STATE OF TAMIL NADU AND ANR. A

v.

INDIA CEMENTS LTD. AND ANR.

(Civil Appeal No. 4233 of 2007)

APRIL 21, 2011 B

[D.K. JAIN AND H.L. DATTU, JJ.]

Sales Tax – Tamil Nadu General Sales Tax Act, 1959 – ss.17A and 28A –Interest free sales tax deferral scheme introduced by the State of Tamil Nadu under G.O.Ms.No.119 dated 13th April, 1994 for manufacturing units undertaking expansion/diversification – Scheme providing for deferral of sales tax based on increased volume of production/sales – Interpretation of the scheme – Held: The benchmark for availing the benefit of the sales tax deferral scheme having been fixed both with reference to the production as also to the sales, it was immaterial whether the unit concerned reached base production volume (BPV) or the base sales volume (BSV) earlier – Any other interpretation of the said GOM would frustrate the object of the scheme – Benefit of sales tax deferral scheme would be available to a dealer from the date of reaching of BPV or BSV, whichever is earlier – Interpretation of Statutes. C D E

Circulars /Notifications – Revenue Circulars – Binding effect of – Held: Circulars issued by the revenue are binding on the departmental authorities and they cannot be permitted to repudiate the same on the plea that it is inconsistent with the statutory provisions or it mitigates the rigour of the law. F

The State of Tamil Nadu vide G.O.Ms.No.119 dated 13th April, 1994 introduced interest free sales tax deferral scheme for manufacturing units undertaking expansion/ diversification. The said G.O.M. provided that deferral of sales tax will only be on the increased volume of G

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A production/sales and for the purpose of determining such increased volume, the base figure would be the highest of the volume of production/sale in any year during the last three years prior to expansion.

B The first respondent, which was engaged in the manufacture and marketing of cement in the State of Tamil Nadu and Andhra Pradesh, claimed entitlement to the benefit of deferral of sales tax. The Taxation Special Tribunal held that before the first respondent could claim deferral of sales tax, it was required to reach both the C base production volume (BPV) and base sales volume (BSV); in other words, if the BSV had been reached earlier but BPV had not been reached, the first respondent will not be entitled to get the deferral facility, till it achieved BPV. Being aggrieved, the first respondent D preferred Writ Petitions before the High Court which allowed the petitions and set aside the order passed by the Tribunal.

In the instant appeal, the question which arose for E consideration was whether the first respondent would be eligible for sales tax deferral in any financial year for the sales made in that year in excess of the base sales volume (BSV) as soon as they exceed the BSV or only when their production also exceeds the base production F volume (BPV) in that year.

Dismissing the appeal, the Court

HELD: 1. The source of the sales tax deferral scheme is traceable to Section 17A of the Tamil Nadu General G Sales Tax Act, 1959 (TNGST Act) which enables the Government to notify deferred payment of tax for new industries, etc. subject to such restrictions and conditions as may be deemed fit. Therefore, the scheme in question has a statutory flavour. From a comparative H reading of G.O.P.No.92 dated 22nd February, 1991 and

G.O.Ms.No.376 dated 27th October, 1992 on the one hand and G.O.Ms.No.119 dated 13th April, 1994, the eligibility certificate issued thereunder to the first respondent as also the consequential agreement entered between the parties on the other hand, it is evident that G.O.P.No.92 and G.O.Ms.No.376 is the source of power to grant exemption and G.O.Ms.No.119 lays down the methodology and the machinery to implement the scheme. These are complementary to each other. Therefore, the terms and conditions stipulated in the schemes; the eligibility certificate as also the consequential agreement, between the first respondent and the revenue, having the statutory force, undoubtedly violation of any one of the terms and conditions thereof would disentitle the beneficiary of the benefit of the sales tax deferral scheme. [Para 15] [410-C-F]

Commissioner of Customs (Preventive), Mumbai Vs. M. Ambalal &Company **(2011) 2 SCC 74: 2010 (15) SCR 937 – referred to.**

2. A conjoint reading of clauses 3(i) and (ii) of G.O.Ms.No.119 dated 13th April, 1994, and paragraph 5.3 of the eligibility certificate dated 13th February, 1998 issued to the first respondent would show that the object of the conditions with reference to reaching of BPV is to ensure that the concerned unit achieves the highest production and sale of the existing unit in the last three years prior to the commencement of the commercial production in the expansion unit, resulting in higher revenue on higher sales. The benchmark for availing the benefit of the sales tax deferral scheme having been fixed both with reference to the production as also to the sales, it is immaterial whether the unit concerned reaches BPV or the BSV earlier. The word "when" employed in clause 3(ii) of G.O.Ms.No.119, whether read as "if" or "after" only signifies that in order to avail of the benefit of sales tax deferral for sales made in the year in excess of the BSV,

A the industry must achieve in that year the BPV, which is the highest production of the last three years prior to the expansion, for every assessment year of the total number of years, viz., 12 years, besides reaching BSV in that particular year. It is obvious that by insisting that the BSV B should also be reached, the revenue of the State gets protected in every assessment year during the entire period of deferral and, in fact, the industry gets the benefit of deferral only on sales which are in excess of the BSV. It is pertinent to note that if for any reason the beneficiary C ultimately fails to achieve the BPV during the financial year, the benefit of deferral of sales tax availed of by it on achieving BSV becomes refundable forthwith along with interest thereon. In light of the intention behind the schemes, clause 3(ii) of the G.O.Ms.No.119 cannot be D construed to mean that the benefit would flow only from the date of reaching the BPV and not from the date of reaching the BSV, particularly when the main object of the schemes is to increase the productivity without compromising with the revenue of the State. Any other interpretation of the said GOM would frustrate the object E of the scheme. It is now well established principle of law that if a plain meaning given to the provision for the purpose of considering as to whether the applicant had fulfilled the eligibility criteria as laid down in the notification or not is found to be clear, purpose and F object the notification seeks to achieve must be given effect to. [Para 16] [411-B-H; 412-A-C]

G.P. Ceramics Private Limited v. Commissioner, Trade Tax, Uttar Pradesh (2009) 2SCC 90: 2008 (16) SCR 315 – G relied on.

3. In any event, the decision of the High Court cannot be flawed with in, light of the circular dated 1st May, 2000 issued by the office of the Principal Commissioner and Commissioner of Commercial Taxes, Chennai, in exercise H

of power conferred on him under Section 28A of the TNGST Act. It is manifest from the circular that as per the clarification issued by the Commissioner of Commercial Taxes, in exercise of the power conferred on him under Section 28A of the TNGST Act, the benefit of sales tax deferral scheme would be available to a dealer from the date of reaching of BPV or BSV, whichever is earlier, as is pleaded on behalf of the first respondent. It is trite law that circulars issued by the revenue are binding on the departmental authorities and they cannot be permitted to repudiate the same on the plea that it is inconsistent with the statutory provisions or it mitigates the rigour of the law. In the present case, it is not the case of the revenue that circular dated 1st May, 2000 is in conflict with either any statutory provision or the deferral schemes announced under the afore-mentioned government orders. The said circular is binding in law on the adjudicating authority under the TNGST Act. [Paras 17, 18, 23] [412-D; 413-D-E; 415-E-F]

Paper Products Ltd. v. Commissioner of Central Excise **(1999) 7 SCC 84**; *Collector of Central Excise, Vadodara v. Dhiren Chemical Industries* **(2002) 2 SCC 127: 2001 (5) Suppl. SCR 607**; *Commissioner of Customs, Calcutta & Ors. v. Indian Oil Corpn. Ltd. & Anr.* **(2004) 3 SCC 488: 2004 (2) SCR 511 and** *Commissioner of Central Excise, Bolpur v. Ratan Melting & Wire Industries* **(2008) 13 SCC 1: 2008 (14) SCR 653 – referred to.**

Case Law Reference:

2010 (15) SCR 937	**referred to**	**Para 13**
2008 (16) SCR 315	**relied on**	**Para 16**
(1999) 7 SCC 84	**referred to**	**Para 19**
2001 (5) Suppl. SCR 607	**referred to**	**Para 20, 21, 22**

A | **2008 (14) SCR 653** | **referred to** | **Para 21**

2004 (2) SCR 511 | **referred to** | **Para 22**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4233 of 2007.

B From the Judgment & Order dated 22.12.2006 of the High Court of Madras in W.P. Nos. 13697 & 13698 of 2002

Rajiv Dutta, M. Chandrasekharan, S.K. Bagaria, R. Nedumaran, Dushyant Kumar Singh, C. Thiruppathi, Hari C Shankar K., Vikas Singh Jangra, Kavin Gulati, Praveen Kumar, Kumar Rajesh Singh, Ruby Singh Ahuja, Ruchikra Gupta, Deepti Sarin, Siddhanth Kochhar, Manu Agarwal for the appearing parties.

D The Judgment of the Court was delivered by

D.K. JAIN, J. 1. This appeal is directed against the final judgment and order dated 22nd December, 2006 rendered by the High Court of Judicature at Madras in W.P.Nos.13697 and 13698 of 2002. By the impugned judgment, while setting aside E the order dated 19th April, 2002 passed by the Taxation Special Tribunal (for short "the Tribunal") in O.P. Nos. 322 and 351 of 2002, the High Court has held that the first respondent viz. M/s India Cements Ltd. is entitled to the benefit of deferral of sales tax as claimed by them under the interest free sales F tax deferral scheme, introduced by the State of Tamil Nadu under G.O.Ms.No.119 dated 13th April, 1994 issued by the Commercial Taxes & Religious Endowments Department of the State.

G 2. Before we traverse the facts, which have given rise to the present appeal, in order to appreciate the issue involved, it would be expedient to refer to the relevant State Government orders/memorandum notified from time to time, in exercise of powers conferred under Section 17A of the Tamil Nadu H General Sales Tax Act, 1959 (for short "the TNGST Act") and

Section 9(2) of the Central Sales Tax Act, 1956 (for short "the CST Act"). A

2.1 With a view to promote industrialisation, the Government of Tamil Nadu had declared 105 taluks of the State as industrially backward for the purpose of grant of interest free sales tax loan, interest free sales tax deferral, state capital subsidy etc. In furtherance thereof and to correct regional imbalances in industrialisation, vide G.O.Ms. No.500 dated 14th May, 1990, the Government declared 30 taluks from amongst the 105 industrially backward taluks to be industrially most backward taluks, offering them further incentives. It was directed that the new industries to be set up in these 30 most backward taluks as also in the three industrial complexes of State Industries Promotion Corporation of Tamil Nadu (for short "the SIPCOT") at three named places, in addition to the existing concessions, would be entitled to full waiver of sales-tax dues for a period of five years upto a ceiling of the total investment made in the fixed assets. It was also stipulated that existing units in these areas/complexes undertaking expansion/ diversification shall also be entitled to deferral of sales tax for nine years, limited to 80% of the additional investment made in fixed assets. However, the benefit of sales tax deferral to the new units was to the full extent of the total investment made in the fixed assets. The scheme was subject to the sales tax payable on products manufactured by the capacity created by expansion/diversification units only. B C D E F

2.2 Subsequently, certain clarifications were issued vide G.O.P.No.92 CT dated 22nd February, 1991 and G.O.P.No.396 dated 10th September, 1991 whereby benefit of deferral of payment of sales-tax payable was extended to all industries to be set up anywhere in Tamil Nadu having an investment of '100 crores and above on sale of the products manufactured by the industry for a period of twelve years from the date of commencement of production on or after 18th July, 1991 upto a ceiling of 100% of the value of fixed assets, after G H

A deducting the quantum of tax under the CST Act for the same period and subject to production of eligibility certificate to be issued by SIPCOT. By G.O.Ms.No.376, dated 27th October, 1992, in exercise of powers conferred by clause (a) of sub-section 5 of Section 8 and sub-section 2 of Section 9 of the B CST Act, the Government extended the benefit of remission/ deferral of tax payable under the CST Act, as similar to G.O.P.No.92 dated 22nd February 1991, to the new industries as well as to the existing industries, on the same conditions prescribed under G.O.P.No.92. These government orders were C followed by another G.O.M.No.43, Industries (MIG-II) Department, dated 13th December, 1992 whereby special incentives were introduced for mega industries, subject to fulfilment of the prescribed conditions.

2.3 It appears that with a view to protect the revenue and D also to increase the production level of industries which were interested in availing concessions of deferral of sales tax, the State Government vide G.O.Ms.No.119, dated 13th April, 1994, imposed certain conditions and issued directions that were required to be complied with by the expansion/diversification E units for availing sales tax benefits. For the sake of ready reference, the relevant portion of the said G.O. is extracted below:

"3. The Government after careful examination, have F decided to accept the suggestions of the special Commissioner and Commissioner of Commercial Taxes as they protect the Revenue and also help to increase the production level of the industries availing the concession. Accordingly, the Government direct that –

G (i) The industry will be eligible for sales tax deferral only if in a financial year production exceeds the base production volume which is the highest annual production in the 3 years prior to expansion.

H (ii) When the actual production in the industry in any

financial year exceeds the base production volume, the industry would be eligible for deferral of sales tax for sales made in that year in excess of the base sales volume under Tamil Nadu General Sales Tax, which is the highest of the actual annual sales in the last 3 years prior to expansion.

(iii) The above conditions are applicable in cases where expansion unit is a separate unit located elsewhere or a part of the existing plant.

(iv) The specifications of base production/sales volumes are applicable even in the case of allegedly new unit having been started by the same management or ownership or where the substantial controlling capital is put in by the same group of companies.

(v) The base production volume and the base sales volume will have to be worked out and incorporated in the eligibility certificates at the time of issue by SIPCOT and District Industries Centres."

3. The first respondent, engaged in the manufacture and marketing of cement in the States of Tamil Nadu and Andhra Pradesh was having manufacturing units at Sankari and Sankar Nagar. By their letters dated 13th March, 1996, 4th March, 1997 and 24th September, 1997 they proposed to set up an expanded unit at Dalavoi village, Sendurai taluk to avail the benefit of sales tax deferral scheme under G.O.Ms.No.119, dated 13th April 1994. On being approached, on 13th February, 1998, SIPCOT issued the requisite eligibility certificate to the first respondent, *inter-alia,* mentioning that: (i) the first respondent will be eligible for deferral of sales tax not exceeding '205.13 crores (later on revised to '270.21 crores), interest free for a period of twelve years from the month in which the first respondent's unit commenced its commercial production i.e. from 1st July, 1997 to 31st May, 2009 (cl.3); (ii) deferral of

A sales tax will only be on the increased volume of production/ sales; (iii) for the purpose of determining the increased volume of production, the base figure would be the highest of the volume of production/sale in the company in any one of the year during the last three years; (iv) till reaching the volume of production/ B sale specified earlier, the company would continue to pay tax and any liability in excess of the production/sale specified therein alone will be eligible for deferment (cl.5.3); (v) the deferral scheme will be applicable to the unit/company only as long as it manufactures products for which the essentiality C certificate had been issued (cl.6) and (vi) violation of any of the conditions as stipulated in the eligibility certificate and the connected government orders will result in withdrawal of deferral facility in entirety (cl.7). In compliance of clause 5.2 of the eligibility certificate, on 12th April, 2000, the first respondent D entered into an agreement with the Zonal Assistant Commissioner, Commercial Taxes, undertaking to comply with the Base Production Volume and Base Sales Volume (hereinafter referred to as "BPV" and "BSV" respectively) as indicated in the essentiality certificate.

E 4. The first respondent continued to remit the sales tax until they reached the level of BSV, viz. the highest of the actual annual sales in the last three years prior to the expansion, stating that they had also reached, in the financial year, BPV, viz. the highest production in the last three years prior to the F expansion and submitted its return claiming the deferral of tax on the sale in excess of BSV.

5. The Assistant Commissioner of Commercial Taxes, issued a notice dated 19th March, 2002, *inter alia,* informing the first respondent that once the BSV is reached, then the G eligibility for availment of deferral under the eligibility certificate dated 13th February, 1998 would be available only for the unit at Dalavoi and the deferral could not be stretched to include the production of other units and accordingly, directed the respondent to pay a sum of '5322.14 lakhs which had been H availed, in excess, as deferral of sales tax. The respondent was

also informed that they could avail of deferral of sales tax after reaching the BSV/BPV for all the units whichever is earlier and then they could avail deferral for expansion unit at Dalavoi only. On 21st March, 2002 the Assistant Commissioner issued an erratum to the earlier notice dated 19th March, 2002 to the effect that the words 'units whichever is earlier and then they can avail deferral for expansion unit' should be read as 'units whichever is later and then they can avail deferral for expansion unit'.

6. In its reply to the notice dated 19th March, 2002, as quoted in the impugned judgment, the first respondent submitted that:- (i) G.O.Ms.No.119 dated 13th April, 1994 cannot be read as completely nullifying the purpose, purport and effect of G.O.P.No.92 dated 22nd February, 1991; (ii) the aim of G.O.Ms.No.119 was to ensure that the entrepreneur maintains the tax payment obligation prior to the new industry so that only incremental sale volume is entitled to deferral and (iii) the new industry which is a separate industrial undertaking, with the sole investment infrastructure utilities, management and work force already determined, had suffered by treating this as an expansion and even if it were an expansion, logically tax can only be collected on the base sale volume and further sale volume beyond the base volume should be treated as a result of the expansion investment.

7. In the meanwhile, consequent to the erratum issued in notice dated 21st March, 2002, the Assistant Commissioner issued a revised notice dated 22nd March, 2002, informing the first respondent that they had availed deferral before they had reached the BPV, which is violative of the conditions laid down in the eligibility certificate. The respondent was thus, informed that they were liable to pay an amount of '5873.51 lakhs as excess availment of deferral of sales tax for the period from 1998-1999 to 2001-2002.

8. Aggrieved by the said demand notice, the first respondent filed O.P. No.322 of 2002 before the Tribunal

A seeking quashing of the said notice. Subsequently, they filed another O.P.No.351 of 2002 to declare clause 5.3 of the eligibility certificate dated 13th February, 1998 as *ultra vires* the Notification No.II(1)/CTRE/158/91 in G.O.P.No.396 dated 10th September 1991 and Notification No.II(1)/CTRE/213/92
B in G.O.Ms.No.376 dated 27th October, 1992. In both the said petitions, it was contended that clauses 3(i) and (ii) of G.O.Ms.No.119 dated 13th April, 1994 as well as the consequential qualification prescribed in the eligibility certificate dated 13th February, 1998 in paragraph 5.3 would offend the
C spirit and object of the sales-tax deferral scheme, if the conditions in agreement dated 12th April, 2000 are construed to mean that the holder of the eligibility certificate would be eligible for the benefit of deferral scheme only when they achieve both the BPV/BSV levels together and not otherwise.

D 9. Relying on an earlier decision of the High Court dated 5th December, 2001, in the case of Madras Cement Limited, wherein it was held that the Government Order makes it clear that even if the sales of the unit had reached the BSV, they would be eligible for deferral of sales tax on sales made in that
E year only when they reached the BPV, the Tribunal dismissed both the original petitions. Thus, the Tribunal held that before the first respondent could claim deferral of sales tax, both the BPV and BSV shall have to be reached. In other words, if the BSV had been reached earlier but BPV had not been reached,
F the said respondent will not be entitled to get the deferral facility, till they achieve BPV.

10. Being aggrieved, the first respondent preferred Writ Petitions No.13697 and 13698 of 2002 before the High Court. As afore-stated, the High Court has allowed the writ petitions.
G Reversing the decision of the Tribunal, the High Court observed thus:

"21.5 A combined reading of clauses 3(i) and (ii) of G.O.Ms.No.119, Commercial Taxes and Religious
H Endowments Department, dated 13-4-1994 and

paragraph 5.3 of Eligibility Certificate dated 13-2-1998 in the case of M/s. India Cements Ltd., and para 10 of the Eligibility Certificate dated 22-12-1998 in the case of M/s. Hindustan Motors Limited and the terms and conditions incorporated in the consequential agreements in both the cases, would go to show that the word "when" mentioned in clause 3(ii) of G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department dated 13-4-1994, if read as "if" or "after" whatever the case may be, the BPV which is the highest production of the last three years prior to the expansion should be achieved by the holder of the eligibility certificate for every assessment year of the total number of years, viz., 12 years in the case of deferral and 5 years in the case of waiver, besides reaching BSV in that particular year. By insisting that the BSV should also be reached, the Revenue of the State gets protected in every assessment year during the entire period of deferral or waiver.

21.6. To determine the date from which such benefit of deferral or waiver would follow, viz., from the date of reaching BPV or from the date of reaching BSV, or whichever is earlier or whichever is later, in the light of the intention behind the schemes, clause 3(ii) of G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department, dated 13-4-1994 cannot be construed to mean that the benefit would flow only from the date of reaching the BPV, not from the date of reaching the BSV, as the object of the schemes is to increase the productivity, but without compromising with the revenue of the State.

21.7. As per the rules of interpretation applicable to the case of fiscal laws, the words must say what they mean and nothing should be presumed or implied. Applying the said plain interpretation and reading the word "when" even plainly as "when", the blending of two clauses 3(i) and 3(ii) as suggested by us above, by way of harmonized and

A reasonable construction, is inevitable, as the same cannot be ruled out keeping in mind the intention behind the schemes and the goal to achieve the same in the public interest, viz. to improve the production in the most Backward and backward Areas, certainly without B compromising with the revenue of the State, in whatever manner, the word "when" found in clause 3(ii) is read whether as "when" of "if" or "after" as the case may be. The above interpretation is, in our considered opinion, unavoidable because any other construction would lead to C absurdity frustrating the object behind the scheme."

11. Hence the instant appeal by the State of Tamil Nadu, in which SIPCOT has been arrayed as proforma respondent No.2.

D 12. Mr. Rajiv Dutta, learned senior counsel appearing for the State strenuously urged that the only interpretation that could be given to clause 3(ii) of G.O.Ms.No.119 dated 13th April, 1994, which is also reflected in the eligibility certificate and the agreement entered into by the first respondent, is that both the E base production volume (BPV) and base sales volume (BSV) had to be reached before the first respondent could claim deferral of sales tax. According to the learned counsel, it was only after the BPV was reached that the right of deferral accrued and therefore, if the BSV had been reached earlier, even then the first respondent was not entitled to get the deferral facility F till the BPV had been reached. In other words, whichever condition is reached later it is at that stage that industry concerned will get the right to defer the payment of sales tax, pleaded the learned counsel. Referring to para 5.3 of the Eligibility Certificate, which provides that "the company is G eligible for deferral of sales tax only on the increased volume of production/sale", learned counsel submitted that the *SLASH* in between the words production and sale shows that till both the BPV and BSV were achieved, the first respondent could not claim the benefit of deferral of sales tax scheme. It was H submitted that the word "when" employed in clause 3(ii) of

G.O.Ms.119 also shows that only in the year where the industry reaches both the BPV and BSV, that it would be eligible for the benefit of sales tax deferral. A

13. *Per contra*, Mr. M. Chandrasekharan, learned senior counsel appearing for the first respondent submitted that clause 3(i) of G.O.Ms.No.119 prescribes the qualification for availing the sales tax deferral and clause 3(ii) of the said G.O. enables the expansion/diversified unit, of the existing industry to avail the benefit of sales tax deferral either from the date of achieving the BSV or BPV, whichever is earlier, in that financial year. It was contended that if BSV is achieved earlier and BPV is reached later in the financial year, the benefit of sales tax deferral should date back to the earlier date of achieving BSV and similarly if the BPV is achieved earlier and BSV is achieved later, it should date back to the earlier date of achieving BPV and only then the object of deferral scheme can be achieved. According to the learned counsel, any other interpretation would frustrate the object of the scheme. Learned counsel also urged that even if the word "when" as appearing in clause 3(ii) is read as "after" even then the first respondent would be eligible for deferral of sales tax on the sales in excess of BSV after the actual production of the unit in the financial year exceeds the BPV and the benefit should date back to the date of reaching the BSV. Learned counsel also argued that in light of the Circular dated 1st May, 2000 issued under Section 28A of the TNGST Act, clarifying the position as to when the benefit of deferral of sales tax scheme would follow, the revenue cannot be permitted to contend that in order to avail of the benefit of sales tax deferral the industry must reach both BPV and BSV and not when either of the two is reached earlier, as contemplated in the circular. In support of the proposition that a beneficial and promotional exemption should be liberally construed, reliance was placed on a decision of this Court in *Commissioner of Customs (Preventive), Mumbai Vs. M. Ambalal & Company*[1]. B C D E F G

1. (2011) 2 SCC 74. H

A 14. Thus, the short question which falls for consideration is whether the first respondent would be eligible for sales tax deferral in any financial year for the sales made in that year in excess of the base sales volume (BSV) as soon as they exceed the BSV or only when their production also exceeds the base B production volume (BPV) in that year?

15. The source of the sales tax deferral scheme is traceable to Section 17A of the TNGST Act which enables the Government to notify deferred payment of tax for new industries, etc. subject to such restrictions and conditions as may be C deemed fit. Therefore, the scheme in question has a statutory flavour. From a comparative reading of G.O.P.No.92 dated 22nd February, 1991 and G.O.Ms.No.376 dated 27th October, 1992 on the one hand and G.O.Ms.No.119 dated 13th April, 1994, the eligibility certificate issued thereunder as also the D consequential agreement entered between the parties on the other hand, it is evident that G.O.P.No.92 and G.O.Ms.No.376 is the source of power to grant exemption and G.O.Ms.No.119 lays down the methodology and the machinery to implement the scheme. These are complementary to each other. Therefore, E the terms and conditions stipulated in the schemes; the eligibility certificate as also the consequential agreement, between the first respondent and the revenue, having the statutory force, undoubtedly violation of any one of the terms and conditions thereof would disentitle the beneficiary of the benefit of the sales F tax deferral scheme. With this background, we may now advert to the core issue viz. the interpretation of clauses 3(i) and 3(ii) of G.O.Ms.No.119 dated 13th April, 1994, extracted above. At this juncture, it will also be expedient to refer to paragraph 5.3 of the eligibility certificate issued to the first respondent, to G which reference was made by learned counsel for the State. It reads as follows :

"5.3. The company is eligible for deferral of sales tax only on the increased volume of production/sale. For the purpose of determining the increased volume of H production, the base figure would be the highest of the

volume of production/sale in the company in any one of the year during the last 3 years. Till reaching the volume of production/sale specified earlier the company would continue to pay tax and any liability in excess of the production/sale specified above alone will be eligible for deferment." A B

16. A conjoint reading of clauses 3(i) and (ii) of G.O.Ms.No.119 dated 13th April, 1994, and paragraph 5.3 of eligibility certificate dated 13th February, 1998 would show that the object of the conditions with reference to reaching of BPV is to ensure that the concerned unit achieves the highest production and sale of the existing unit in the last three years prior to the commencement of the commercial production in the expansion unit, resulting in higher revenue on higher sales. The benchmark for availing the benefit of the sales tax deferral scheme having been fixed both with reference to the production as also to the sales, in our opinion, it is immaterial whether the unit concerned reaches BPV or the BSV earlier. In our view, the word "when" employed in clause 3(ii) of G.O.Ms.No.119, whether read as "if" or "after" only signifies that in order to avail of the benefit of sales tax deferral for sales made in the year in excess of the BSV, the industry must achieve in that year the BPV, which is the highest production of the last three years prior to the expansion, for every assessment year of the total number of years, viz., 12 years, besides reaching BSV in that particular year. It is obvious that by insisting that the BSV should also be reached, the revenue of the State gets protected in every assessment year during the entire period of deferral and, in fact, the industry gets the benefit of deferral only on sales which are in excess of the BSV. It is pertinent to note that if for any reason the beneficiary ultimately fails to achieve the BPV during the financial year, the benefit of deferral of sales tax availed of by it on achieving BSV becomes refundable forthwith along with interest thereon. In our opinion, in light of the intention behind the schemes, clause 3(ii) of the G.O.Ms.No.119 cannot be construed to mean that the benefit would flow only from the date C D E F G H

A of reaching the BPV and not from the date of reaching the BSV, particularly when the main object of the schemes is to increase the productivity without compromising with the revenue of the State. Any other interpretation of the said GOM would frustrate the object of the scheme. It is now well established principle of
B law that if a plain meaning given to the provision for the purpose of considering as to whether the applicant had fulfilled the eligibility criteria as laid down in the notification or not is found to be clear, purpose and object the notification seeks to achieve must be given effect to. (See: *G.P. Ceramics Private*
C *Limited Vs. Commissioner, Trade Tax, Uttar Pradesh.*[2])

17. In any event, we feel that the decision of the High Court cannot be flawed with in light of the circular dated 1st May, 2000 issued by the office of the Principal Commissioner and Commissioner of Commercial Taxes, Chennai, in exercise of
D power conferred on him under Section 28A of the TNGST Act. For the sake of ready reference, the relevant portion of the circular is extracted below:

> "As per GOMs No.119, CT & RE/13.4.1994 as regards expansion cases it was decided that the past revenue shall
E be protected obtained prior to expansion. The BPV/BSV is fixed on the basis of highest annual production/sales in the 3 years prior to expansion. Thus the industries will have to pay the taxes due upon the turnover and until the Base Production Volume/Base Sales volume mentioned in the
F Eligibility Certificate is achieved. The BPV/BSV shall have to be worked out and incorporated in the Eligibility Certificate by SIPCOT and other district centres as per above Government order. Hence if the details are not available the particulars of production/sales for prior three
G years shall be ascertained from the books of the dealers and Eligibility Certificate got amended to incorporate the particulars to avoid any dispute. As per decision of Tamil Nadu Taxation Special Tribunal in O.P.1229/1230/1231/98 dated 23.11.1998. Mercury Fittings (P) *Ltd. It was held that*

H 2. (2009) 2 SCC 90.

GOM No.119/CTRE/13.4.1994 (sic) contemplate the liability to pay tax with reference to Base Production Volume or Base Sales Volume whichever is reached earlier and the liability for deferral is only with reference to volume of Sales and not with reference to taxes paid on sales for the base year. Thus all Deputy Commissioners and Assistant Commissioners shall thoroughly verify all expansion cases and satisfy themselves that taxes have been paid until the BPV/BSV has been achieved."

(Emphasis supplied by us)

18. It is manifest from the highlighted portion of the circular that as per the clarification issued by the Commissioner of Commercial Taxes, in exercise of the power conferred on him under Section 28A of the TNGST Act, the benefit of sales tax deferral scheme would be available to a dealer from the date of reaching of BPV or BSV, whichever is earlier, as is pleaded on behalf of the first respondent. It is trite law that circulars issued by the revenue are binding on the departmental authorities and they cannot be permitted to repudiate the same on the plea that it is inconsistent with the statutory provisions or it mitigates the rigour of the law.

19. In *Paper Products Ltd. Vs. Commissioner of Central Excise,*[3] while interpreting Section 37-B of the Central Excise Act, 1944, which is in *pari materia* with Section 28A of the TNGST Act, this Court had held that the circulars issued by the Central Board of Excise & Customs are binding on the department and the department is precluded from challenging the correctness of the said circulars, even on the ground of the same being inconsistent with the statutory provision. It was further held that the department is precluded from the right to file an appeal against the correctness of the binding nature of the circulars and the department's action has to be consistent with the circular which is in force at the relevant point of time.

3. (1999) 7 SCC 84.

A 20. In *Collector of Central Excise, Vadodara Vs. Dhiren Chemical Industries,*[4] a Constitution Bench of this Court had held that if there are circulars issued by the Central Board of Excise & Customs which place a different interpretation upon a phrase in the statute, the interpretation suggested in the B circular would be binding upon the revenue even regardless of the interpretation placed by this Court.

21. Similarly, in *Commissioner of Customs, Calcutta & Ors. Vs. Indian Oil Corpn. Ltd. & Anr.,*[5] dealing with the circular issued by the Board under Section 151-A of the Customs Act, C 1962, which is again in pari materia with Section 28A of the TNGST Act, Ruma Pal, J., had opined that the circular will be binding primarily on the basis of the language of the statutory provisions buttressed by the need of the adjudicating officers to maintain uniformity in the levy of tax/duty throughout the D country. Although in the same judgement, while concurring with the view expressed by Ruma Pal, J., on the facts of that case, P. Venkatarama Reddi, J., entertaining certain doubts as to the correctness of the proposition laid down by the Constitution Bench in *Dhiren Chemical Industries* (supra), had observed E that there was a need to redefine succinctly the extent and parameters of the binding character of the circulars of the Central Board of Direct Taxes or Central Excise etc., by another Constitution Bench, yet the learned Judge did not disagree with the proposition that it is not open to the revenue to file an appeal F against the order passed by an appellate authority which is in conformity with a departmental circular. In fact, His Lordship went on to observe that when there is a statutory mandate to observe and follow the orders and instructions of CBEC in regard to specified matters, that mandate has to be complied with. It is not open to the adjudicating authority to deviate from G those orders or instructions which the statute enjoins that it should follow. If any order is passed contrary to those instructions, the order is liable to be struck down on that very ground.

4. (2002) 2 SCC 127.

H 5. (2004) 3 SCC 488.

22. In *Commissioner of Central Excise, Bolpur Vs. Ratan Melting & Wire Industries,*[6] a Constitution Bench of this Court has clarified the confusion created on account of the view expressed in para 11 of *Dhiren Chemical Industries* (supra), on the question of binding effect of judgment of this Court *vis-a-vis* State and Central Government circulars thus:

> "7. Circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the court. It is for the court to declare what the particular provision of statute says and it is not for the executive. Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law."

23. In the present case, it is not the case of the revenue that circular dated 1st May, 2000 is in conflict with either any statutory provision or the deferral schemes announced under the afore-mentioned government orders. We, therefore, hold that the said circular is binding in law on the adjudicating authority under the TNGST Act.

24. For the reasons afore-mentioned, we do not find any merit in this appeal and the same is dismissed accordingly.

25. However, in the facts and circumstances of the case, the parties are left to bear their own costs.

B.B.B. Appeal dismissed.

6. (2008) 13 SCC 1.