of the second respondent and stated that subject to the conditions stated therein, the petitioner is entitled to the benefit of the waiver scheme.

7. Subsequently, the petitioner had come before this Court, by filing another writ petition in W.P.No.2325 of 2003, to forbear the respondents from demanding any advance tax in respect of 250 Mts., of crude palmolein imported by the petitioner, which was then lying at the Madras Port. The said writ petition was disposed of, by an order, dated 14.08.2003, subject to certain conditions. Ultimately, the second respondent, by an order, dated 27.10.2003, held that the petitioner is not entitled to the benefit of waiver and the amended eligibility certificate is declared as null and void, for which reason, he referred to an unreported decision of this Court in W.P.No.6576 of 1994. Against this order, the petitioner preferred an appeal before the Sales Tax Special Tribunal, Chennai. As observed earlier, the outcome of the said appeal has not been informed to this Court, by both sides. However, the only legal issue involved, in these petitions, would be, as to whether the petitioner would be entitled to the benefit of the waiver scheme.

8. Admittedly, the petitioner's Eligibility Certificate has been amended and the Eligibility Certificate has not been cancelled or declared as null and void by the respondents, who are Sales Tax Authorities. As long as the petitioner's Amended Eligibility Certificate, dated 28.08.2002, is valid and not been cancelled by the

competent authority, the petitioner is entitled to the benefit of waiver scheme. If that is the legal position, then, obviously, the respondents could not have assessed the petitioner to tax, ignoring the said Eligibility Certificate. Hence, on the said short ground, the petitioner is entitled to succeed.

9. Accordingly, W.P.Nos.28371, 28359, 24349 and 24504 of 2004 are allowed and the impugned orders are quashed, as no record is being placed before this Court, by the respondents, to show that the amended Eligibility Certificate, dated 28.08.2002, has been either modified, cancelled or amended further by the competent authority and the respondents have no jurisdiction to cancel such eligibility certificate.

10. In the light of the above, no orders are required in W.P.No.20589 of 2004, hence, the same is closed. No costs. Consequently, the connected WPMP is closed.

03.08.2016

Index : Yes / No
Web : Yes / No
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T.S.SIVAGNANAM, J.,

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To

1. The Deputy Commercial Tax Officer, Arcot
2. The Assistant Commissioner of
   Commercial Taxes, Tiruvannamalai

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