(2002) 03 BOM CK 0037

In the Bombay High Court

Case No : Writ Petition No. 4264 of 2001

Tiger Steel Engineering APPELLANT

Vs

The State of Maharashtra and Another RESPONDENT

Date of Decision : 01-03-2002

Acts Referred:

Citation : (2002) 127 STC 13

Hon'ble Judges : V.C. Daga, J;J.P. Devadhar, J

Bench : Division Bench

Advocate : B.C. Joshi, N. Badekar and M.M. Vaidya, for the Appellant; N.P. Deshpande, A.G.P. and G.S. Rao, instructed by . Purnanand and Co., for the Respondent

Judgement

J.P. Devadhar, J.

1.The short issue raised in this petition is whether a manufacturer can be given eligibility certificate under the dispersal of industries package scheme of incentive, 1993 from a date other than the date of commercial production even though the scheme prevailing at the relevant time provided for issuance of eligibility certificate from the date of commercial production.

2.The Petitioner No.1 Company is a Company registered under the Companies Act and is having its factory at village Kudavali, Tal. Murbad in the District of Thane in Maharashtra.

3. With an aim to achieve dispersal of industries outside Bombay and Thane area and to encourage establishing of industries in the underdeveloped and developing areas of the State, the Government of Maharashtra, Industry, Energy and Labour Department has announced schemes since 1964 with the concurrence of all the departments of the State for grant of incentive to such industries established in the backward area of the State of Maharashtra. The said schemes were amended from time to time and in this petition, we are concerned with Dispersal of industries Packaging Scheme of incentive, 1993 dated 7th May,

1993 (1993 scheme for short). The Statutory provisions of 1993 Scheme

4. Before dealing with the facts relevant for the adjudication of the issues raised in this petition, it would be appropriate to refer to some of the relevant clauses of the 1993 scheme:

a) The 1993 scheme was to be in operation for a period of 5 years from 1st October, 1993 to 31st September, 1998.

b) Clause 3.1 defined "date of effect of eligibility" as follows:

"Date of Effect of Eligibility

(1) The Eligibility Certificate under the 1993 Scheme will be issued by the Implementing Agency after commencement of commercial production as may be determined by it, based on the totality of the documentary evidence led by the Eligible Unit in this behalf, as also such other information, details, e.g. date of power connection, electricity consumption bills over a period, first sale bill, excise licence, extract of excise register/production register, etc. required/called for in connection therewith.

(2) The decision of the Implementing Agency, subject to such directions as Government may issue from time to time in this regard, will be final and binding on the Eligible Unit.

(3) The Commissioner of Sales Tax will endorse the EC issued by the Implementing Agency and shall specify the date of effect of eligibility for the Sales Tax Incentives.

c) Clause 4 deals with general provisions and clause 4(1) dealt with Application for Eligibility, as follows:-

"Cll .41() Application for Eligibility

(1) An application for eligibility under the 1993 Scheme shall be filed by an Eligible Unit only after it has taken all the Initial Effective Steps but not later than 30th September, 1998. It shall be supported by documentary evidence in regard to completion of the Effective Steps.

(2) For claiming eligibility under the 1993 Scheme, an Eligible Unit shall also complete all the Final Effective Steps on or before 30th September, 1999.

(3) An application filed with the implementing Agency on or before 30th September, 1993 after completion of the Initial Effective Steps for incentives under the 1988 Scheme, but where the applicant fails to complete all the Final Effective Steps latest by 30th September, 1994, shall be automatically considered under and be subject to the 1993 Scheme but the incentives to such an Eligible Unit shall be applicable at the scales which are lower of the scales of the 1988 Scheme or the 1993 Scheme.

(4) An application for eligibility shall be submitted to the Implementing Agency at

least three months prior to the expected date of commencement of commercial production. An Eligible Unit shall comply with the requirements preceding the issue of the EC by the Implementing Agency to ensure obtaining the EC within the period of six months from the date of commencement of commercial production as laid down in the Procedural Rules."

5. By a Resolution dated 23rd March, 2000, the Government of Maharashtra, Industries, Energy and Labour Department amended 1993 Scheme inter alia substituting clause 3.1(1) as follows :-

"Notwithstanding the provisions of para 4.1(2), the Eligibility Certificate under the 1993 Scheme will be issued by the Implementing Agency after commencement of commercial production as may be determined by it, based on the totality of the documentary evidence led by the Eligible Unit in this behalf, as also such other information, details, e.g. electricity consumption bills over a period, first sale bill, excise licence, extract of excise register/production register, etc., required/called for in connection therewith. The effective date of eligibility certificate shall be from the date of commercial production."

THE FACTS

6. With this background, let us now look at the facts pertaining to the case of the Petitioners.

7. The Petitioner No.1 Co. with a view to avail the benefit under the 1993 Scheme decided to establish a factory in a backward area. With that view in mind, the Petitioners. purchased a plot of land in M.I.D.C. at Kudavali, Murbad Taluka, District Thane in the year 1996. After conclusion of the formalities and constructing a factory and after the commencement of commercial production, the Petitioner Company made an application to the Respondent No.2 namely State Industries and Investment Corporation of Maharashtra Limited (SICOM) seeking eligibility for their Unit under the 1993 Scheme. After perusal of the relevant documents and on being satisfied that the Petitioner Company complied with all the initial requirements and formalities, an agreement was executed by and in between the Petitioner No.1 Company and SICOMs representing State of Maharashtra on 21.9.1999 wherein it was agreed that the Petitioners are en titled to the benefits under the 1993 Scheme. Thereafter, by a letter dated 16.12.1999, SICOM as per the 1993 Scheme forwarded the case of the Petitioners to the Respondent No.2 seeking approval of the Commissioner of Income Tax so that requisite Eligibility Certificate could be granted in favour of the Petitioners. Along with the said letter, a copy of the Eligibility Certificate under the 1993 Scheme granting deferral of the sales Tax liability proposal was also forwarded to the Sales Tax Authorities. Instead of issuing Eligibility Certificate, the Respondent No.4 namely the Deputy Commissioner of Sales Tax, Incentive and Enforcement, called upon the Petitioners to pay the sales tax up to 30th November, 1999 and only on such payment being made the requisite eligibility certificate will be granted to the petitioners. The Petitioners made

several representations stating therein that under the 1993 scheme, the date of the Eligibility Certificate ought to be the date of commercial production and if the certificate is issued in the light of the 1993 Scheme, the question of paying the sales tax for the period from the date of commercial production does not arise at all. The Sales Tax Authorities declined to consider the case of the Petitioners. However decided to wait for the decision of the Maharashtra Sales Tax Tribunal, as similar issues were pending before the Tribunal. It appears that even after the decision of the Tribunal holding that the date of effect of entitlements of eligibility should be from the date of commercial production, the Respondents failed to issue the requisite certificate to the Petitioners.

8. In the light of the amendment to the 1993 Scheme, by the Resolution dated 23rd March, 2000, the Petitioners once again sought the Eligibility Certificate with entitlement from the date of commencement of commercial production as per the amended Scheme. By an order dated 19th June, 2000, the Respondents held that the amendment to 1993 Scheme was applicable only to pipeline cases and the case of the Petitioners cannot be treated as a pipeline project and accordingly, the amendment to the 1993 Scheme was held not applicable to the case of the Petitioners. By their letter dated 26th July, 2000 (Exhibit-P) sales tax authorities once again insisted upon the payment of sales tax failing which sought to take suitable action against the Petitioners. In these circumstances, the Petitioners have filed the aforesaid petition on 11th July, 2001 inter alia seeking to quash and set aside the order dated 26.7.2000 and an order directing Respondents to grant the eligibility entitlement from the date of the commercial production. During the pendency of this petition, the Respondent No.2 by a letter dated 27.8.2001 forwarded Eligibility Certificate dated 16.12.1999. In the Eligibility Certificate, it was stated that although the date of commencement of commercial production was on 5.7.1998, the date of effect of Eligibility Certificate will be from 1.1.2000.

The Arguments

9. Mr. Joshi, learned Counsel appearing on behalf of the Petitioners submitted that when the application of the Petitioner was complete in all respects and when the Respondents have not disputed that the date of commercial production was 5th July, 1998, there was no reason whatsoever on the part of the Respondents to grant the Eligibility Certificate on 16.12.1999 effective from 1.1.2000. It was submitted that under the 1993 Scheme, it was obligatory on the part of the Respondents to issue the Eligibility Certificate from the date of the commercial production. It was submitted that even assuming that there was any ambiguity, then, the case of the Petitioners being pending on 23rd March, 2000 when the amendment to the 1993 Scheme was brought in, it was not open for the Respondents to deny the benefit of the amended scheme and ought to have granted Eligibility Certificate effective from the date of the commercial production. Mr. Joshi pointed out several decisions of the Sales Tax Tribunal, wherein it was held that the entitlements/Eligibility Certificate under the

unamended 1993 Scheme is to be effective from the commencement of commercial production. It was also submitted that in view of the fact that the implementing agency namely SICOM had no objection to the Eligibility Certificate being granted with effect from the date of commercial production, the action of the Sales Tax authorities in issuing the impugned Eligibility Certificate is wholly arbitrary, illegal and contrary to the 1993 Scheme itself.

10. Mr. Deshpande, learned Counsel appearing on behalf of the Respondents Nos. 1 and 3 to 6 submitted that amendment to the 1993 Scheme by Resolution dated 23rd May, 2000 was not applicable to the case of the Petitioners as SICOM had processed the case of the Petitioners and forwarded their case to the Sales Tax Commissioner with approval, prior to the amendment and hence the case of the Petitioners cannot be treated as a pipeline project. It was submitted that under the 1993 Scheme the implementing agency namely the SICOM grants the Eligibility Certificate after the commencement of commercial production and under Clause 3.1(3) of the Scheme, the power to issue entitlement vests with the Commissioner of Sales Tax. It was submitted that clause 3.14 of the 1993 Scheme read with Rule 2.12 of the Procedural Rules as laid down in the Government Resolution dated 11.8.1980 clearly provide that the Certificate of Entitlement shall be made effective from the prospective date and, therefore, there is no impropriety or illegality in the eligibility certificate issued to the Petitioners.

CONSIDERATION & FINDINGS

11. We have heard both the parties and perused the material placed on record. It is not in dispute that the Petitioners on the date of their application had complied with all the formalities and had taken requisite effective steps to avail the benefit of the 1993 Scheme. Under the 1993 Scheme, there was no bar for making an application after the commercial production had started. It is not even the case of the Respondents that any of the final effective steps were complied with by the Petitioners after the filing of application. The provisions contained in clause 4.1(4) of the 1993 Scheme to the effect that an application for eligibility shall be submitted to the implementing Agency at least three months prior to the expected date of commencement of commercial production and that the Eligible Unit shall comply with the requirements preceding the issue of the Eligibility Certificate by the Implementing Agency to ensure obtaining the Eligibility Certificate within the period of six months from the date of commercial production, cannot be construed to mean that even though the applicant has complied with all the requisitions, the Respondents can withhold the grant of Eligibility Certificate for a period of nine months. Those provisions are meant for the applicant to comply with the requisitions within the stipulated time and are not meant for the Respondents to leisurely process the application up to a period of nine months. In our opinion, if the contention of the Respondents is accepted, it would mean promoting lethargy instead of promoting industrial growth in backward area. Even the Implementing Agency has not subscribed to the view

canvassed on behalf of the Sales Tax authorities.

12. In the instant case, there is no dispute that the commercial production had started on 5th July, 1998. The case of the Petitioners were forwarded by SICOM to the Respondent No.4 on 16th December, 1999 and the Sales Tax Authorities were sitting tight on that application without any justification and it is an admitted position that till August, 2001, the said papers were lying in the office of the Commissioner of Sales Tax and the same were returned to SICOM only in the last week of August, 2001 and thereupon, by a letter dated 27th August, 20001, SICOM has issued the eligibility certificate to the Petitioners with retrospective effect from 16.12.1999. There is no justification whatsoever put forth on the part of the Sales Tax Authorities as to why they had withheld the application of the Petitioners for such a long period. In spite of our repeated opportunities granted, no satisfactory explanation has been given as to why the Sales Tax Authorities were keeping the application of the Petitioners pending for so long and as to why the Petitioners are not entitled to the eligibility certificate from the date of commencing of commercial production. There is no dispute that in similar cases, the Sales Tax Tribunal has held that under the 1993 Scheme the entitlement of the Eligibility Certificate is from the date of commercial production. The Respondents have not implemented the said decisions of the Tribunal and it is not the case of the Respondents that these decisions of the Tribunal have been stayed by any authority or Court.

13. The aforesaid contention of the Petitioners also gets support from the amendment to the 1993 Scheme by Government Resolution dated 23.3.2000. In our opinion, the Respondents are wrong in contending that the case of the Petitioners cannot be treated as pipeline case. If after processing of the application of the Petitioners by the Respondent No.2, nothing was required to be done in the matter, then the Sales Tax authorities could not have withheld the application of the Petitioners for such a long period. In any event, the fact remains that on the date when the 1993 Scheme was amended by Government Resolution dated 23.3.2000, the application of the Petitioners was pending before the Sales Tax authorities and hence the case of the Petitioners is liable to be held as pipeline case and covered under the amended 1993 Scheme. Thus, in either view of the matter i.e. either under the 1993 Scheme itself or under the amended 1993 Scheme, the Petitioners are entitled to seek the relief as claimed in the petition. For all the reasons stated above, we are of the opinion that the Respondents are not justified in issuing the Entitlement certificate dated 16.12.1999 effective from 1.1.2000.

14. Having said so, the question which needs consideration is to what relief the Petitioners are entitled in the peculiar facts of the present case. We have noticed that the application for approval under the 1993 Scheme was made by the Petitioners on 3rd September, 1998 and the commercial production had commenced prior to that date namely 5th July, 1998. Therefore, the question arises is as to whether the Petitioners are en titled to the Entitlement under the

Eligibility Certificate even for the period prior to their making application under the 1993 Scheme ? Mr. Joshi, however, did not press for the date of entitlement under the Eligibility Certificate for the period prior to the date of application made on 3rd September, 1998. In view of this, the Petitioners shall be entitled to the date of entitlement from the date of application. In this view of the matter, the Respondents are directed to issue the Eligibility Certificate effective from 3rd September, 1998. It is expressly made clear that the issue of granting eligibility certificate prior to the date of application under 1993 Scheme is kept open.

15. In the circumstances set out hereinabove, the petition succeeds. The Rule is made absolute in the above terms and the Respondents are directed to issue the Eligibility Certificate to the Petitioners with entitlement effective from 3rd September, 1998 and grant all of consequential reliefs and entitlements under the 1993 Scheme. In the facts and circumstances of the case, there will no order as to costs.

