

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2017

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.1205 of 2004

M/s.T.C.S.Textiles Private Limited,
Rep.by its Managing Director,
Mr.T.K.Chandiran

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep.by its Secretary to Government,
Department of Energy,
Fort St.George, Chennai -9.
2. The Chief Electrical Inspector to Government,
Thiru-Vi-Ka Industrial Estate,
Guindy, Chennai - 600 032.
3. Tamil Nadu Electricity Board,
Rep.by its Chairman,
No.800, Anna Salai,
Chennai - 600 002.
4. The Superintending Engineer,
Coimbatore Electricity Distribution
Circle (South)
Coimbatore- 641 012.

... Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records relating to the impugned Letter No.SE/CEDC/S/CBE/AO/R/A1/HTSC242/03 dated 25.12.2003 issued by the fourth respondent herein quash the same and consequently direct the respondents to grant exemption from levying Additional Tax under the Tamil Nadu Electricity (Taxation on Consumption) Act 1962 in accordance with G.O.Ms.No.1084 dated 30.07.1992 from 18.08.2003 to 17.08.2006 and also to refund a sum of Rs.3,49,842.70p collected illegally from the petitioner for the period from September 2003 to January 2004.

For Petitioner : Mr.M.Md.Ibrahim Ali

For Respondents : Mrs.K.Bhuvaneswari,
Government Advocate for R1 & R2
Mr.S.K.Rameshwar for TNEB
for R3 and R4

O R D E R

The petitioner has filed this writ petition, challenging the impugned letter No.SE/CEDC/S/CBE/AO/R/A1/HTSC 242/03 DATED 25.12.2003 issued by the 4th respondent to quash the same and consequently direct the respondents to grant exemption from levying additional tax under the Tamil Nadu Electricity (Taxation on Consumption) Act 1962 in accordance with G.O.Ms.No.1084 dt.30.07.1992 from 18.08.2003 to 17.08.2006 and also to refund a sum of Rs.3,49,849.70p collected illegally from the petitioner for the period from September 2003 to January 2004.

2.The brief facts of the case is that the petitioner was running a Textile Spinning Mills under the name and style of "SCM Textile Spinners"at Thekkalur Coimbatore District, registered under the Companies Act 1956. The petitioner company obtained the new Service Connection No.242 on 18.08.2003 and started its production on the same day.

3.The second respondent, the Chief Electrical Inspector to Government has granted provisional approval on 13.08.2003 as required under Rule 63 of the Indian Electricity Rules 1956 to install machinery along with copy to the Superintending Engineer, Coimbatore Electricity Distribution Circle, working under the third respondent herein. Accordingly, new machineries were installed. According to G.O.Ms.No.1084 on 30.07.1992 issued by the Government, the petitioner is entitled for exemption of 5% Additional Tax on their monthly consumption bill for a period of three years from the date of commencement of manufacture or production of the principal product to the date of first reading taken thereto. The petitioner started its production on 18.08.2003 and accordingly they are eligible for exemption of Additional Tax on consumption of energy from 18.08.2003 to 17.08.2006.

4.Thereafter, the petitioner had applied for exemption of Additional tax on consumption of energy to the fourth respondent on 12.11.2003 enclosing the first sales invoice, Industrial Licence, Generator permission, Copy of Test Report, Tariff change first and second bill, RG-I statements and Central Excise

Authority Certification, Paying duty. But the fourth respondent rejected the application for exemption as per G.O.Ms.No.1084 dated 30.07.1992 issued by the first respondent stating that the petitioner was not entitled to exemption of Tamil Nadu Tax on Consumption of Electricity as per the advise of the second respondent that the Act 12 of 2003 had been enacted and had come into force w.e.f. 16.06.2003.

5.Learned counsel appearing for the petitioner would submit that in view of the Repeal Provision under Section 20 (1) (a) of the Act 12 of 2003, the petitioner was entitled for exemption under the G.O.Ms.No.1084 issued by the Government under the Tamil Nadu Electricity (Taxation on Consumption) Act, 1962. The said G.O. was issued in order to encourage the new industrial establishments.

6.The learned counsel appearing for the petitioner further submitted that the Repeal Provision under Section 20 (1) (a) of the Act 12 of 2003, would not affect the exemption granted to the petitioner earlier under G.O.Ms.No.1084. Hence the impugned rejection order passed by the fourth respondent is null and void and the same is liable to be quashed. In support of his contentions, the learned counsel for the petitioner relied and submitted a similar issue which was dealt by the Hon'ble Supreme Court in Southern Petrochemical Industries Co.Ltd., v. Electricity Inspector and E.T.I.O (SC) reported in 2007 (3) CTC 273, the relevant portion of which learned counsel for the petitioner relied upon as follows:

Part 3 (S.B.Sinha,J.)

95. What, however, is the matter of moment would be that the expression " unless a different intention appears" occurring in Section 6 of the General Clauses Act, 1897 has not been inserted in sub-section (1) of Section 20 of the 2003 Act. Sub-sections (1) and (2) of Section 20 of the appended to sub-section (1) of Section 20 of the 2003 Act provides fro the consequences flowing from the repeal of the 1939 Act and the 1962 Act; Section 20(2) provides for a legal fiction for continuation of certain things/proceeding on the premise as if the said Acts had not been repealed. Repeal of the 1939 Act and the 1962 Act would lead to repeal of notifications issued thereunder also. Proviso appended to sub-section (1) of Section 20 of the 2003 Act, however, carves out an exception in regard to the consequences flowing there from.

96. If sub-sections (1) and (2) of Section 20 of the 2003 Act operate in different fields, as we have held, the marginal note of Section 20, viz, repeal and savings, in our opinion, would not be material. If both the sub-sections of Section 20 of the 2003 Act are not dependent on each other and in particular having regard to the phraseology used therein, they need not be read together. One cannot proceed on the basis while reading the provisions of the statute that anomaly would be created and then urge that they should be read together.

97. Submission of Mr.Andhyarujina that this Court must read the words "unless a different intention appears" in sub-section 20 of the 2003 Act, in our opinion, is impermissible in law. We have rejected a similar contention of Mr.Nariman urging us to read down and apply the purported rule of purposive construction while construing Section 14 of the 2003 Act. We do not intend to apply different tests in the matter of construction while construing Section 14 of the construction of Section 20 of the 2003 Act. Omission of words, in a particular statute may play an important role. The intention of the legislature must be, as is well known, gathered from the words used in the statute at the first instance and only when such a rule would give rise to anomalous situation, the Court may take recourse to purposive construction. It is also a well settled principles of law that casus omissus cannot be supplied. (See J.Srinivasa Rao V.Govt. of A.P. and another, 2006 (13) SCALE 27).

98.Proviso appended to sub-section (1) of Section 20 of the 2003 Act although for all intent and purport incorporates Section 6 of the General Clauses Act but a significant departure therefrom must be borne in mind. If the legislature has used different words, or has omitted certain words, in our opinion, the same cannot be read as as containing the words "unless a different intention appears". It may be that the provisions of the 2003 Act are demonstrably different from the 1962 Act but we must assume that the legislature did so deliberately. The intention of the legislature

by making a distinction between sub-section (1) and sub-section (2) of Section 20 of the 2003 Act, in our opinion, is obvious. The fact that the significant words "unless a different intention appears" or the Act does not contain a provision inconsistent therewith were known to the legislature. Whereas in sub-section (1) of Section 20 of the 2003 Act they did not introduce any such things, they did so while enacting sub-section (2) thereof.

7. Mr. S.K. Raameshuwar, the learned standing counsel for the T.N.E.B. had filed counter wherein it has been averred that the petitioner started their production in the year 2003 and made an application on 11.08.2003 and after the inspection conducted on 13.08.2003, on 18.08.2003 service connection was given in favour of the petitioner. This itself very clearly shows that the application was made on 11.08.2003 after the Repealing Act came into force on 16.06.2003. As the notification for exemption in G.O. Ms. No. 1084, dated 30.07.1992 was issued under the Repeal Act of 1962 and the electricity supply itself having been availed only on 18.08.2003, there could not be any commencement of the manufacture or production during the period when the said G.O. was in force. As no right accrued prior to Repeal Act of 1962, the petitioner was not entitled to claim any right much less any legal right to claim exemption without there being any pari materia provision in the new 2003 Act.

8. The learned standing counsel further submitted that the impugned order was only a formal communication to the petitioner of its disentitlement to exemption as decided by the second respondent herein in its letter, dated 01.12.2003. Therefore, the petitioner was not entitled to challenge the same.

9. The learned counsel for the respondent has drawn the attention of this Court by quoting Repealing Act Provision 20(1) (a).

"20(1): The Tamil Nadu Electricity Duty Act, 1939 and the Tamil Nadu Electricity (Taxation and Consumption) Act, 1962 is hereby repealed.

Provided that such repeal shall not affect:

(a) the previous operation of the said Acts or anything duly done or suffered thereunder;

10. Heard both sides.

11. On perusal of the Supreme Court judgment relied upon

by the learned counsel for the petitioner, the challenge in the reported decision and the present writ petition was completely different. The challenge before the Supreme Court judgment is as follows:

22. Validity of the provisions of the 2003 Act and / or Application thereof in respect of the generating companies as also the consumers of electrical energy being purchasers, from the Tamil Nadu Electricity Board came to be questioned before the Madras High Court in a large number of Writ Petitions. The matter was heard by a Division Bench of the said High Court. By reason of a judgment and order dated 13.07.2006, the Division Bench dismissed the Writ Petition.

12. In respect of the petitioner's company, the exemption of the electricity tax was taken away by the Repealing Act of Section 20 (1) (a). The issue before the Hon'ble Supreme Court is entirely different, wherein the Hon'ble Supreme Court granted the benefit which was enjoyed by the consumer. But in the case on hand, the application was made by the petitioner after the Repealing Act 12 of 2003 and as per clause 20 (1) (a), the previous operation of the Acts or anything duly done or suffered thereunder shall not be affected by the Repealing Act. Admittedly, the petitioner did not consume connection prior to Repealing Act and he has only made application on 11.08.2003, i.e. after the Act 12 of 2003. Hence The exemption given under Section 20 (1) (a) is not applicable to the petitioner.

13. Accordingly, the impugned order passed by the fourth respondent did not suffer from any error of law which may warrant an interference in proceedings under Article 226 of the Constitution.

In the result, this writ petition is dismissed without any order as to costs.

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Assistant Registrar

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Sub Assistant Registrar

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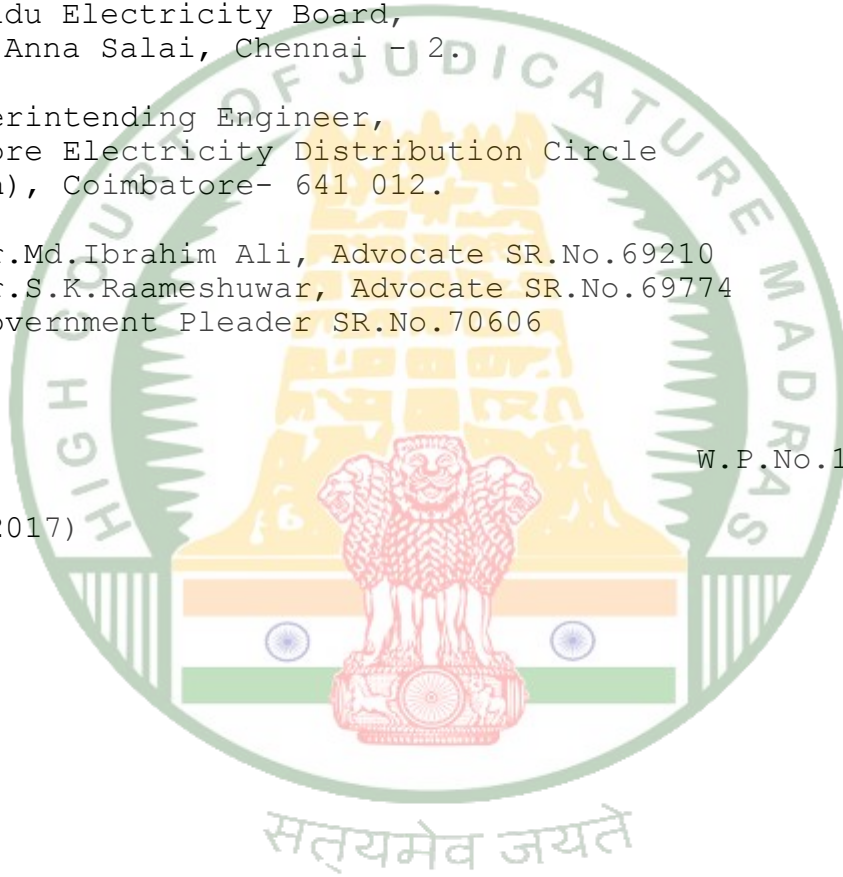
To.

- 1.The Secretary to Government,
The State of Tamil Nadu,
Department of Energy,
Fort St.George, Chennai -9.
- 2.The Chief Electrical Inspector to Government,
Thiru-Vi-Ka Industrial Estate,
Guindy, Chennai - 600 032.
- 3.The Chairman,
Tamil Nadu Electricity Board,
No.800, Anna Salai, Chennai - 2.
- 4.The Superintending Engineer,
Coimbatore Electricity Distribution Circle
(South), Coimbatore- 641 012.

+1cc to Mr.Md.Ibrahim Ali, Advocate SR.No.69210
+1cc to Mr.S.K.Raameshuwar, Advocate SR.No.69774
+1cc to Government Pleader SR.No.70606

W.P.No.1205 of 2004

GN(13/12/2017)



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