



W.P.(MD)No.18238 of 2018

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BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

Reserved on	Pronounced on
29.07.2026	.08.2026

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. (MD) NO. 14250 OF 2018

AND

W.M.P. (MD) NOS. 12909 TO 12911 OF 2018

M/s.ArKay Energy (Rameswaram) Ltd.

Valuthoor Village, Valantharavai 623 536

Ramnad District, rep., by its

Vice President (Commercial), Mr.T.S.Das

.. Petitioner

- Vs -

1. State of Tamil Nadu

Rep. by the Secretary to Government

Energy Department

Secretariat, Fort St. George

Chennai 600 009.

2. The Chief Electrical Inspector to Government

Thiru-Vi-Ka Industrial Estate

Guindy, Chennai 600 032.



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3. Tamil Nadu Generation & Distribution
Corporation Ltd. (TANGEDCO)
NPKKR Maaligai, 144, Anna Salai
Chennai 600 002.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records of the impugned order bearing Letter No. 3527/2012-4 dated 02.01.2013 issued by the 1st respondent and quash the same as being violative of the judgment of the Hon'ble High Court of Madras and the Hon'ble Supreme Court and in violation of principles of natural justice.

For Petitioner	: Mr. Anirudh Krishnan,
	for M/s.Sarvabhauman Associates
For Respondents	: Mr. B.Saravanan, AAG
	Assisted by Mr.R.Ramasamy
	Counsel for State of TN for RR-1 & 2
	Mr. S.Deenadhayalan, Std. Counsel for R-3

ORDER

Aggrieved by the order passed by the 1st respondent in the appeal filed by the petitioner against the demand raised by the 2nd respondent in respect of captive generation of electricity by the plants installed by the petitioner and the consequential



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sale and consumption thereof as provided under the Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003, (for short 'the Act') the present writ petition has been filed.

2. It is the case of the petitioner that it is a captive generating power plant, which was setup as a joint venture unit in line with the directions issued by the Ministry of Power, Government of India dated 8.6.2005 and the power, which is generated by the petitioner, is wheeled through the grid for the use of all the joint venture units, who are shareholders of the petitioner company and further a sizeable quantity of the power is also sold to the 3rd respondent.

3. It is the case of the petitioner that tax in respect of captive generating plants was fixed at not less than 10 paise and not more than 20 paise per unit in respect of electricity on the consumption for own use and in respect of third party sale, the said tax shall not be less than 5% and not more than 10% of the net charge on the sale of surplus electricity as may be notified by the Government.

4. It is the case of the petitioner that from the year 2007, the 2nd respondent started raising several illegal, arbitrary and unsustainable demands for payment of tax under the provisions of the Act, which was refuted by the petitioner pointing out that the



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demands were illegal, unsustainable and against the provisions of the Act. It is the case of the petitioner that the power generated from the captive generating plants run by the petitioner was sent to the grid and apart from the electricity used for own purposes by the petitioner and its member units, the rest of the energy was sold not by the petitioner but by the Power Trading Corporation (for short 'PTC'), which includes sale to the 3rd respondent as well and, therefore, for the said sale, the tax cannot be realised from the petitioner, but would only be realisable either from the seller, viz., PTC or the 3rd respondent, who realises the power and sells the same to the customers.

5. In spite of the same, several demands originating from the year 2007, was raised by the 2nd respondent till the year 2012 alleging tax payable by the petitioner. Though the petitioner has submitted detailed replies and refuted its liability to pay the tax, the 2nd respondent, without appreciating the above, had raised demands, though no formal order of assessment was passed against the said demand. The 2nd respondent, over the period from 2007 to 2012, has raised five demands culminating in the issuance of Form E-2 notice for the period from 5/2007 to 2/2008 and 6/2008 to 8/2008 demanding tax on captive consumed electricity to the tune of Rs.4,03,54,241/-.



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6. It is the further case of the petitioner that for all the demands raised by the 2nd respondent, the petitioner had promptly replied by raising valid objections pointing out the arbitrary levy of tax, but the same was not properly considered by the 2nd respondent inspite of the fact that the petitioner had clarified to the 2nd respondent that there was no requirement for the petitioner to furnish returns in Form C-3 as the petitioner was a captive consumption plant and that there was no sale of power to third parties.

7. It is the further case of the petitioner that inspite of the fact that the petitioner has clearly expressed its stance, the demand of tax was made by the 2nd respondent, which prompted the petitioner to file W.P. (MD) No.6210/2011 for quashing the E-2 demand notice dated 16.5.2011 in which this Court directed that the appropriate authority to decide the validity of the E-2 notice is the 1st respondent u/s 10 of the Act and, therefore, liberty was granted to the petitioner to file an appeal.

8. As a consequence of the said order, the petitioner herein filed the appeal before the 1st respondent, controverting the demand made by the 2nd respondent, but the 1st respondent mechanically, without appreciating the ambit of its power u/s 10 (3) of the



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Act, dismissed the appeal on the ground that the demand amount has not been paid, though the provision, in clear and unequivocal terms provide that it is only the admitted amount, which is to be paid for the appeal to be entertained and taken up. It is the further averment of the petitioner that the amount, which is admitted, has been paid by the petitioner and, therefore, the 1st respondent ought to have entertained the appeal. Therefore, left with no other alternative and efficacious remedy, the present writ petition has been filed before this Court.

9. Learned counsel appearing for the petitioner submitted that the impugned order passed by the 1st respondent is arbitrary, illegal and violative of Article 14 of the Constitution and is against the well settled ratio laid down by this court as well as the Apex Court.

10. It is the further submission of the learned counsel that this Court, in the earlier course of litigation in W.P. (MD) No.6210/2011 had directed the 1st respondent to take up the appeal on file and dispose of the same on merits. It is further submitted that the petitioner has challenged both the manner of assessment and the levy of tax and there was no amount admitted by the petitioner, which is payable before the appeal could be



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taken up for determination and such being the case, the 1st respondent gravely erred in dismissing the appeal on the ground that the amount demanded had not been paid.

11. It is the further submission of the learned counsel that proviso to Section 10 (1) of the Act r/w Rule 17 (1)(iii)(a) of the Tamil Nadu Tax on Consumption or Sale of Electricity Rules, 2003 (for short 'the Rules') requires payment only of such amount of tax or interest as the appellant admits to be due and it does not prescribe the deposit of the entire assessed demand as a condition of entertaining an appeal. Since the petitioner has disputed both the levy and assessment in its entirety, there being no admitted amount liable to be deposited, the 1st respondent has treated the entire assessed demand to be a mandatory pre-deposit for the purpose of hearing the appeal, which is against the aforesaid provisions and in direct contravention of the order passed in W.P. (MD) No. 6210/2011.

12. It is the further submission of the learned counsel that the Tamil Nadu Tax on Consumption or Sale of Electricity (Amendment) Act, 2007 has been challenged by the generators operating in the State in ***Tamil Nadu Electricity Consumers Association – Vs – State of TN (W.P. No.11016 & 11017/2008)***, wherein the Supreme Court had permitted assessments to proceed, but stayed the coercive disconnection of electricity and since the



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matter is *sub judice* before the Apex Court, the legitimate charging section itself being under challenge, no demand could be made. Without appreciating the said fact, the 1st respondent has passed the impugned order, which is blatantly violative, illegal and arbitrary.

13. It is the further submission of the learned counsel that there is a clear distinction between 'own use' and 'use of members' as provided u/s 2 (2) of the Act, as the said provision clearly and consciously distinguishes between electricity generated by a captive generating plant "*for his own use*" and electricity generated "for the use of members". Further, Section 3 (1)(b) employs only the expression "*own use*" and thus taxes a captive generating licensee at the unit rate on the consumption for own use and further it also does not levy tax upon electricity consumed "*for own use or for the use of its members*". It is the submission of the learned counsel that the omission must be given effect particular in a charging provision, as importing the words "or for the use of members" from Section 2 (2) of the Act into Section 3 (1)(b) of the Act would impermissibly enlarge both the taxable event and the identity of the person liable.

14. It is the further submission of the learned counsel that Section 3 of the Act relate to actual consumption. In the present case, the petitioner generated the electricity



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and the surplus electricity generated was wheeled through the 3rd respondent, which was consumed by the shareholder companies of the petitioner and the petitioner did not consume those units and the shareholder companies have already suffered electricity tax at the rate of 10 paise per unit through their respective current consumption and, therefore, demanding the same from the petitioner is nothing but double taxation and further the impugned notice demanding the amount under the head captive consumption has been raised against a wrong taxable entity. However, this aspect has not been appreciated by the 1st respondent while passing the impugned order, which is bereft of any reasons and, therefore, the same deserves to be set aside.

15. Per contra, learned Addl. Advocate General appearing for the respondents submitted that Rule 17 of the Rules provides the procedure for entertainment and disposal of appeal, which clearly prescribes that all particulars shall be mandatorily disclosed in the appeal u/r 17 (1)(e) and the amount of tax and interest admitted to be due from the appellant shall be indicated therein and further Rule 17 (1)(3)(a) casts a duty on the appellant to show that the amount of tax or interest admitted to be due from the appellant has been paid.



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16. It is the submission of the learned Addl. Advocate General that the appeal filed by the petitioner before the 1st respondent does not contain any particulars either admitting any amount of tax due to be paid or an assertion that no amount was due to be paid. Therefore, the mandatory requirements u/s 17 have not been complied with by the petitioner while filing the appeal u/s 10 of the Act and, therefore, the 1st respondent has rightly dismissed the appeal.

17. It is the further submission of the learned Addl. Advocate General that even the petitioner has admitted in the affidavit that a substantial quantum of energy was sold by the petitioner to the 3rd respondent and also to certain third parties and, therefore, to that extent, the petitioner ought to have paid the amount with regard to the specific units admitted by the petitioner in the affidavit and non-disclosure of the same and non-payment of the same would be clear infraction of Rule 17 r/w Section 10 of the Act and, therefore, no interference is warranted with the order impugned herein.

18. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.



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19. There is no quarrel with the facts relating to captive generation of power and consumption of the said captive generated power by the petitioner and also its shareholding companies. It is the specific case of the petitioner that the generation of electricity over and above the captively consumed electrical energy, the said quantum of generated electricity was wheeled through the 3rd respondent to PTC from where it was sold of which the 3rd respondent has also been the procurer of the said electricity from the PTC.

20. A perusal of the demand raised by the 2nd respondent with regard to the tax claimed from the petitioner reveals that it consists of three heads, viz., (i) the amount of electricity captively consumed by the petitioner, (ii) the amount of electricity wheeled through the 3rd respondent to PTC and (iii) the amount of electricity sold to third parties. The above heads are not disputed by the petitioner; rather, what is claimed by the petitioner is that for the electricity captively consumed by the petitioner, the petitioner has paid the tax and with regard to the electricity wheeled to the grid, which has been consumed by its shareholders, the shareholding companies have paid the tax and insofar as the balance of electricity procured by the 3rd respondent, tax is being collected from



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the end users and, therefore, under the second head, the petitioner is not required to pay any amount. However, with regard to the tax that is payable for the electricity sold to third parties, the petitioner claims that it has submitted a demand draft for a sum of Rs. 2,95,385/= and, therefore, according to the petitioner, no amount is due from the petitioner.

21. Be that as it may. When the demand was raised by the 2nd respondent amounting to a sum of Rs. 4 Crores and odd, the petitioner had approached this Court by filing W.P. (MD) No.6210/2011 and in the said writ petition, finding that there is a remedy of appeal available to the petitioner before the 1st respondent, which the petitioner too accepted that it would exhaust if liberty is granted, this Court passed the following order :-

"3. The petitioner appears to have filed the Writ Petition within ninety days from the date of order, meaning thereby before expiry of the time given for filing appeal. Therefore, time taken to prosecute the Writ Petition should necessarily be given credit while calculating the time for appeal. The appellate authority is directed to take the appeal on file and decide the issue on merits. The petitioner is given thirty days from today to file an appeal."

(Emphasis Supplied)



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22. From the order, it is clear that this Court had directed the appellate authority, viz., the 1st respondent herein to decide the issue on merits. However, it is claimed by the petitioner that the said appeal has not been decided on merits; rather it has been dismissed on the ground that the amount admitted by the petitioner as demanded has not been paid. In this regard, reliance is placed on proviso to Section 10 (1) of the Act which provides for appellate remedy and the said provision reads as under :-

“Appeal :

10 (1) Any person may in the prescribed manner appeal to the Government against any order of assessment of Electricity Tax within sixty days or such further period as may be allowed by the Government for reasons shown to their satisfaction from the date of receipt of a notice of demand issued after such order of assessment.

Provided that no appeal against an assessment of electricity tax shall be entertained by the Government unless they are satisfied that such amount of electricity tax as the appellant may admit to be due from him has been paid.”

(Emphasis Supplied)

23. Rule 17 (1)(3) of the Rules provides for the manner in which the appeal filed u/s 10 (1) of the Act are to be entertained and acted upon and the said provision reads as under :-



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“17. Appeal and Procedure for disposal of appeal :

(1) The appeal under section 10 of the Act -

(i) shall contain the following particulars, namely:-

(a) the date of order appealed against;

(b) the name and designation of the officer who passed the order;

(c) the grounds of appeal briefly but clearly set out:

(d) the date of receipt of the notice of the demand arising out of assessment order.

(e) the amount of tax and the amount of interest admitted to be due from the appellant.

(ii) shall be accompanied by a copy of the order appealed against;

(iii) shall be endorsed by the appellant or by an agent authorised, in writing, by the appellant as follows:

(a) that the amount of tax or interest as the appellant admits to be due from him has been paid;

(b) that to the best of his knowledge and belief, the particulars set out in the memorandum are correct.

(iv) shall be signed by the appellant or by an agent authorised, in writing, by the appellant.”

(Emphasis Supplied)

24. While proviso to Section 10 (1) in clear terms spells out that no appeal against an assessment of electricity tax shall be entertained by the Government unless they are



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satisfied that such amount of electricity tax *as the appellant may admit to be due from him* has been paid, Rule 17 (1)(i)(e) and 17 (iii)(a) in clear and unambiguous terms prescribe that the appeal should contain particulars relating to the amount of tax and the amount of interest admitted to be due from the appellant and that the admitted amount of tax or interest by the appellant has been paid.

25. From the above provision, it clearly transpires that there should not only be an admission of the amount that is due from the appellant towards tax or interest but also that the admission of the said amount should be complied with by the appellant by paying/depositing the said amount before the appeal is entertained by the appellate authority. From this it could safely be concluded that not the entire amount as demanded by the 2nd respondent is to be paid by the appellant for the entertainment of the appeal, but only such amount, as is admitted by the appellant alone should be paid and the particulars of such payment revealed for the purpose of entertaining the appeal.

26. It is the specific case of the petitioner that the petitioner has not admitted that any amount is due from it as the tax towards the captive consumption of electricity has been paid by the petitioner and the quantum of electrical energy generated and wheeled to the grid for onward transmission to PTC, which has been used by the shareholding



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companies of the petitioner, the tax towards such utilisation has been paid by the shareholding companies and the extent of energy that has been procured by the 3rd respondent, tax has been collected from the end users and, therefore, no amount is payable by the petitioner. So there is no question of any amount, which is admitted by the petitioner, which has not been paid.

27. In the aforesaid backdrop, it is necessary for this Court to find out the manner in which the appeal has been dealt with by the 1st respondent and the said order is quoted hereunder :-

“2. I am directed to state that according to the proviso to sub-section (1) of section 10 of the Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003 (Tamil Nadu Act 12 of 2003) no appeal against an assessment of electricity tax shall be entertained by the Government unless they are satisfied that such amount of electricity tax, as the appellant may admit to be due from him has been paid.

Further, according to rule 17 (1) (iii) (a) of the Tamil Nadu Tax on Consumption or Sale of Electricity Rules, 2003 an appeal under section 10 of the said Act, shall be endorsed by the appellant or by an agent authorized, in writing, by the appellant that the amount of electricity tax or interest as the appellant admits to be due from him has been paid. The assessed tax amount of Rs.4.03



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Crores was not still paid by you besides payment of penal interest for non-payment of Electricity Tax in time.

3. I am directed to inform that the Government have considered your appeal and your appeal for setting aside the proceedings of the Director cum Chief Electrical Inspector to Government in Form E2, is rejected. You are, therefore, directed to pay the Electricity Tax due to the Government for the period from 5/07 to 8/08 with penal interest at the rate of 12% per annum. You are also directed to pay the Electricity Tax amount from 9/08 to till date as per the provisions of the said Act, along with the penal interest."

28. While this Court in the earlier round of litigation in W.P. (MD) No.6210/2011 had directed the appellate authority, viz., the 1st respondent to consider the appeal on merits and dispose of the same, however, even a bare perusal of the impugned order passed by the 1st respondent reveals that no merit based decision has been taken by the 1st respondent. The 1st respondent has premised its decision on the non-payment of electricity tax and the penal interest, that had been demanded from the petitioner by the 2nd respondent. It is to be pointed out that the only the amount as may be admitted by the appellant is to be paid and it is not a mandatory prescription for pre-deposit of entire amount, as demanded by the 2nd respondent. However, the 1st respondent, placing



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reliance on the aforesaid provision of the Act and Rules has rejected the appeal of the petitioner in a mechanical manner without going into the merits of the issue, muchless the nature of payment of the admitted dues, which is not a mandatory prescription, but for the admitted amounts only. It is also to be pointed out that with regard to the quantum of electricity sold to third parties, the petitioner had admitted the sale of electricity to a third party and to that extent had deposited the tax component to the tune of Rs.2,95,385/=.

29. It is also to be pointed out that in the impugned order, the 1st respondent has also captured the provisions of the Act and the Rules and has stated that the appellant, viz., the petitioner herein, has to pay the dues admitted by him. However, when the said provision is quoted, the 1st respondent has gone on to hold that the assessed tax amount of Rs.4.03 Crores, as assessed by the 2nd respondent was still not paid by the petitioner besides non-payment of penal interest. This clearly shows non-application of mind on the part of the 1st respondent while dealing with the appeal filed by the petitioner, which alone is sufficient to interfere with the order passed by the 1st respondent.



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30. Though very many other grounds touching the merits of the issue with regard to the liability of the petitioner to pay tax on the captive consumption of electricity vis-a-vis the sale of electricity through the grid to PTC and to the 3rd respondent and also to other third parties has been raised by the petitioner, however, in view of the fact that the 1st respondent has not decided the appeal on merits and had dismissed the appeal on a technicality, which also has been held to be erroneous above, without the issues being decided in the appeal by the 1st respondent, it would not be proper for this Court to adjudicate the aforesaid issues on merits as it would rob the parties of the valuable remedy of appeal before this Court without the merits of the issue being adjudicated by the 1st respondent. Therefore, this Court is not entering into the merits of the issue and, accordingly, leaves all the issues open for it to be decided by the 1st respondent in the appeal, which would be taken up on remand.

31. For the reasons aforesaid, this writ petition is allowed and the impugned order passed by the 1st respondent is set aside and the matter is remanded to the 1st respondent, who shall take up the appeal on merits, without insisting on payment of any amount, as has been demanded by the 2nd respondent, and dispose of the appeal on merits and in accordance with law after affording an opportunity of hearing to the



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petitioner and the petitioner is at liberty to submit all documentary evidence to substantiate its claim before the 1st respondent. The 1st respondent shall take up the appeal and pass orders thereon within a period of twelve weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

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Index : Yes / No

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To

1. The Secretary to Government
Energy Department
Government of Tamil Nadu
Secretariat, Fort St. George
Chennai 600 009.
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M.DHANDAPANI, J.

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**PRE-DELIVERY ORDER IN
W.P. (MD) NO.14250 OF 2018**

**Pronounced on
.08.2026**