

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2018

CORAM

THE HONOURABLE Mr. JUSTICE R.MAHADEVAN

W.P. No. 9646 of 2007

and

M.P. No.1 of 2007

M/s. Unnamalai Spinning Mills (P) Ltd.,  
Rep.by the Managing Director,  
Unnamalai Nagar,  
Kombur Post,  
Pappireddipatty Taluk,  
Dharmapuri District - 636 905. ....Petitioner

Vs

- 1.The Union of India,  
Rep. by the Secretary,  
Department of Energy,  
New Delhi.
- 2.The State of Tamil Nadu,  
Rep. by the Secretary,  
Department of Energy,  
Fort St.George,  
Chennai - 600 009.
- 3.The Tamil Nadu Electricity Board,  
Rep. by the Chairman,  
800, Anna Salai,  
Chennai - 600 002.
- 4.The Superintending Engineer,  
TNEB - Dharmapuri Electricity  
Distribution Circle,  
Dharmapuri - 5.
- 5.The Tamil Nadu Electricity  
Regulatory Commission,  
Rep. by the Secretary,  
17, Third Main Road,  
Seethammal Colony, Alwarpet,  
Chennai - 600 018.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Declaration declaring that clause 20.02 of the Terms and Condition of Supply of Electricity of Tamil Nadu Electricity Board in operation upto 31.08.2004 levying and collection of Belated Payment Surcharge 1.5 per month (18% per annum) as well as 3% per month (36% per month) while availing extension of time, is excessive, arbitrary, unreasonable, discriminatory, violative of Article 14 and 19 (1) (g) of Constitution of India and consequently direct the third and fourth respondents to refund the BPSC collected from the petitioners from April 1998 or such other period.

For Petitioner: M/s.S.Sivanandam

For Respondents: Mr.M.Varunkumar (for TNEB)

#### O R D E R

The issue involved in this writ petition is regarding the levy of interest on belated payment of Electricity Tax. According to the petitioner, the respondent Electricity Board has no jurisdiction to impose any interest on the belated payment of the Electricity Tax.

2.When the matter was taken up for consideration, the learned counsel for the petitioner submitted that vide order dated 18.06.2009 in W.P(MD) No.254 of 2007 [Sivakasi Electrochemical Limited v. the Superintending Engineer, Virudhunagar Electricity Distribution Circle, Virudhunagar], this Court had decided the issue involved herein in favour of the petitioner therein; the said order was challenged by the respondent Electricity Board in W.A.(MD)No.1590 of 2011, which was dismissed by the Division Bench of this Court, by judgement dated 22.12.2011, holding that as the Electricity Tax is not the amount due and payable to the Board, it has no right to collect the surcharge on the belated payment of electricity and hence, the claim of the Board being the belated payment of surcharge for the non-payment of Electricity Tax in time, is unsustainable in law; and the further appeal in SLP (C) No.12282 of 2014 filed by the respondent Electricity Board before the Supreme Court, was also dismissed, vide order dated 01.03.2016. Thus, the learned counsel sought appropriate direction in this writ petition.

3.The submissions so made by the learned counsel for the petitioner have been conceded by the learned counsel appearing for the respondents.

4.In the light of the aforesaid judgment, this writ petition stands allowed as prayed for. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar (CS V)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary,  
The Union of India,  
Department of Energy,  
New Delhi.
- 2.The Secretary of the Tamil Nadu,  
Department of Energy,  
Fort St.George,  
Chennai - 600 009.
- 3.The Chairman of the Tamil Nadu Electricity Board,  
800, Anna Salai,  
Chennai - 600 002.
- 4.The Superintending Engineer,  
TNEB - Dharmapuri Electricity  
Distribution Circle,  
Dharmapuri - 5.
- 5.The Secretary to the Tamil Nadu Electricity  
Regulatory Commission,  
17, Third Main Road,  
Seethammal Colony, Alwarpet,  
Chennai - 600 018.

+1cc to Mr.M.Varunkumar, Advocate, S.R.No.78599

W.P. No. 9646 of 2007

SJ(CO)

RRS (29/04/2019)