IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2016

CORAM

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.9681 of 2007

and M.P.No.1 of 2007

M/s. Thangavel Spinning Mills
B. Mallapuram Post,
Harur Taluk,
Dharmapuri District,
Rep.by its Manager, E.Saravanan ...Petitioner

Vs.

1. The Superintendent Engineer,
Tamil Nadu Electricity Board,
Dharmapuri Electricity Distribution Circle,
Dharmapuri.

2. The Chairman,
Tamil Nadu Electricity Board,
800, Anna Salai,
Chennai 600 002. ... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records of the first respondent in letter No.Lr.No.SED/RCS/HT/HT SC.No.105/F.E. Tax case/2007 dated 23.02.2007, quash the same.

For Petitioner : Mrs.A.V.Bharathi

For Respondents: Mr.M.Varun Kumar,
Standing Counsel, TNEB

O R D E R

The prayer in the writ petition is for issuance of a writ of certiorari calling for records of the first respondent in letter No.Lr.No.SED/RCS/HT/HT SC.No.105/F.E. Tax case/2007 dated 23.02.2007.

2. The short issue involved in this writ petition is that the respondents have issued an order for payment of surcharge for the belated electricity tax and accordingly the impugned

order dated 23.02.2007 was passed by the respondents on the ground that the petitioner has to pay the surcharge for the belated payment of the electricity tax and according to the impugned order, the amounts comes to Rs.10,22,554/-, which was directed to be paid on or before 15.03.2007. Challenging the said order, the petitioner has filed this writ petition.

3. Heard both sides.

4. The learned counsel for the petitioner would contend that the issue is covered by various decisions of this Court and one such case in W.P.Nos.9028 and 9029 of 2007 was decided by this Court by order dated 22.02.2013 in Deccan Alloys Private Limited Vs Tamil Nadu Electricity Board and one other where by this Court has held as follows:-

> "4. Learned counsel for the petitioners as well as learned standing counsel for the respondents submit that the very same question was raised in another case and the same was decided against the Electricity Board and the said decision of the learned single Judge was affirmed by a Hon'ble Division Bench of the Madurai Bench of this Court in W.A.(MD). No.1590 of 2011 (The Superintending Engineer .Vs. Sivakasi Electrochemical Ltd.,) dated 22.12.2011. A copy of the judgment has also been produced for the perusal of the Court. The Hon'ble Division Bench held that the Tamil Nadu Electricity Board was not justified in levying surcharge on belated payment of arrears of electricity tax by the petitioner in the said writ petition from which the writ appeal arose, who was placed in similar situation.
>
> 5. As the issue involved in the present cases has been covered by the judgment of the Hon'ble Division Bench, following the same, this Court allows the writ petitions and grants the declaration as sought for. Consequently, connected miscellaneous petitions are closed. However, there will be no orders as to costs".

5. The learned counsel for the petitioner would further contend that the Tamil Nadu Electricity Supply Code came into force on 01.09.2004. Therefore, if at all any surcharge has to be paid by the petitioner, it shall be only upto 31-05-2003 and not beyond that. Therefore the calculation and the demand made by the respondents through the impugned order to the extent of Rs.10,22,554 is unlawful and in this regard the petitioner had given a representation dated 07.03.2007 to the respondents stating as follows:-

> "There is no provision for BPSC under Act 12 of 2003 which came into the force 01.06.2003, where as there is a provision for BPSC under Act 32 of 91. Hence, there cannot be levy of BPSC from 01.06.2003. In your

letter dated 23.02.2007 you have levied BPSC for the period 06/2003 to 7/04-Rs.3,04,822/- which cannot be levied as per act 12 of 2003.

Hence, I request you deduct as sum of Rs.3,04,822/- and issue the revised bill. The BPSC comes only Rs.7,37,836/-. I request further it is sick industry, I request pay the amount of Rs.7,17,724/- in 25 monthly installments more over Mettur Electricity Distribution System also not levied BPSC for the period 06/2003 to 08/2004".

6. In view of the said factual position, the impugned order making such a huge demand is unsustainable and therefore interference of this Court is essential.

7. The learned standing counsel appearing for the respondents would contend that the petitioner originally challenged the levy of electricity tax before this Court which was ultimately rejected and since there was a huge delay in payment of electricity tax, the same could attract the payment of surcharge and that is the reason why for the delay in making electricity tax by the petitioner the same was duly calculated up 31.08.2004 to pay a sum of Rs.10,22,554/- from 01.09.2004. The demand was not made in view of the provisions of the Tamil Nadu Electricity Supply Code by which belated payment of surcharge levied for electricity tax was not made from 01.09.2004. Therefore there is every justification on the part of the respondents to make the demand as has been made in the impugned order.

8. The rival submissions made by the learned respective counsel have been considered.

9. As has been rightly contended by the learned counsel for the petitioner, the issue of levying surcharge for belated payment of electricity tax was considered by this Court in the judgment referred to above and it was decided in favour of the consumers. Moreover, Tamil Nadu Tax on Consumption or Sale of Electricity Act 2003 (Act 12 of 2003) came into force from 01.06.2003 and the issue has been subsequently considered. Even though the petitioner had submitted a request to the first respondent on 07.03.2007 as stated supra, the petitioner has expressed the willingness to pay the amount upto 31.05.2003 and thereafter there is no justification on the part of the respondent to claim the same.

10. In this regard a calculation was also given by the petitioner in the said representation according to it a sum of Rs.3,04,822/- was to be deducted whereas Rs.7,17,724 is the actual amount, for which the petitioner expressed his willingness to make the payment in 25 monthly installments.

11. This Court, by order dated 15.03.2007, granted interim stay of the impugned order and since the same is pending all along, further decision could not have been taken by the respondents in respect of the said request made by the petitioner through his representation dated 07.03.2007. Be that as it may.

12. Now the issue lies in a very narrow compass, as the same has already been settled in more than one judgment as referred above.

13. The petitioner has fairly given his calculation that the surcharge levied up to 31.05.2003 is unjustifiable, as after that date no surcharge could be levied for the delayed payment of electricity tax. Therefore, the petitioner has accepted to make the payment of Rs.7,17,724/-. Therefore this Court finds the calculation given by the petitioner to be correct and is of the view that the impugned demand made by the respondents in a sum of Rs. 10,22,554/- is liable to be quashed. However, the respondents can take a decision for collecting the actual sum of Rs.7,17,724/- from the petitioner with reasonable indulgence to enable the petitioner to make such amount. While making such revised order, the respondents shall not claim any further amount on any other head by way of interest from the petitioner. In the meanwhile, if the petitioner had paid any amount already on its account, the same shall be deducted and after such deduction a recalculation shall be made by the respondents. On receipt of the revised order from the respondents, the petitioner shall make the payment in accordance with law.

14. With the above directions, the writ petition is partly allowed. No costs. Connected miscellaneous petition is also closed.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

To
1. The Superintendent Engineer,
Tamil Nadu Electricity Board,
Dharmapuri Electricity Distribution Circle,
Dharmapuri.

2. The Chairman,
Tamil Nadu Electricity Board,
800, Anna Salai,
Chennai 600 002.

+1 cc to Mr.A.V.Bharathi,advocate,sr.70360

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krd 18/1

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