IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.28852 of 2016
and
W.M.P.No.24927 of 2016

M/s.Dharani Sugars and Chemicals Limited
Having its Registered Office at
PGP House, No.57, Sterling Road
Nungambakkam
Chennai 600 034
Rep. By its Director (Law) .. Petitioner

..Vs..

1.The Secretary to Government
Energy Department
Government of Tamil Nadu
Fort St.George, Chennai - 600 009.

2.The Director
Office of the Electrical Inspector
Thiru Vi.Ka. Industrial Estate
Guindy, Chennai - 600 032.

3.The Electrical Inspector
Plot No.4, EMS Bhavan
St.Mary's Road, Perumalpuram
Tirunelveli - 7.

4.The District Collector
Tirunelveli District

5.The Tahsildar
Sivagiri Taluk, Tirunelveli District

6.The Revenue Inspector
Vasudevanallore,
Tirunelveli District. .. Respondents

Prayer

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the 1st respondent herein to dispose of the appeal filed by the petitioner on 15.07.2016 together with the petition for condonation of delay in filing the said appeal as against the order passed by the 2nd Respondent in Form E-2, dated 8.4.2015.

For Petitioner : Mr.AR.L.Sundaresan, Senior Counsel for Ms.P.T.Ramadevi

For Respondent : Mr.S.Diwakar, Spl.G.P.,

ORDER

Heard Mr.AR.L.Sundaresan, learned Senior Counsel assisted by Ms.P.T.Ramadevi, learned counsel appearing for the petitioner and Mr.S.Diwakar, learned Special Government Pleader appearing for the respondents.

2.The petitioner which is a Sugar Mill seeks for a direction upon the first respondent to dispose of the appeal filed by the petitioner dated 15.07.2016 together with the petition for condonation of delay in filing the said appeal as against the order passed by the 2nd Respondent dated 08.04.2015. The said order dated 08.04.2015 is a notice of demand for tax assessed under Section 9 of the Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003. The petitioner was informed by the said notice that for the period from June 2003 till March 2014, the electricity tax payable by the petitioner has been assessed as mentioned in the Annexure to the said notice and the petitioner has been called upon to pay a sum of Rs.79,73,272/- towards tax on own consumption and Rs.57,50,986/- towards interest on belated payment into the Government treasury on or before 08.05.2015 and produce the receipt before the Office of the Electrical Inspector, Tirunelveli, failing which the unpaid amount shall be recovered from the petitioner as public demand.

3.The undisputed facts are that the petitioner along with other similarly placed persons had filed writ petitions before this Court challenging the demand for electricity tax on generation and consumption of power. The writ petitions were dismissed by the Hon'ble Division Bench by judgment dated 13.07.2006. Aggrieved by the same, the petitioner preferred a Special Leave Petitions before the Hon'ble Supreme Court and by common judgment in Civil Appeal No.2551/2007 etc., the Hon'ble Supreme Court was pleased to allow the civil appeals and set aside the judgment of the Hon'ble Division Bench of this Court, holding that the exemption granted under the 1962 Act would continue to operate in favour of generating companies and there will be no tax on generation and consumption in respect of persons who were granted exemption under the 1962 Act.

4.Subsequently, the Government of Tamil Nadu enacted the Tamil Nadu Tax on Consumption and Sale of Electricity (Validation) Act, [TN Act 5 of 2008], thereby removing the basis of the decision of the Hon'ble Supreme Court. Challenging the said Act, the petitioner filed W.P.No.20911 of 2011 which was heard along with a batch of cases and the writ petitions were dismissed by the Division Bench by a common judgment dated 15.06.2012.

5.Aggrieved by the same, the petitioner preferred an appeal before the Hon'ble Supreme Court in SLP (Civil) No.12635 of 2013 and the same is pending before the Hon'ble Supreme Court. However, it is admitted that there are no interim orders granted. In the mean time, the notice of demand was issued on 08.04.2015, demanding the aforesaid sums.

6.On receipt of the demand notice, the petitioner is stated to have approached the respondents 2 and 3 and informed about the pendency of the matter before the Hon'ble Supreme Court. However, since there was no interim orders granted in the Special Leave Petitions, action has been initiated by the third respondent under the provisions of the Revenue Recovery Act and based on the instructions given, the 5th respondent, The Tahsildar, Sivagiri Taluk, Tirunelveli District has issued notice to the petitioner.

7.While so, the petitioner has preferred a statutory appeal under Section 10 of the Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003 before the first respondent. It is admitted by the petitioner that there is a delay of 402 days in filing such an appeal. Since the application for condonation of delay has not been considered and there is a threat of Revenue Recovery Proceedings, the petitioner has rushed to this Court and filed this writ petition.

8.When the matter came up for admission on 18.08.2016, the Court recorded the submission made by the learned Senior Counsel appearing for the petitioner and directed the learned Special Government Pleader to verify as to whether an appeal is pending. Accordingly, the office of the first respondent by Letter No.6453/A2/2016-2, dated 23.08.2016 has informed the learned Special Government Pleader that the appeal filed by the petitioner is under examination of the Government and final orders will be issued in consultation with the Chief Electrical Inspector to the Government and Law Department of the Government.

9.The learned Senior Counsel appearing for the petitioner submitted that since coercive action has been initiated against the petitioner, the petitioner may be granted some interim protection.

10.Firstly, it has to be pointed out that the appeal petition is barred by limitation and the application for condonation of delay is pending before the first respondent for consideration. Therefore, if the petitioner seeks for interim protection, they have to file a appropriate interim application for grant of stay before the first respondent. This having not been done, this Court is of the view that liberty should be granted to the petitioner to file such a stay petition.

11.In the light of the above, this Court is inclined to issued the following directions:

(a) The petitioner is directed to file a stay petition before the first respondent within a period of two weeks from the date of receipt of a copy of this order.

(b) If such a petition is filed, the first respondent is directed to consider the said petition along with the application filed for condonation of delay dated 15.07.2016, within a period of two weeks thereafter.

(c) The appeal petition shall be considered subject to the orders that may be passed by the first respondent on the petition for condonation of delay and stay petition, within a reasonable time.

(d) The respondents are directed not to take any coercive action against the petitioner for a period of two weeks form the date of receipt of a copy of this order i.e., till the petitioner moves the first respondent by way of a stay petition.

12.The writ petition is disposed of with the above directions. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government
   Energy Department
   Government of Tamil Nadu
   Fort St.George, Chennai - 600 009.

2.The Director
   Office of the Electrical Inspector
   Thiru Vi.Ka. Industrial Estate
   Guindy, Chennai - 600 032.

3.The Electrical Inspector
   Plot No.4, EMS Bhavan
   St.Mary's Road, Perumalpuram
   Tirunelveli - 7.

4.The District Collector
   Tirunelveli District

5.The Tahsildar
   Sivagiri Taluk, Tirunelveli District

6.The Revenue Inspector
   Vasudevanallore, Tirunelveli District.

+1cc to Mr.P.T.Ramadevi, Advocate Sr.48439
+1cc to the Government Pleader Sr.48684

W.P.No.28852 of 2016
and
W.M.P.No.24927 of 2016

rj[co]
srg 30/08/2016