

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2017

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THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.No.3986 of 2012

and

M.P.No.1 of 2012

M/s.Sri Vaikunth Papers and Boards Ltd.,
Rep by the Managing Director,
S.F.No.225,
Ekkarai Thathapalli Village,
Sathyamanglam,
Erode District. Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep by its Secretary,
Department of Energy,
Fort St.George,
Chennai 600 009.
- 2.Tamil Nadu Generation and Distribution
Corporation Limited,
Rep by the Chairman,
114 (Old 800), Anna Salai,
Chennai 600 002.
- 3.The Superintending Engineer,
Tamil Nadu Generation and Distribution
Corporation Limited,
Gobi Electricity Distribution Circle,
Gobichettipalayam. ... Respondents

Prayer : Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari to call for the records of the third respondent in Lr.No.D10/A/Cs.Br/DFC/HT/A2/F.E.Tax/2011 dated 20.01.2012 and quash the same as illegal.

For Petitioner : Mr.S.Rajesh

For Respondents: Mr.S.Gunasekaran
Additional Government Pleader for R1

: Mr.S.K.Raameshuwar for R2 & R3

O R D E R

Heard Mr.S.Rajesh, learned counsel appearing for the petitioner and Mr.S.Gunasekaran, learned Additional Government Pleader appearing for the first respondent and Mr.S.K.Raameshuwar, learned counsel appearing for the second and third respondents.

2. The petitioner has approached this Court for seeking the following relief,

"To issue a Writ of Certiorari to call for the records of the third respondent in Lr.No.D10/A/Cs.Br/DFC/HT/A2/F.E.Tax/2011 dated 20.01.2012 and quash the same as illegal."

3. The case of the petitioner is as follows:

The petitioner has approached this Court to challenge the impugned notice dated 20.01.2012 of the third respondent towards the levy of E.Tax for the period from March 2003 to June 2010. According to the learned counsel appearing for the petitioner, prior to the issuance of the demand notice, no opportunity has been given to the petitioner. Therefore, he would submit that the impugned demand notice was in violation of principles of natural justice.

4. The learned counsel for the petitioner would draw this Court's attention to the decision of the Hon'ble Division Bench of this Court dated 14.11.2011 in W.P.No.26190 of 2011, wherein this Court has interfered with the identical demand notice only on the ground that the consumer has not been afforded opportunity as required under Section 1 of the Act.

5. The learned counsel for the petitioner would further submit that since the issue is directly covered by the Hon'ble Division Bench of this Court, the same order or direction could be passed to the third respondent to give opportunity to the petitioner before any action is taken towards the demand of any tax.

6. Upon notice, the learned counsel for the respondents entered appearance.

7. After hearing the counsels appearing for the rival parties, this Court is in agreement with the contention put forth by the learned counsel for the petitioner. The impugned demand notice cannot be sustained in law since no opportunity was afforded to the petitioner before the demand notice was issued.

8. In the said circumstances, as held by the Hon'ble Division Bench of this Court, the aforesaid impugned demand notice in Lr.No.D10/A/Cs.Br/DFC/HT/A2/F.E.Tax/2011, dated 20.01.2017 is set aside on the ground that no prior notice was issued to the petitioner. It is open to the third respondent

to issue notice and afford opportunity to the petitioner before taking further action in the matter in terms of regulations of the Corporation.

9. In the light of the above rulings, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary,
The State of Tamil Nadu,
Department of Energy,
Fort St.George,
Chennai 600 009.
- 2.The Chairman,
Tamil Nadu Generation and Distribution
Corporation Limited,
114 (Old 800), Anna Salai,
Chennai 600 002.
- 3.The Superintending Engineer,
Tamil Nadu Generation and Distribution
Corporation Limited,
Gobi Electricity Distribution Circle,
Gobichettipalayam.

+1cc to Mr.S.Rajesh, Advocate, S.R.No.72376

W.P.No.3986 of 2012

GN(01/11/2017)

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