IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.29184 of 2016 &
W.M.P.Nos.25234 & 34310 of 2016

M/s.Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
Rep. by its Chief Financial Controller / General
At No.144, Anna Salai,
Chennai-600 002. ... Petitioner

Versus

1.The Principal Commissioner of Service Tax-I,
Newry Towers,
No.2054-1, 2nd Avenue, Anna Nagar,
Chennai-600 040.

2.The Customs Excise and Service Tax,
Appellate Tribunal,
Shastri Bhavan Annexe,
Nungambakkam, Chennai. ... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records relating to the impugned show cause notice No.123/2015, dated 13.10.2015 issued by the first respondent and quash the same as arbitrary, contrary to the settled law and without authority of law.

For Petitioner : Mr.K.Jayachandran

For Respondents : M/s.Hema Muralikrishnan
Senior Panel Counsel

O R D E R

Heard Mr.K.Jayachandran, learned counsel appearing for the petitioner and M/s.Hema Muralikrishnan, learned Senior Panel Counsel appearing for the respondents.

2. The petitioner is the Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) and the challenge in this Writ Petition is to a show-cause notice, dated 13.10.2015, issued by the first respondent, wherein, the first respondent has called upon the petitioner to explain as to why Service Tax of Rs.5,04,75,947/-, including other Cess should not be demanded for the period from April 2012 to March 2015 under proviso to Section 23(1) of the Finance Act, 1994; why interest should not be demanded under Section 75 of the Finance Act, 1994 and why penalty should not be imposed under Section 77 and 78 of the Finance Act, 1994.

3. In response to the impugned show-cause notice, the petitioner submitted their reply, dated 08.12.2015. In the reply, one of the contentions raised by the petitioner is that in respect of the earlier period, an Order-in-Original was passed, demanding Service Tax, which has been challenged by the petitioner before the CESTAT and the Appeal is pending and the petitioner's request for an early hearing of the Appeal was accepted by the Tribunal, but on account of want of coram, the matter could not be taken up and therefore, the petitioner made an alternative prayer to keep the proceedings in abeyance till the CESTAT disposes of the Appeal. The main prayer sought for in the reply to the show-cause notice was to drop the proceedings in the light of the submissions made by the petitioner in the reply to the show-cause notice. The respondent has not considered the alternate relief for deferment of proceedings as a separate issue, but has issued notices for personal hearing and third such notice has been issued on 04.08.2016 for the personal hearing fixed on 23.08.2016. Immediately, the petitioner has rushed to this Court and filed this Writ Petition, challenging the show-cause notice.

4. The learned counsel for the petitioner very fairly submitted that the petitioner does not seek for quashing the show-cause notice, but the limited prayer is to keep the show-cause notice in abeyance, because identical issue is pending before the Tribunal (CESTAT) in the assessee's own case.

5. The learned Senior Panel Counsel appearing for the respondents would submit that the period for which the show-cause notice has been issued is from April 2012 to March 2015 i.e., after the service tax regime underwent a complete change by the introduction of the negative list. Therefore, it is submitted that the exemption granted by the Parliament is only for “transmission or distribution of electricity” and the Parliament did not include various other functions / services provided by the electricity transmission or distribution utility

in the negative list. Therefore, it is submitted that the pendency of the Appeal before the CESTAT has absolutely no bearing on the impugned show-cause notice.

6. In the reply, the learned counsel for the petitioner would submit that the identical contention was raised by the petitioner before the Commissioner for the earlier period i.e., from 2008-09 to 2011-12 and at present, the petitioner's contention are fortified by the recent notification. Therefore, it is the submission of the learned counsel for the petitioner that the show-cause notice should be directed to be keep in abeyance.

7. As noticed above, the petitioner has already submitted their reply to the show-cause notice, vide reply dated 08.12.2015 and in the reply, the petitioner has raised various grounds, including the ground that the issue is pending before the CESTAT. The petitioner has sought for two reliefs from the first respondent and the second relief is an alternative relief to the first relief. The first relief is to drop the proceedings, by accepting the reply. The second relief is to defer the proceedings till the conclusion of the matter before the CESTAT. To consider the second issue, it would be necessary for the adjudicating authority to examine as to whether the issues which are pending before the CESTAT are identical to that of the issues, which are raised in the impugned show cause notice.

8. Therefore, at this stage, this Court cannot interdict the impugned show cause notice and the petitioner should participate in the adjudication process. However, this Court is inclined to issue appropriate directions, so that the plea for deferring the proceedings is considered as first among the several issues by the first respondent. This should not be understood that the issue is to be considered as a primary issue, but it shall be considered as first among the several issues raised by the petitioner. This direction would sufficiently safeguard the interest of the petitioner in the proceedings before the first respondent.

9. Accordingly, while rejecting the prayer to quash the impugned show-cause notice and dismissing the Writ Petition, a direction is issued to the first respondent to consider the petitioner's reply, dated 08.12.2015, afford an opportunity of personal hearing and consider the prayer made by the petitioner to defer the proceedings, till the conclusion of the matter before the CESTAT as first among the several issues to be decided and pass a comprehensive order on merits and in accordance with law.

10. The Writ Petition is dismissed on the above terms. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

r n s
To

1.The Principal Commissioner of Service Tax-I,
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No.2054-1, 2nd Avenue, Anna Nagar,
Chennai-600 040.

2.The Customs Excise and Service Tax,
Appellate Tribunal,
Shastri Bhavan Annexe,
Nungambakkam, Chennai.

+1cc to Mr.K.Jayachandran, Advocate sr.68643
+1cc to M/S.Hema Muralikrishnan, Advocate sr.68893

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srg 22/12/2016