

CASE NO.:
Appeal (civil) 8607-8610 of 2002

PETITIONER:
Southern Agrifurane Industries Ltd.

RESPONDENT:
Commercial Tax Officer & Ors.

DATE OF JUDGMENT: 08/02/2005

BENCH:
Ruma Pal, Arijit Pasayat & C.K. Thakker

JUDGMENT:
J U D G M E N T

RUMA PAL, J.

The issue to be decided in these appeals is whether the appellant is liable to pay interest on the balance of sales tax dues for the period 1.10.93 to 30.9.94 under Section 24(3) of the Tamil Nadu General Sales Tax Act, 1959 or was it exempt from doing so under Section 17A(2) of that Act?

The appellant-company is a registered dealer under the Tamil Nadu General Sales Tax Act, 1959. Sometime in 1988 proceedings were commenced in respect of the appellant under the Sick Industries Companies (Special Provisions) Act, 1985. (referred to hereafter as SICA). Ultimately on 28th September, 1993 a scheme was sanctioned by the Board of Industrial and Financial Reconstruction (hereinafter referred to as 'BIFR') for rehabilitation of the appellant. Under the heading, "Cost of the scheme and Means of financing", the BIFR noted the requirement of funds for the rehabilitation of the Appellant and the means of finance. As far as the requirements of funds are concerned it was assessed at Rs. 1491 lakhs. To meet this requirement, the means of finance from three sources were identified, namely;

1. Interest from Secured loans	Rs. 568,00,000
2. Promoters and new some items rights of issue of equity capital	Rs. 300,00,000
3. Deferment of Sales Tax by Govt. of Tamil Nadu	Rs. 623,00,000
Total =	Rs. 1491,00,000

Clause (B) of the Scheme under the heading 'Reliefs and Concessions' required the State Government to "grant interest-free deferment of sales-tax payable to Tamil Nadu Government on sales of furfural and IMFS during the 6 months period from January 1993 to June 1993 (Rs.623 lakhs approx). The deferred amount of sales-tax as above shall be repayable during the 3 years period from July 1, 1994 to June 30,1997."

On 23rd September, 1993 the State Government intimated the BIFR that having considered the request of the appellant, it had proposed to sanction the deferral of sales tax for one year from 01.10.93 to 30.9.1994 and to permit the repayment of the deferred sales tax after a moratorium period of one year over a period of 5 years i.e. from 1.10.1995 to 30.9.2000. The BIFR accordingly amended the scheme by an order dated 8th December, 1993 so that the sales tax deferment during the six months' period from January 1993 to June 1993

(Rs.623 lakhs approximately) repayable during the three years period from July 1,1994 to June 30, 1997 was amended to read "for one year from 1.10.1993 to 30.9.1994 to be repayable during the period from 1.10.1995 to 30.9.2000".

The scheme was approved by the State Government by GO Ms. No.5 dated 7th January, 1994 and on 4th March, 1994 a notification was published by the State Government in the Official Gazette which reads:-

"In exercise of the powers conferred by sub-section (1) of section 17-A of the Tamil Nadu General Sales Tax Act 1959 (Tamil Nadu Act 1 of 1959), the Governor of Tamil Nadu hereby defers the tax payable under the said Act by Thiruvallur Southern Agrifurane Industries Limited, Madras for a period of one year from the 1st October 1993 subject to the condition that the deferred tax shall be paid over a period of five years in equal instalments after a moratorium of one year, that is from 1st October 1995 to 30th September 2000."

The implementation of the scheme was reviewed by the BIFR on 18th August, 1994. The Minutes of the Meeting record that according to the Monitoring Agency, (which was the Industrial Development Bank of India), after the sanction of the scheme the appellant had to incur additional capital expenditure of Rs. 468 lakhs and pay statutory dues of Rs. 155 lakhs on account of Central Excise Duty for the year 1991-1992. As such the enhanced cost of rehabilitation rose from Rs.1491 lakhs to Rs.2114 lakhs. In response to a query by the BIFR, the representative of the appellant submitted that the additional expenditure of Rs. 623 lakhs would be financed out of deferment of sales tax agreed to by the State Government. After hearing the parties, the BIFR sanctioned the enhanced cost of rehabilitation of Rs. 2114 lakhs. It also stated that the additional cost of Rs. 623 lakhs would be financed out of sales tax deferment of Rs. 623 lakhs.

Consequent to this amendment of the scheme, an Amendment Notification was published by the State Government on 3rd February, 1995 seeking to amend the notification dated 4th March, 1994. The amendment notification stated that for the expression "for period of one year from the 1st October, 1993, subject to the condition that the deferral tax shall be over a period of five years in equal instalments after a moratorium of one year that is from 1st October, 1995 to 30th September 2000" in the earlier notification, the following expression shall be substituted namely:-

"for a period of one year from the 1st October 1993, subject to the following conditions namely:-

(i) The deferred sum of Rs.1,246 lakhs shall be paid over a period of five years in equal instalments from 1st October 1995 to 30th September 2000 after availing a moratorium of one year (1st October 1994 to 30th September 1995); and

(ii) The amount of tax deferred shall not exceed the fixed deferred amount of Rs. 1,246 lakhs."

The rehabilitation measures undoubtedly proved effective as the appellant's net worth became positive by 30th September, 1995. These facts were drawn to the attention of the BIFR by the appellant which agreed that it may be released from the purview of SICA being no longer a sick industrial undertaking. Considering the representation and the material, the BIFR passed an order on 8th December, 1995 to the effect

that it considered the appellant-company had ceased to be a sick industrial company within the meaning of Section 3(1)(o) of SICA and its case was no longer required to be dealt with by BIFR. The proceedings in the case were accordingly closed and the Special Director appointed by the BIFR was discharged.

Proceeding on the basis that the sales tax deferment was only in respect of the Rs. 1,246 lakhs, by several notices dated 31.7.1996, 21.8.1996, 10.9.1996 and 11.11.1996, the Commercial Tax Officer, Villupuram being the respondent No.1 herein, called upon the appellant to pay the entire balance of the sales tax due for the period 1.10.93 to 30.9.94 together with the interest under Section 24(3) of the Tamil Nadu General Sales Tax Act immediately. An amount of Rs. 5,51,91,688 was payable on account of sales tax, surcharge, etc. Interest on that amount calculated up to 31.10.1996 was claimed at Rs.4,36,48,594 thus making a total demand of Rs.9,88,40,282. In response to the letter dated 30.10.1996, the appellant wrote to the Industries Department of the State Government on 15th November, 1996 saying that they would like to settle the Sales Tax dues as claimed by way of a comprehensive package. The package envisaged:

(a) The waiver of the interest amount of Rs. 4.37 crores;

(b) Payment of the balance excess amount on Rs. 5.52 crores in two instalments, the first of which would be paid within a fortnight from the date of the order of the authorities and the second after six months.

The State Government passed an order on the appellants representation on 31st December, 1996 by which it permitted the appellant to pay the amount of tax due with interest in two instalments, one in December 1996 and the second before 5.3.1997 subject to three conditions, the third of which stated that there would be no waiver of the interest payable on the deferred payment. It was made clear that the appellant was liable to pay penal interest at 24% per annum on the outstanding arrears till the date of the payment of the arrears under Section 24(3) of the Tamil Nadu General Sales Tax Act, 1959.

The appellant did not challenge this order. The subsequent demand for interest for the period of 1.11.1996 to 10.11.1996 together with the earlier demands, totalling Rs. 10,00,09,892 was cleared by the appellant on 10th January, 1997 and 14th March, 1997 by two separate payments of Rs.4,94,20,141 and Rs. 5,05,89,751 amounting to the exact figure of 10,00,09,892.

Subsequently however the appellant claimed that the payment of Rs. 5,05,89,751/- made by it on 14th March, 2003 was not towards the demanded amount but towards the regular tax for February, 1997. This was rejected by the respondent No.1 and on 1st April, 1997, the appellant sought for permission from the respondent to pay the penal interest of Rs. 4.37 crores in three equal instalments.

Without waiting for a response between 9th April 1997 and 4th May, 1998, the appellant filed original petitions before the Tamil Nadu Taxation Special Tribunal. In none of these proceedings was the order dated 31st December, 1996 challenged.

The Tribunal dismissed the several petitions filed by the appellant. Challenging the common order passed in the original petitions the appellant filed writ petitions before the Madras High Court. The Madras High Court also rejected the writ petitions.

The appellant contends that by the amendment notification, the first notification issued under Section 17(A) of

the Sales Tax Act could not be retrospectively affected so as to put a ceiling on the sales tax deferred. According to the appellant, the first notification had granted the right to the appellant to pay the entire sales tax liability incurred by the appellant for the period 1.10.93 to 30.9.94 in instalments over a period of five years. The imposition of a limit on the deferred amount of Rs.1,246 lakhs was contrary to the statute and invalid. Section 17(A) was referred to to submit that the power of retrospectively denying benefit conferred under Section had been excluded.

The High Court had rejected this submission of the appellant by holding that the first notification did not grant an unlimited tax deferral and that the amendment notification merely clarified that the deferral was not limited to Rs.623 lakhs but was upto Rs.1,246 lakhs. Therefore there was no question of the amendment notification operating retrospectively. On the assumption that the amendment did operate retrospectively, the High Court held that by virtue of Section 15 of the Tamil Nadu General Clauses Act, the State Government had the power to deny the benefit of deferral granted retrospectively.

The appellant submits that the view expressed by the High Court was contrary to the well established principles laid down in several decisions of this Court including *Strawboard Manufacturing Co. v. Gutta Mill Workers Union* AIR 1953 SC 95 and *Kazi Lhendup Dorji V. Bureau of Investigation* 1994 Supp (2) SCC 116. In addition, the appellant submits that the Scheme framed by BIFR also did not lay down any ceiling on the quantum of deferral of the sales tax. It is submitted that the scheme was a statutory one and binding on the State Government under the provisions of Sections 18(1), (4) (8) read with Section 19(3) and Section 32 of SICA.

According to learned counsel for the respondents, neither the Scheme nor the first notification had granted an unlimited sales tax deferral as claimed by the appellant. The original scheme envisaged a deferment of sales tax of 6 crores 23 lakhs. This limit was subsequently raised to Rs. 1246 lakhs at the request of the appellant and on the recommendation of the IDBI. There was as such no question of retrospective operation of the amendment notification nor violation of any scheme sanctioned by the BIFR. In any event, it is submitted that Section 15 of the Tamil Nadu General Sales Tax Act, 1959 would apply to Section 17A permitting the State Government to undo what it may have the power to do under that Section. It is also submitted that the appellant had collected the entire sales tax from its customers for the period 1.10.93 to 30.9.94. It was entitled to the deferment of the sales tax only to the extent it was required to meet the cost of rehabilitation as sanctioned by the BIFR. It is further submitted that the appellant in any event, on its own accord, sought release from the provisions of the SICA and at least from the period subsequent to such release, it should have cleared all outstanding tax liability immediately.

Section 17(A) of the Tamil Nadu General Sales Tax Act confers power on the State Government to notify deferred payment of tax for certain industries including sick units. The relevant extract of Section reads thus:
17A. Power of government to notify deferred payment of tax for new industries, etc.

(1) The Government may, in such circumstances and subject to such conditions as may be prescribed, by notification issued whether prospectively or retrospectively defer the payment by

any new industrial unit or sick unit or sick textile mill of the whole or any part of the tax payable in respect of any period:

Provided that such retrospective effect shall not be earlier than the 9th May 1988.

(1A) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

(2) Notwithstanding anything contained in this Act, the deferred payment of tax under sub-section (1) or sub-section (1A) shall not attract interest under sub-section (3) of section 24 provided the conditions laid down for payment of the tax deferred are satisfied."

Therefore, under sub-section (2) interest is not payable on the deferred payment of tax provided the conditions laid down in sub-section (1) are satisfied. The purpose of the section is to grant the benefit to new industrial units to help them tide over the initial teething troubles and to sick industries to assist them to get over their sickness. To this end, the Government is empowered to defer the payment of the whole or any part of the tax payable in respect of any period. If on the other hand, the conditions are not satisfied, then too the State Government may allow the tax due to be repaid in instalments under Section 24(1) but in such a case the assessee would be liable to pay interest under Section 24(3) which provides:

" On any amount remaining unpaid after the date specified for its payment as referred to in sub-section (1) or in the order permitting payment in instalments, the dealer or person shall pay, in addition to the amount due, interest at one and half per cent per month of such amount for the first three months of default and at two per cent per month of such amount for the subsequent period of default".

Both the Tribunal and the High Court have found as a fact that the scheme which was sanctioned by the BIFR initially on 28.7.1993 provided for a limit on the quantum of Sales Tax deferral namely Rs.623 lacs. We see no reason to interfere with this concurrent finding fact. The sales tax deferral was part of the scheme and was granted as a measure of financial assistance to meet a projected need for the purposes of the appellant being rehabilitated. Both the figures were firm. It has been conceded by the learned counsel for the appellant that a scheme for rehabilitation under the SICA must necessarily contain firm figures. Unless the figure had been fixed by the Scheme when framed in 1993, it would in our opinion be illogical to ask for an enhanced limit of need to be sanctioned and for a consequent enhancement of the financial assistance on 18.8.1994. It is true that the first notification only mentioned the period of deferral and did not specify the amount, but the background in which the notification was issued clearly showed that the State Government had been required by BIFR to render assistance of Rs. 623 lakhs by way of sales tax deferral. The object and purpose of the notification was to fulfill that obligation cast on the State Government under Section 19(3) of SICA. It is improbable that the State Government, not being required to do so, would in an act of unprecedented generosity

deprive its exchequer of funds to which it was otherwise entitled.

The State's understanding was that the original limit of Rs. 623 lakhs needed revision upwards pursuant to the revision in the scheme. The increase in the outer limit could be justified as far as the State was concerned to double the original figure sanctioned, since the period of deferral was doubled from 6 months to a year. This was apparently how the appellant also understood the position. It did not protest initially against the amendment notification when it was published in February 1995. Again its response to the demand in 1996 of the Sales Tax Authorities was not that the claim was in violation of the scheme or the notifications but was a plea for grant of instalments which plea was acceded to by the State Government on 31.12.1996 in exercise of its powers under Section 24(1). In compliance with the order dated 31.12.1996, the payment was in fact made by the appellant. As such the amended notification was indeed an amendment of the first notification dated 28.7.1993 consequent upon the revised sanction of the BIFR on 18.8.1994 enhancing the need and assistance limits and it was not seeking to retrospectively deny any benefit already conferred on the appellant. We therefore do not need to go into the further question whether the High Court was right in importing Section 15 of the Tamil Nadu General Clauses Act into Section 17.A.

Finally, the appellant was entitled to the relief of sales tax deferral only to the extent it was necessary to take it out of "sickness" i.e. on rehabilitation. That is so provided under Section 17A(2). Anything in excess of such rehabilitation would not be covered by Section 17A but would fall under Section 24(3) of the Tamil Nadu General Sales Tax Act, 1959. The BIFR had fixed the quantum for rehabilitation at Rs. 2114 lakhs. The Rs.1246 lakhs of deferral of sales tax admittedly met this need. Any further tax deferral therefore would only be a benefit conferred on a non-sick company and be permissible under Section 24(1) in which event the appellant would be liable to pay interest under Section 24(3) as held by the High Court.

The appeals are accordingly dismissed without any order as to costs.