

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5354 OF 2011

TITAN PLAST(P) LTD.
REP. BY ITS MANAGING DIRECTOR
SHRI SUNIL KUMAR AGARWAL
S/O SHRI MOHANLAL AGARWAL
AGED ABOUT 45 YEARS
RRESIDENT OF HYDERABAD, TELANGANA & ANR. APPELLANT(S)

VERSUS

THE COMMERCIAL TAX OFFICER,
TELANGANA & ORS. RESPONDENT(S)

WITH

CIVIL APPEAL NO. 5355/2011

CIVIL APPEAL NO. 4443/2015

CIVIL APPEAL NO. 934/2017

CIVIL APPEAL NO. 940/2017

CIVIL APPEAL NO. 936/2017

CIVIL APPEAL NO. 933/2017

CIVIL APPEAL NO. 6415/2017

CIVIL APPEAL NO. 6416/2017

CIVIL APPEAL NO. 6417/2017

CIVIL APPEAL NO.3770/2015

CIVIL APPEAL NO.7729/2014

CIVIL APPEAL NO.5356/2011

CIVIL APPEAL NO. 5361/2011

CIVIL APPEAL NO. 5362/2011

CIVIL APPEAL NO.5363/2011

CIVIL APPEAL NO. 7388/2011

CIVIL APPEAL NO.3401/2012

WRIT PETITION(C) No. 298/2012

CIVIL APPEAL NO.5449/2013

CIVIL APPEAL NO.7004/2013

CIVIL APPEAL NO. 6414/2017

O R D E R

I.A. No. 30622/2018 in Civil Appeal NO. 5356/2011 is allowed.

As common question of law and facts arise in this group of appeals and as they arise out of the impugned common judgment and order passed by the High Court, all these appeals are being decided and disposed of by this common judgment and order.

1. Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the High Court of Andhra Pradesh at Hyderabad in Writ Petition No. 12804 of 2009 and other allied writ petitions and also feeling aggrieved and dissatisfied with the impugned orders passed by the High Court dismissing the writ petitions relying upon the common judgment and order passed in Writ Petition No. 12804 of 2009 and other allied writ petitions, the respective original writ petitioners - dealers have preferred the present appeals.

1.1 That before the High Court, the respective original writ petitioners - dealers challenged the validity of G.O.Ms. No. 503 Revenue (CT-II) Department dated 08.05.2009, whereby Rule 67 of the A.P. VAT Rules, 2005 (hereinafter referred to as "Rules, 2005") came to be amended, inter alia on the ground

that the same is illegal, arbitrary and contrary to the industrial policy of the State Government in G.O.Ms. No. 108 dated 20.05.1996. The original writ petitioners - dealers also challenged the consequential demand notices, whereby they were called upon to pay the deferred sales tax immediately.

2. The facts leading to the present appeals in nutshell are as under:-

2.1 In order to encourage and accelerate industrial development in the State, the State of Andhra Pradesh introduced a new industrial policy called "Target-2000" which was notified in G.O.Ms. No. 108 dated 20.05.1996. Under the said industrial policy, all new industrial units, whether large, medium or small, which had commenced production on or after 15.11.1995 were eligible for certain incentives including sales tax concessions. Each industry was given two options. The first option was that they were entitled for sales tax deferment for a period of 14 years and the deferred amount was to be treated as a deemed loan on the security of the fixed assets of the industry pari-passu with the financial institutions, and on finalization of the assessment by the commercial tax authorities each year. The second option was sales tax exemption (tax holiday) for a period of 07 years, limited to a ceiling of 135% of the fixed capital investment during the entire holiday period, effective from the date of commencement of commercial

production. All the industrial units, in this batch of appeals, opted for sales tax exemption (tax holiday).

2.2 At this stage, it is required to be noted that at the relevant time, when the notification dated 20.05.1996 was notified, it was a regime under A.P. GST Act, 1957. However, thereafter, A.P. GST Act, 1957 came to be repealed and the A.P. VAT Act, 2005 (hereinafter referred to as "Act, 2005") came into force w.e.f. 01.04.2005. Section 69(1) of the Act, 2005 provided that an industrial unit, availing tax exemption on the date of commencement of the Act, 2005 to be treated as a unit availing tax deferment. Consequently, the respective petitioners - industrial units were also treated as a unit availing tax deferment. Rule 67 of the Rules, 2005 prescribes the manner in which tax incentives are required to be treated. It specifically provides that where any unit is availing a tax holiday on the date of commencement of the Act, it shall be treated as converted as the unit availing tax deferment and the balance period available as on 31.03.2005 to such units shall be doubled. Meaning thereby, if as on 31.03.2005, an industrial unit was having two years remaining period for tax exemption / holiday, under Rule 67, such unit shall be entitled to the benefit of deferred tax payment for four years, i.e., double the remaining period. However, as per the illustration to Rule 67, the deferment period provided was 14 years. However, thereafter, when the

State realized the mistake in providing 14 years deferment as per illustration to Rule 67, the State Government came out with the amended G.O. whereby the illustration to Rule 67 of the Rules, 2005 came to be amended and it provided that deferment shall be doubled the remaining period under the old regime. Therefore, all the industrial units were issued demand notices in the year 2019 as by the amendment to Rule 67 vide G.O.Ms. No.503 Revenue (CT-II) Department dated 08.05.2009, the deferment period came to be reduced. The amendment to Rule 67 of the Rules, 2005 vide G.O.Ms. No.503 Revenue (CT-II) Department dated 08.05.2009 and the consequential demands were the subject matter of writ petitions before the High Court.

2.3 Before the High Court, it was the case on behalf of the respective industrial units that the amendment in question was contrary to the earlier industrial policy called "Target-2000" and also to the G.O.Ms. No.108 dated 20.05.1996.

2.4 It was submitted that under G.O.Ms. No.108 dated 20.05.1996, the tax deferment units were required to repay the tax collected by them on completion of the availment period of 14 years. It was submitted that the amended illustration to Rule 67, now, requires the converted tax deferment units, whose remaining period of eligibility has been doubled, also to commence repayment

soon after completion of their availment period. Therefore, it was submitted that the amended Rule is contrary to the parent act and the original writ petitioners - dealers.

2.5 On the other hand, it was submitted on behalf of the State that the illustration to Rule 67 of the Rules, 2005 was as such itself contrary to Rule 67.

2.6 By the impugned common judgment and order, the High Court has dismissed the respective writ petitions, which are the subject matter of the present appeals.

3. Learned counsel appearing on behalf of the respective original writ petitioners - industrial units have as such reiterated what was submitted before the High Court. It is vehemently submitted that the amendment to Rule 67 of the Rules, 2005 vide G.O.Ms. No.503 Revenue (CT-II) Department dated 08.05.2009 is just contrary to the earlier industrial policy and the earlier G.O.Ms. No.108 dated 20.05.1996.

3.1 It is submitted that once the industrial units, who availed the option of tax exemption / tax holiday were converted to the deferred tax units and when under the earlier industrial policy, the deferred tax units were entitled to 14 years deferment in paying the tax without interest and when under Section 69 read with Rule 67, all those, who availed the deferred tax benefit shall continue to avail the same and now, when the industrial units are converted to the deferred tax

units, they shall also be entitled to the deferment in tax for a period of 14 years from Act, 2005, i.e., upto the year 2019.

3.2 It is further submitted that as such the industrial policy called "Target-2000" was to encourage and accelerate the industrial growth in the State. It is submitted that as such the earlier illustration to Rule 67 of the Rules, 2005 as such was absolutely in consonance with the said industrial policy and in line with the earlier G.O.Ms. No.108 dated 20.05.1996, which specifically provided for 14 years deferment and, therefore, the High Court has materially erred in dismissing the writ petitions and upholding the G.O.Ms. No.503 Revenue (CT-II) Department dated 08.05.2009 by which the deferred period has been substantially reduced.

3.3 It is further submitted that even otherwise when the Rule 67 came to be amended in the year 2009, the same cannot be made applicable retrospectively and the State is not justified in charging the interest on the tax amount for the period between 2005 to 2009 as the liability to pay tax by the amended Rule - Rule 67 of the Rules, 2005 can be said to have arisen only by way of amendment to Rule 67 of Rules, 2005 vide G.O.Ms. No.503 Revenue (CT-II) Department dated 08.05.2009.

4. All these appeals are vehemently opposed by Shri Sriharsha Peechara, learned counsel appearing on behalf of the State.

4.1 It is submitted that as such the earlier scheme and the

G.O.Ms. No.108 dated 20.05.1996 were in A.P. GST Act regime under which the tax holiday / tax exemption was permissible. It is submitted that, however, thereafter, when the A.P. GST Act came to be repealed and the A.P. VAT Act came into force w.e.f. 01.04.2005 as there was no provision for tax exemption / tax holiday in the A.P. VAT Act, 2005, the option of tax holiday / exemption came to be withdrawn. However, taking into consideration the industrial policy, all the industrial units, who availed the option of tax holiday / exemption prior to 01.04.2005 may not have to suffer, the legislature thought it fit to convert all those industrial units, who availed the option of tax holiday / exemption as the units availing tax deferment. It is submitted that Rule 67 specifically provides that the balance tax period available as on 31.03.2005 to such units shall be doubled. It is submitted that therefore, for example, if the industrial unit, who availed the benefit of tax holiday was having balance period of two years as on 31.03.2005, such industrial unit shall be entitled to benefit of tax deferment double the balance period, i.e., four years. It is submitted that, however, by mistake, the illustration to Section 67 provided for 14 years deferment, which as such was just contrary to Section 69 read with Rule 67. It is submitted that therefore, the said illustration to Rule 67 came to be amended vide G.O.Ms. No.503 Revenue (CT-II) Department dated 08.05.2009 correcting the mistake and to bring the illustration to Rule 67 in line with the Rule 67 of the Rules, 2005 read with Section 69. It is submitted that therefore, the High

Court has not committed any error in dismissing the writ petitions upholding the G.O.Ms. No.503 Revenue (CT-II) Department dated 08.05.2009.

4.2 Now, so far as the submission on behalf of the respective appellants on the levy of interest for the period between 2005 to 2009 is concerned, the learned counsel appearing on behalf of the State is not in a position to dispute that the liability to pay the tax has arisen in view of the curtailment of the deferred payment of tax period due to G.O.Ms. No.503 Revenue (CT-II) Department dated 08.05.2009, and, therefore, he is also not in a position to justify the levy of interest for the said period.

5. We have heard the learned counsel for the respective parties at length.

5.1 At the outset, it is required to be noted that as per the original scheme prevailing prior to the VAT regime and under the Sales Tax regime, an industrial unit was entitled to two types of benefits, namely, (i) Tax deferment for 14 years; or (ii) Tax holiday for 7 years. Here are the cases in which the respective original writ petitioners - industrial units had opted for the second option, namely, tax holiday for 7 years. It appears that at the relevant time, when G.O.Ms. No.108 dated 20.05.1996 was issued providing for tax exemption / tax holiday, the same was permissible under the old Sales Tax Regime. However, subsequently, the A.P. VAT Act, 2005 came into force w.e.f. 01.04.2005 under which there was no provision

for tax exemption / holiday or even tax deferment. However, Section 69 provided for the tax deferment and under Section 69 "Notwithstanding anything contained in the A.P. VAT Act, any industrial unit availing a tax holiday or tax exemption on the date of commencement of the Act, 2005 shall be treated as a unit availing tax deferment. Therefore, the tax deferment benefit came to be continued under the new regime, i.e., the Act, 2005 as per Section 69. Section 69 reads as under:-

69. Tax Deferment:- (1) Notwithstanding anything contained in the Act, any industrial unit availing a tax holiday or tax exemption on the date of commencement of the Act shall be treated as a unit availing tax deferment.

(2) The unit availing tax deferment as specified in sub-section (1) shall be eligible to issue tax invoices and to claim input tax credit subject to provisions of Section 13 of the Act.

(3) The period of eligibility, the method of debiting eligibility amount, the repayment and any other benefits for all units availing tax deferment shall be in the manner prescribed.

5.2 However, Rule 67 of the Rules, 2005 provides the treatment of tax incentive cases and it provides that "Where any unit is availing a tax holiday on the date of commencement of the Act, it shall be treated as converted as the unit availing tax deferment". It further provides that the balance period available as on 31.03.2005 to such units shall be doubled and the eligibility amount shall be the balance available to such unit as on 31.03.2005. Rule 67 reads as under:-

"67. Treatment of tax incentive cases:-

1) Where any unit is availing a tax holiday on the date of commencement of the Act, it shall be treated as converted as the unit availing tax deferment. The balance period available as on 31st day of March 2005 to such units shall be doubled. The eligibility amount shall be the balance available to such unit as on that date. Balance period means the difference of period between date of completion of eligibility shown in the certificate of eligibility and 1st day of April 2005.

2) The units already availing tax deferment prior to commencement of the Act, shall continue to be eligible to avail the balance amount available as on 31st day of March 2005 and for the period as mentioned in the eligibility certificate.

3) The tax payable and the tax to be claimed as deferment for each period shall be the net tax (i.e. output tax less input tax) which shall be debited to the eligibility amount.

ILLUSTRATION:

CDL Industries was granted tax holiday for a period of 7 Years from 10-10-1999 to 09-10-2006 for an amount of Rs.65,22,000. As on 31-03-2005, the dealer has availed an amount of Rs.45,10,000.

The period originally available as on 01-04-2005 is 18 months & 9 days. As per the above sub-rule the dealer now is eligible to avail tax deferment for the balance amount of Rs.20,12,000/- for a period of 36 months and 18 days, i.e., 01-04-2005 to 18-04-2008.

The amount of deferment availed for each month shall be paid at the end of fourteenth year, i.e., the amount of tax deferred for the month of April, 2005 shall be paid on or before 30th April, 2019.

4) Where any VAT dealer is availing deferment, a declaration in Form 502 shall be filed for every tax period in addition to the return in Form VAT 200.

5.3 Thus, under Section 69 read with Rule 67, all those industrial units, who availed the option of tax holiday /

exemption prior to 2005, came to be converted to the unit availing tax deferment, however, with condition that the balance period of tax holiday / exemption available as on 31.03.2005 to such units shall be doubled for the purpose of tax deferment. Meaning thereby, an industrial unit having two years balance period available as tax holiday / exemption as on 31.03.2005, the same shall be converted to the unit availing tax deferment for four years, i.e., double the balance period. However, the illustration to Rule 67 provided contrary to Rule 67 and it provided for 14 years deferment. That thereafter, having realized the mistake and having found that the illustration to Rule 67 stating 14 years deferment was just contrary to Rule 67, by the impugned notification dated G.O.Ms. No.503 Revenue (CT-II) Department dated 08.05.2009, the State Government has amended the Rule 67, more particularly, the illustration to Rule 67 providing double the balance period for tax deferment, which as such can be said to be in consonance with Rule 67.

5.4 As per the settled position of law, an illustration cannot govern the Rule but it is the Rule which shall govern and the illustration is always for clarification and it is to explain what is provided under the Rule. But the illustration cannot be contrary to the main statute namely, Rule and/or Act. Therefore, thereafter when the illustration came to be amended subsequently, vide G.O.Ms. No.503 Revenue (CT-II) Department dated 08.05.2009, to bring it in line with the statutory

provision - Rule 67, it cannot be said that the same is illegal and/or contrary to the parent act and/or contrary to the original industrial scheme. The earlier industrial scheme and the earlier G.O.Ms. No.108 dated 20.05.1996 were under the old Sales Tax regime and now the legislation has been changed in view of the introduction of the A.P. VAT Act, 2005 w.e.f. 01.04.2005. In fact, the State Government has taken care of the interest of the industrial units by providing double the balance period while converting the industrial units, who earlier availed the tax holiday as the units having tax deferment. Therefore, it cannot be said that the State was not aware of the interest of the industrial units under the VAT regime.

5.5 Now, so far as the submission on behalf of the respective industrial units - dealers on promissory estoppel is concerned, there cannot be any promissory estoppel applied against such Statute. Section 69 of the Act, 2005 and Rule 67 of the Rules, 2005 are very clear and the intention is also very clear, namely, to convert the industrial unit availing the tax holiday / exemption as the unit having tax deferment and the balance period of tax available as on 31.03.2005 to such unit shall be doubled.

5.6 Under the circumstances, the High Court has rightly dismissed the writ petitions upholding the subsequent G.O.Ms. No.503 Revenue (CT-II) Department dated 08.05.2009 and amendment to Rule 67 of the Rules, 2005. However, at the same

time, there shall not be any levy of interest on non-payment of the tax for the period between 2005 to 2009, which is due and payable, now, in view of subsequent G.O.Ms. No.503 Revenue (CT-II) Department dated 08.05.2009 and till Rule 67 of the Rules, 2005 came to be amended, respective industrial units were entitled to the benefit of deferred payment of tax. Therefore, from the date of the earlier illustration to Rule 67 of the Rules, 2005, which came to be subsequently amended in the year 2009, there shall not be any interest liability and even the penalty for the period between 01.04.2005 and May, 2009. To that extent, the impugned judgments and orders passed by the High Court are required to be modified and the present appeals are required to be partly allowed to the aforesaid extent.

6. In view of the above and for the reasons stated above, present appeals succeed in part. The impugned judgments and orders passed by the High Court upholding the validity of the amendment to Rule 67 of the Rules, 2005 vide G.O.Ms. No.503 Revenue (CT-II) Department dated 08.05.2009 is/are hereby confirmed. Therefore, the challenge to the amendment to the illustration to Rule 67 of the Rules, 2005 vide G.O.Ms. No.503 Revenue (CT-II) Department dated 08.05.2009 fails. However, it is directed that there shall not be any interest liability and/or levy of penalty, if any, for the period between 01.04.2005 to May, 2009 on non-payment of any tax during the said period. It goes without saying that if any industrial unit has paid the interest for the period between 01.04.2005 to May, 2009, the same shall be refunded to them within a period

of eight weeks from today.

The Civil Appeals are partly allowed to the aforesaid extent. W.P. (C) No. 298 of 2012 stands disposed of accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.

..... J.
(M.R. SHAH)

..... J.
(C.T. RAVIKUMAR)

New Delhi;
March 22, 2023.

ITEM NO.102

COURT NO.4

SECTION XII-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 5354/2011

TITAN PLAST(P) LTD.
REP. BY ITS MANAGING DIRECTOR
SHRI SUNIL KUMAR AGARWAL
S/O SHRI MOHANLAL AGARWAL
AGED ABOUT 45 YEARS
RRESIDENT OF HYDERABAD, TELANGANA & ANR.
Appellant(s)

VERSUS

THE COMMERCIAL TAX OFFICER,
TELANGANA & ORS.

Respondent (s)

WITH

C.A. No. 5355/2011 (XII-A)

C.A. No. 4443/2015 (XII-A)

C.A. No. 934/2017 (XII-A)

C.A. No. 940/2017 (XII-A)

C.A. No. 936/2017 (XII-A)

C.A. No. 933/2017 (XII-A)

C.A. No. 6415/2017 (XII-A)

C.A. No. 6416/2017 (XII-A)

C.A. No. 6417/2017 (XII-A)

C.A. No. 3770/2015 (XII-A)

C.A. No. 7729/2014 (XII-A)

C.A. No. 5356/2011 (XII-A)
(and FOR [I/A TO BRING ON RECORD THE CHANGE IN NAME OF THE
APPELLANT COMPANY] ON IA 30622/2018
IA No. 30622/2018 - I/A TO BRING ON RECORD THE CHANGE IN NAME OF
THE APPELLANT COMPANY)
C.A. No. 5361/2011 (XII-A)

C.A. No. 5362/2011 (XII-A)

C.A. No. 5363/2011 (XII-A)

C.A. No. 7388/2011 (XII-A)

C.A. No. 3401/2012 (XII-A)

W.P. (C) No. 298/2012 (X)

(IA No. 1/2012 - PERMISSION TO FILE ANNEXURES)

C.A. No. 5449/2013 (XII-A)

C.A. No. 7004/2013 (XII-A)

C.A. No. 6414/2017 (XII-A)

Date : 22-03-2023 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE M.R. SHAH

HON'BLE MR. JUSTICE C.T. RAVIKUMAR

For Appellant(s) Mr. S. K. Bagaria, Sr. Adv.
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Mr. Ayush Kashyap, Adv.
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Mr. Soumik Ghosal, Adv.
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Mr. Devvrat, AOR

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Mr. Guntur Prabhakar, AOR

UPON hearing the counsel the Court made the following

O R D E R

I.A. No. 30622/2018 in Civil Appeal NO. 5356/2011 is
allowed.

The Civil Appeals are partly allowed and W.P. (C) No. 298
of 2012 stands disposed of in terms of the signed order.

Pending application(s), if any, stand disposed of.

(NEETU SACHDEVA)
ASTT. REGISTRAR-cum-PS

(NISHA TRIPATHI)
ASSISTANT REGISTRAR

(signed order is placed on the file)