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**(2001) 12 MAD CK 0006**

**In the Madras High Court**

**Case No :** Writ Petition No. 21270 of 2001 and W.M.P. No. 32679 of 2001

Sambandam Solvent Extraction Limited

APPELLANT

Vs

State Industries Promotion Corporation of Tamil Nadu Limited  
and Others

RESPONDENT

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**Date of Decision :** 06-12-2001

**Acts Referred:**

**Citation :** (2002) 126 STC 42

**Hon'ble Judges :** F.M. Ibrahim Kalifulla, J

**Bench :** Single Bench

**Advocate :** C. Natarajan, for the Appellant; P. Rajagopal and B. Parthasarathy, Government Advocate (Taxes), for the Respondent

**Final Decision :** Allowed

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## **Judgement**

F.M. Ibrahim Kalifulla, J.—Petitioner seeks for the issuance of a writ of certiorarified mandamus, to call for the records of the first

respondent dated March 15, 2001 to quash the proceedings of the first respondent and direct the first respondent to amend the eligibility certificate

dated December 2, 2000 by also including in it waiver of Central sales tax on the sale of the finished goods manufactured by the expansion unit of

the petitioner with effect from March 1, 2000 up to February 28, 2005 in accordance with G.O. Ms. No. 500 dated May 14, 1990.

2. By G.O. Ms. No. 500 dated May 14, 1990, with the laudable object of encouraging industrialisation in State of Tamil Nadu in the more

backward areas, the Government announced certain schemes for the entrepreneurs who came forward to locate their industries in such areas

which included waiver of tax liability under the Tamil Nadu General Sales Tax Act as well as the Central Sales Tax Act with reference to the inter-

State sales. As per the said Government order, under Clause 7, the application for interest-free sales tax deferral should be filed before the first

respondent herein in so far as the medium and major industries are concerned. Under Clause 9, it is the General Manager of the District Industries

Centre of the first respondent, who is the competent authority to issue the eligibility certificate in respect of the small-scale industries and major and medium industries.

3. Pursuant to G.O. Ms. No. 500 dated May 14, 1990, the Government by G.O. Ms. No. 1394 dated December 4, 1990, specifically provided

the particulars of the tax components. Clause 1 of the said Government Order states that as per the instructions issued by the Government in

Commercial Taxes and Religious Endowments Department, deferral/waiver of sales tax includes all components, viz., sales tax, surcharge,

additional surcharge, additional sales tax and Central sales tax.

4. The petitioner was one of the applicants, who is stated to have applied for this eligibility certificate with the first respondent. Considering the

petitioner's application, the first respondent herein issued the eligibility certificate in its proceedings dated December 2, 2000, providing for the

entitlement to the benefit of sales tax waiver of five years as per G.O. Ms. No. 500 dated May 14, 1990 and all other Government orders as are

in and may come into force from time to time, inclusive of certain other Government orders. In para 3 of the said certificate, it was stipulated that

the petitioner 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) under the waiver scheme for the five years from the month in which the holder's unit commenced its commercial

production, i.e., from March 1, 2000 to February 28, 2005.

5. In paragraph No. 4.2, it was certified that 100 per cent of the value of the initial gross fixed assets was Rs. 232.35 lakhs. Inasmuch as the said

eligibility certificate provided for waiver of sales tax under the Tamil Nadu General Sales Tax Act, additional sales tax, surcharge and additional

surcharge, thus leaving out the Central sales tax payable by the petitioner on the inter-State sales, the petitioner is stated to have approached the

first respondent for inclusion of the Central sales tax as well. It was pursuant to this approach made by the petitioner that the first respondent, by

the impugned order dated March 15, 2000 has stated that as per the orders issued in G.O. Ms. No. 13, Commercial Taxes Department dated

January 24, 2000, the petitioner is not eligible for Central sales tax since the petitioner commenced commercial production after January 24, 2000.

6. Mr. C. Natarajan, learned Senior Counsel appearing on behalf of the petitioner, while drawing the attention of this Court to G.O. Ms. No. 13

dated January 24, 2000 as well as the connected Notification Nos. 210 of 1992 and 211 of 1992, would state that in view of the provisions

contained in the relevant notifications to the effect that the proviso that came to be added in G.O. Ms. No. 13 dated January 24, 2000 is relatable

to the industrialists who have made an investment of not less than 50 crores and above but less than Rs. 100 crores, and of Rs. 100 crores and

above under the Notification Nos. 210 of 1992 and 211 of 1992 respectively, the impugned order of the first respondent in not providing the relief

under Central Sales Tax Act to the petitioner by relying upon G.O. Ms. No. 13 dated January 24, 2000 cannot be sustained.

7. On the other hand, Mr. B. Parthasarathy, the learned Government Advocate appearing for the third respondent would contend that, by virtue of

G.O. Ms. No. 12 dated January 23, 2000 and particularly Clause (iii) of paragraph No. 4 of the said Government order, there being no definite

material to substantiate the claim of the petitioner that his unit got registered with an industrial agency of the State/Central Government and that as

per Clause (iii)(d) of paragraph No. 4, the petitioner not having started the production within two years from the date of the said Government

order the first respondent was fully justified in not including the Central sales tax entitlement in the eligibility certificate dated December 2, 2000.

The learned counsel would contend that even as per the said eligibility certificate, dated December 2, 2000, when the certificate of eligibility was

subject to the prevailing conditions of the State Government that are in force and/or that may come into force from time to time and inasmuch as,

the G.O. Ms. No. 12 dated January 23, 2000 would make the petitioner ineligible for the said entitlement, the first respondent was fully justified in

not providing for relief under the Central sales tax in the eligibility certificate dated December 2, 2000. In any event, he would contend that the

impugned order being only a show cause notice, there is time enough for the petitioner work out his remedy after any final orders are passed by the

first respondent.

8. Learned counsel appearing on behalf of the first respondent would adopt the submissions of the learned counsel for the third respondent.

9. Having heard the counsel for the parties, I am of the view that the petitioner having been lured to apply by invoking G.O. Ms. No. 500 dated

May 14, 1990 read along with G.O. Ms. No. 1394 dated December 4, 1990, to invest substantial amount for establishing an industry by way of

expansion of its existing industrial structure in the most backward area on the basis of the abovesaid two Government orders providing for certain

benefits inclusive of the sales tax waiver both State as well as Central, it is too late in the day for the respondents herein to contend based on

certain other Government orders to state that the eligibility certificate would be subject to certain restrictions which were not originally provided for

in the basic Government orders, namely, G.O. Ms. No. 500 dated May 14, 1990 and G.O. Ms. No. 1394 dated December 4, 1990.

10. In any event, in my opinion as far as the G.O. Ms. No. 13 dated January 24, 2000, which was relied upon by the first respondent to state that

the petitioner was not eligible for relief of Central sales tax is concerned, it will have to be held that the said Government order is not applicable to

the case of the petitioner. With regard to the extent of the investment made by the petitioner, it is far below the minimum provided under the

relevant notifications, viz., 210 of 1992 and 211 of 1992, with reference to which G.O. Ms. No. 13 dated January 24, 2000 came to be issued.

As far as G.O. Ms. No. 12 dated January 23, 2000 is concerned, even on a perusal of the said Government order, I do not find that the petitioner

can be held to be ineligible for the entitlement as provided in the original Government orders, viz., G.O. Ms. No. 500 dated May 14, 1990 and

G.O. Ms. No. 1394 dated December 4, 1990.

11. Clause 4(iii) of G.O. Ms. No. 12 dated January 23, 2000 imposes four conditions on the industries which were in the pipe-line and the units

which have applied for the relevant eligibility certificates. One of the conditions would state that the unit should have been registered with an

industrial agency of the State/Central Government. The very fact that the eligibility certificate came to be issued on December 2, 2000 based on

the application made on February 22, 1999 with the first respondent makes it

clear that the petitioner got the unit registered with the relevant agency as on that date. Further, the petitioner had already been issued with eligibility certificate for its main plant while the present one is for its expansion unit. In fact, the first respondent has already sanctioned term loan assistance for the expansion unit of the petitioner by its communication dated June 7, 1999. There is no specific denial with reference to the other conditions in the said clause.

12. However, the learned counsel for the third respondent would contend that the petitioner would not satisfy Clause 4(iii)(d), namely, that the industry should start production within two years from the date of that Government Order, viz., G.O. Ms. No. 12 dated January 23, 2000. It is claimed by the petitioner that commercial production commenced in the month of March, 2000. Even in the impugned communication, it is not the case of the first respondent that the petitioner did not commence commercial production within the two years period. The very fact that the impugned order dated March 15, 2001 itself stating that the petitioner commenced commercial production after January 23, 2000, makes it clear that the petitioner had already started the commercial production, thereby satisfying even that condition under Clause 4(iii)(d).

13. In such circumstances, it is not proper to hold that the petitioner is not eligible for the relief of Central sales tax as provided in the basic Government Orders, namely, G.O. Ms. No. 500 dated May 14, 1990 and G.O. Ms. No. 1394 dated December 4, 1990. Under such circumstances, there being no valid ground for the first respondent to deny the entitlement of the petitioner in the issuance of the eligibility certificate dated December 2, 2000 in so far as it related to the Central sales tax, the impugned order is set aside and the writ petition is allowed.

Accordingly, while setting aside the impugned order, there will be a direction to the first respondent to include the entitlement of the petitioner for Central sales tax also for the relevant period in the eligibility certificate of the petitioner. Consequently, connected W.M.P. is closed.