

(2012) 04 MAD CK 0088

In the Madras High Court

Case No : Writ Petition No's. 18273 to 18275 of 2006 and M.P. No's. 1,1 and 1 of 2006 and 1,1 and 1 of 2007

Technical Stampings Automotive Ltd., (Formerly known as
JBM Sungwoo Ltd.)

APPELLANT

Vs

The Deputy Commercial Tax Officer, Sriperumbudur
Assessment Circle, Varadarajapuram, The Assistant
Commissioner (CT) Kancheepuram and The State Industries
Promotion Corporation of Tamil Nadu Ltd., 19-A, Rukmani
Lakshmipathy Road, Post Box No. 7223, Egmore,
Chennai-600008

RESPONDENT

Date of Decision : 25-04-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Tamil Nadu General Sales Tax Act, 1959 — Section 17(A)

Citation : (2012) 53 VST 283

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : N. Prasad, for the Appellant; Manoharan Sundram, GA (Tax) for RR1 and 2 and Ms. Narmada Sampath for R-3, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice K. Chandru

1. The writ petitions are filed by one and the same company. In the first writ petition (W.P. No. 18273 of 2006), the challenge is to the order dated 31.3.2006 passed by the first respondent, i.e., Deputy Commissioner Tax Officer, Sriperumbudur Assessment Circle and he seeks to set aside the same insofar as it has denied deferral of sales tax at turnover of Rs. 8,12,27,823/- relating to sale of steel scrap made by the petitioner from their unit located at SIPCOT, Irungattukottai. The second writ petition (W.P. No. 18274 of 2006) challenges the order dated 31.3.2006 so far as denying deferral sales tax of Rs. 14,15,36,795/- being the turnover relating to sale of steel scrap made by the petitioner in their

factory located at SIPCOT, Irungattukottai.

2. The third writ petition (W.P. No. 18275 of 2006) challenges the order dated 31.3.2006 so far as denying deferral sales tax of Rs. 9.26,82,244/- being the turnover relating to sale of steel scrap made by the petitioner in their factory located at SIPCOT, Irungattukottai.

3. All the three writ petitions were admitted on 19.4.2006. Pending writ petitions, this court granted an interim stay on the basis of the order passed by this court relating to CTO, Thiruparankundram Assessment Circle and others Vs. Thiagarajar Mills Ltd. reported in 2004 (134) STC 58 and also the judgment of the Supreme Court in ITC Batrachalam Vs. State of A.P. reported in (2002) 126 STC 541 interpreting the similar government order in Andhra Pradesh.

4. On notice from this court, on behalf of the first respondent, a common counter affidavit, dated 10.10.2007 has been filed. On behalf of the third respondent SIPCOT, a common counter affidavit dated 8.2.2012 has also been filed.

5. The case of the petitioner company was that they have set up a factory at SIPCOT Industrial Park, Irungattukottai. During the production in the factory, steel scrap emerges marketable by-product while manufacturing assembly and sub assembly of sheet metal components which are automobile parts. The State Government had issued a Government Order in G.O. Ms. No. 500, Industries Department, dated 14.5.1990 and declared the most backward Taluks in Tamil Nadu and also incentive scheme for industries located which included interest free sales tax for which liberalization has been made. In paragraph 4 of the said G.O., salient features of the scheme were set out and the list of backward taluks were mentioned in the annexure.

6. Subsequently, the Government had issued G.O. Ms. No. 92, CTRE Department, dated 22.2.1991 u/s 17-A of the Tamil Nadu General Sales Tax Act, 1959 by which number of backward taluks were increased to 75 as annexed to the G.O. It was stated that new industries situated in those taluks on the sale of product manufactured by the unites for a period of nine years from the date of commencement of production on or after 14.5.1990 for the ceiling of total assessment agent after deducting the quantum of tax under the Central Sales Tax Act for the same period subject to condition of units produced to the assessing authority the eligibility certificate issued by the General Manager, District Industries Centre in the case of small industries and by SIPCOT in the case of medium and major industries subject to the condition that the tax so deferred shall be paid after completion of deferral period along with tax assessed for that year. The Tax deferred in the first year shall be paid in the 10th year along with the tax assessed for that year and the tax deferred for the second year shall be paid in the 11th year along with tax assessed for that year and so on. In the annexure under the Chengai Anna District, No. 3 in the list is Kancheepuram where the petitioner's factory is located. The petitioner company had applied for eligibility certificate from the SIPCOT for availing interest free

sales tax waiver (IFST). The SIPCOT gave the eligibility certificate, dated 10.4.2001. It is necessary to extract paragraphs 3,4 and 6 from the certificate so granted, which reads as follows:

"3. Based on the above, the holder of this E.C will be eligible for deferral of sales tax not exceeding Rs. 1521.17 lakhs (Rupees One thousand five hundred and twenty one lakhs and seventeen thousands only) interest free for NINE YEARS from the month in which the holder's unit commenced its commercial production i.e. From 1.7.1998 to 30.6.2007.

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 in favour of the Government during the period of deferral on the sale of finished goods manufactured by the unit.

4.2. 100% of the value of initial gross fixed assets i.e. Rs. 1521.17 lakhs (Rupees One thousand five hundred and twenty one lakhs and seventeen thousands only).

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 product 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 Dept., 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 Dept., 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. They have also entered into an agreement with the Commercial Tax Department, dated 25.2.2002. It is necessary to refer to several clauses from the agreement as it will have a bearing on this case and they are as follows:

"1. Total deferral amount eligible : Rs. 1521.17 lakhs, (Rupees One thousand five hundred twenty one lakhs and seventeen thousand only).

NOW THEREFORE IT IS AGREED between the parties as under : The Sales Tax due on the Sale of the products manufactured by them in their OWN FACTORY shall be deemed to have been paid to the Assessment Authority and an identical amount shall be treated as Government Loan.

a) In the case of new industries, it shall be for the full tax, subject to ceiling specified in Eligibility Certificate.

b) In the case of expansion / diversification :

i) The company is eligible for deferral of Sales Tax on the increased volume of production. For the purpose of determining the increased volume of production,

the base figure shall be the highest of the volume of production / sale in the company in any one of the year during the last 3 years period preceding the date of commencement of deferral.

ii) The Company has to go on paying the tax to the level of base volume of production / Sales and once it reaches this level, then any further tax liability will be eligible for deferral of Sales Tax.

2. The total amount of tax to be deferred shall not exceed the total investment made in Fixed assets under expansion / diversification or the amount of Rs. 1521.17 lakhs, (Rupees One thousands five hundred twenty one lakhs and seventeen thousand only) as specified in the revised eligibility certificate issued by the Managing Director, State Industries Promotion Corporation of Tamil Nadu Limited, Chennai 600 008 or the actual Interest Free Sales Tax Deferral availed during the period whichever is lower."

8. Subsequent to the agreement, the second respondent had issued a consequential proceedings, dated 20.3.2002 and forwarded it to the petitioner. In paragraph 1, the condition of agreement was once again reiterated which is as follows:

"1.The Tax, Surcharge, Additional Surcharge, Additional Sales tax and Central Sales Tax to be deferred shall relate to the tax on the sale of the products manufactured by the New units in Tamil Nadu on or after 1.7.98."

9. The petitioner company thereafter on getting doubts regarding the clauses in the agreement, asked for clarification from the third respondent SIPCOT by forwarding the letter dated 20.6.2002. They wanted the SIPCOT to inform the scope of the existing eligibility certificate dated 10.4.2001 issued by them in their letter. After referring to the agreement, they had stated as follows :

"....While so, doubts have been expressed at the level of our assessing authority as to whether we can lawfully avail the benefit of deferral of sales tax on the sale of iron and steel scraps effected by our unit to various manufactures of various other automobile components who use the iron and steel scraps as raw material. We are anxious that there should not be any irregularity on our part in the availment of deferral on the sale of iron and steel scraps.

...We wish to submit the scrap emerges as a marketable by-product in our industrial activity. There are industrial consumers ready and willing to buy our scrap. We further submit that even the Tamil Nadu legislature has considered scrap to be a distinct product and has brought about the taxability of scrap under a distinct heading under Item 56 of Part B of the First Schedule, taxable at the rate of 4%. This would show that even the law recognises scrap as a distinct marketable commodity." Their queries are as follows :

(i) that suitable clarification may be issued by your good office to the effect that scrap sold by us is also entitled for the benefit of deferral of sales tax under Eligibility Certificate in No. 304/IX/D/N, dated 10.04.2001 pursuant to G.O.P. No.

92, dated 22.02.1991; and

(ii) that suitable clarification may be issued by your good office to the concerned assessing authorities to the effect that our current Eligibility Certificate is adequate to cover the scrap, particularly having regard to the ruling of the Hon"ble Madras High Court."

10. The petitioner also referred to a division bench judgment of this court in Commercial Tax Officer, Thirupparangundram Assessment Circle and others Vs. Thiagarajar Mills Ltd. Reported in 2004 (134) STC 58 in support of their clarification.

11. In response to the query, the third respondent SIPCOT sent a reply dated 11.5.2004 and informed them as follows:

"We refer to the correspondence cited on the above subject. Your request for inclusion of scrap in the Eligibility Certificate has been placed before the Standing Committee on Incentives for Industrial Promotion at its meeting held on 16.4.2004. The Standing Committee felt that the products not indicated in the application for IFST deferral would not qualify for the IFST Deferral concession. We, therefore, regret our inability to accede your request to include scrap in the Eligibility Certificate."

12. They once again sent a reply to the SIPCOT by a communication, dated 29.1.2005 and informed them as follows:

"....the relevant Government orders extending sales tax deferral do not make distinction between product and by-product arising in the course of manufacturing activity. Accordingly we pray for amendment of eligibility certificate dated 10.04.2001 extending the benefit of sales tax deferral on sale of iron and steel scrap emerging as by-product at our unit located at SIPCOT Industrial Park, Irrungattukottai 602 105, Sriperumbudur, Kancheepuram District, Tamilnadu while extending the benefit of amendment for the entire period of deferral as per existing eligibility certificate."

13. They submitted a return in Form A-1 under the TNGST Act for the year 2003-2004. The first respondent by proceedings, dated 28.12.2005 had issued a notice to the petitioner. Apart from pointing out other aspects, in the same notice he informed the petitioner as follows :

"The dealers have claimed deferral facility for the sales of scrap amounting to Rs. 14,06,35,035.00. But deferral facility can be allowed for the manufactured goods only. Therefore the turnover of Rs. 14,06,35,035.00 cannot be treated as covered by deferral scheme."

14. The petitioner company sent a reply with reference to the scrap sale by reply dated 15.2.2006 and in paragraph 4, they took the following stand which is as follows:

"4) Scrap Sales : Rs. 14,06,35,035/-

In this regard, we would like to state that basically scrap is generated only out of manufacturing activity and hence it forms part and parcel of production activity only though it is a by-product.

Basically deferral facility was extended to the manufacturing unit those situated in the back ward area irrespective of the product they manufacture. Hence as the deferral facility is not product based and can be extended to manufacturing activity thereby occurrence of any product be it main product or by-product.

Considering the above fact, we request you to extend the deferral facility even for the sale of scrap as the scrap is generated only out of manufacturing activity only."

15. However, the first respondent by an assessment order dated 31.3.2006 had refused to grant deferral facility for the sale of scrap and made the following remarks in the assessment order which is as follows :

"Regarding the claim of deferral facility for the sales of scrap amounting to Rs. 14,06,35,035/- their contention was not acceptable since there is no manufactured goods is involved. Hence this turnover of Rs. 14,06,35,035/- will be treated as not covered by deferral scheme."

16. Though the petitioner is entitled to file an appeal to the Appellate Assistant Commissioner, Commercial Taxes Department, Kanchipuram within 30 days, they did not file any such appeal. Hence the assessment orders for the year 2003-04, dated 31.3.2006, for the years 2002-03 and 2001-02 have become final. Thus, they became the subject matter of the litigation in these three writ petitions.

17. The writ petitions were admitted on 19.6.2006. Pending the writ petitions, in the applications for interim stay, this court after referring to Thiagarajar Mills Ltd.'s case (2004) 134 STC 58 and also I.T.C. Bhadrachalam Paper Boards Ltd. Vs. State of Andhra Pradesh reported in (2002) 126 STC 541, had granted an interim stay. Aggrieved by the grant of the interim stay, the first respondent has filed a vacate stay application in M.P. No. 1 of 2007 in all the three writ petitions together with supporting counter affidavit, dated 10.10.2007. However the matters were not brought up for hearing till date. The petitioner has also filed a common rejoinder dated 8.2.2012.

18. Heard the arguments of Mr.N. Prasad, learned counsel appearing for the petitioner, Mr. Manoharan Sundaram, learned Government Advocate (Taxes) appearing for respondents 1 and 2 and Ms. NArmada Sampath, learned Standing Counsel for the SIPCOT.

19. The stand of the petitioner was that though they have a remedy by way of an appeal, but since the third respondent had refused to interpret the eligibility certificate, the Commercial Tax Department is not expected to take a different stand. Hence the remedy by way of an appeal is an illusory. It was contended that the eligibility certificate was issued pursuant to the order of the Government in G.O. Ms. No. 500, Industries Department, dated 14.5.1990 and G.O. P. No. 92,

Commercial Taxes and Religious Endowments Department, dated 22.2.1991. G.O.P. N. 92, using the term "products manufactured" came to be interpreted by the division bench of this court in Thiagarajar Mills Ltd.'s case (cited supra) so as to include the benefit of deferral or waiver even for waste or scrap emerged as by-product in the unit.

20. The Supreme Court vide its judgment in ITC Bhadrachalam Paper Boards Ltd. Vs. State of A.P. Reported in (2002) 126 STC 541 held that the industrial waste emerged as by-product is also to be considered as a product of that industry. It was further claimed that the deferral of sales tax has been fixed at Rs. 1521.17 lakhs. The term used "initial" will have to have the meaning that the deferral of sales tax fixed is with respect to initial gross fixed assets and that will increase the value of the fixed assets. No additional amount can be claimed as deferral. The petitioner had not claimed any additional deferral above the ceiling fixed by the department. It is not the case that the petitioner exceeds the ceiling fixed by the SIPCOT. It is only the question of whether the scrap emerged at every stage in the course of manufacturing activities as by-product in the petitioner unit will also be covered for entitled for deferral of sales tax.

21. Mr. N. Prasad, learned counsel for the petitioner referred to an order of the State Government in G.O. Ms. No. 500, Industries Department, dated 14.5.1990 and contended that deferral incentive was given for encouraging more industries in Tamil Nadu. Therefore, the concession was extended and the petitioner has located the unit in one such area identified by the State. In paragraph 5 of the order, it is very clear that it is subject to sales tax payable on products manufactured by the capacity created by expansion or diversification of units. Likewise, in G.O.P. No. 92, CT&RE Department, dated 22.2.1991, it was stated that the sale of product manufactured by the units for the period of nine years from the date of commencement of production upto the ceiling of total investment made in fixed assets, after deducting the quantum of sales tax for the same period subject to the condition that the units will produce to the Assessing Authority the eligibility certificates issued by the SIPCOT are entitled to deferral. Therefore, the sale of products manufactured include the scrap steel produced by them.

22. However, in the present case, the petitioner, having availed the eligibility certificate and after entering into an agreement and thereafter seeking for further clarification to include the scrap under the deferral scheme which was refused by the SIPCOT, cannot improve his case by citing the decisions so as to contend that the scrap is also a product manufactured on which they are entitled for deferral of sales tax. The petitioner challenged the order dated 10.4.2001 issued by the SIPCOT in W.P. No. 6754 of 2005. That writ petition came to be considered by this court and it was allowed. The eligibility certificate issued on 11.5.2004 was set aside. The SIPCOT was directed to re-consider as to whether the steel scrap produced in the petitioner's industry as coming within the meaning of the word "product" so as to enjoy the eligibility certificate. In that

case, a reference was also made to Thiagarajar Mills Ltd.'s case and ITC Bhadrachalam Paper Board Ltd.'s case in support of the said order. The said decision since reported in (2007) 6 VST 527 (Mad) [JBM Sungwoo Ltd. Vs. State Industries Promotion Corporation of Tamil Nadu Ltd.]. In the operative portion of the order it was stated as follows:

"In the light of the above, the writ petition succeeds and will stand allowed. The impugned order of the first respondent dated May 11, 2004 is hereby quashed and the first respondent is directed to re-consider the steel scrap produced in the writ petitioner's industry as coming within the meaning of the word "product" so as to enjoy the eligibility certificate as per section 4(1)(a) of the certificate dated April 10, 2001 in accordance with the law laid down herein and accord all the necessary benefits arising out of the same. This exercise shall be done within four weeks from the date of receipt of a copy of his order...."

(Emphasis added)

23. Even after the direction, the contention raised by the third respondent SIPCOT as projected by Ms. Narmada Sampath was that there is no warrant for expanding the scope of the eligibility certificate. Once it is allowed, it may give rise to several chain reactions.

24. In the common counter affidavit filed by the Sales Tax authorities, in paragraph 6, it was averred as follows:

6. It is submitted that the State Industries Promotion Corporation of Tamilnadu (SIPCOT), the third respondent herein, has fixed the deferral sales tax amount of Rs. 1521.17 lakhs with reference to 100% value of Initial Gross Fixed Assets of Rs. 1521.17 lakhs as specified in conditions 4.2 of the Eligibility Certificate. The expression "initial" in condition 4.2 of the Eligibility Certificate is important since this expression "initial" means that the deferral of sales tax fixed is with respect to initial gross fixed assets and by increasing the value of fixed assets no additional amount could be claimed as sales tax deferral. Accordingly assessment order was passed in TNGST 1662041, for the assessment years 2001-02, 2002-03 and 2003-04 dt. 31.3.2006 demanding the wrong availment of deferral sales tax amount for the above years.....

25. Though reliance was placed upon a judgment in (2007) 6 VST 527 (Mad), in which a direction was given to the SIPCOT to reconsider the issuance of fresh eligibility certificate, the same was rejected. It was rather unfortunate when that writ petition was argued by the counsel for the petitioner on 13.9.2006, the counsel for the petitioner did not bring it to the notice of the court the pendency of the present three writ petitions, i.e., W.P. Nos. 18273 to 18275 of 2006, especially wherein they have challenged assessment orders issued by the authorities. Without the benefit of the stand of the Sales Tax Department, the matter was disposed of on a piecemeal basis. When matters are interconnected, it is the duty of the counsel to bring it to the notice of the court the pendency of other matters in relation to the same subject. Even otherwise this court merely

directed the respondents to reconsider the question as to whether the steel scrap produced by the petitioner industry will qualify to be the product so as to enjoy the eligibility certificate.

26. When once the eligibility certificate is given, the petitioner is bound by the same. The Sales Tax authorities are merely acting on the terms of the eligibility certificate. Thereafter, when the petitioner moved the authorities for reconsidering their stand, impliedly they have said that the earlier eligibility certificate did not include the scrap produced during the manufacturing of goods. Having sought for clarification and failed in their attempt, they cannot now make use of this court to seek to expand the scope of the eligibility certificate. The eligibility certificate once granted cannot be reviewed by this court under any circumstances as it is only the beneficial scheme for deferral. It is not the case of the petitioner that tax is levied on a different basis. On the other hand, the liability to pay the tax was accepted. It was only the deferral of tax payment as concession that was obtained by the petitioner is now sought to be revised. The eligibility certificate followed by an agreement reached between the parties cannot be reopened at the instance of the petitioner that too sitting under Article 226 of the Constitution. In different circumstances, the common sense meaning of certain products can mean different things and difference places especially in the context of deferral scheme.

27. u/s 4-A of the U.P. Trade Tax Act, a soft drink company claimed eligibility certificate for deferral payment. The eligibility certificate defined the financial limit for fixed capital investment for availing deferrals. The question arose whether bottles and crates which hold them will also be eligible to come under the fixed capital came to be considered by the Supreme Court in Commissioner of Trade Tax, Uttar Pradesh Vs. Varun Beverages Limited reported in (2011) 11 SCC 308. After referring to a judgment of the Supreme Court in State of Bihar and Others Vs. Steel City Beverages Ltd. and Another, wherein the Supreme Court has held that exemption scheme will have to be construed liberally and in that context, while construing the meaning of the term plant and machinery, the Supreme Court agreed that bottles for which investments were made were eligible to be counted for fixed capital investment, but at the same time, crates were excluded. It is necessary to refer to the following passage found in paragraph 21 of the judgment which reads as follows :

21.....we hold that so far as bottles are concerned, they are essential part of the components and equipments necessary for the running of the factory and therefore such value of the investment would form part of the fixed capital investment and would be entitled to exemption as provided for. But so far as crates are concerned they are used by the respondent only for the purpose of marketing. Use of crates is necessary for taking out the bottled beverages out of the factory and while doing the marketing of the sealed bottled beverages. The aforesaid view taken by us also receives support from the contents of the eligibility certificate given by the appellant and therefore crates have no user so

far as running of the factory of the respondent is concerned. Therefore, the value of crates in our considered opinion cannot be deemed to be investment for the purpose of including it within the meaning of the expression "fixed capital investment" as per clause (4) of the Explanation to Section 4-A of the Act.

In the light of the above, there is no case made out to interfere with the impugned assessment orders. Hence all the three writ petitions will stand dismissed. No costs. Consequently connected miscellaneous petitions stand closed.