IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2018

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.6638 of 2009
and
M.P.No.1 of 2009

M/s.Sree Ayyanar Spinning and Weaving Mills Limited,
Rep. By the Managing Director,
Mallanginar - 626 109,
Virudhunagar District. ... 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,
   144 (Old No.800), Anna Salai,
   Chennai - 600 002.

4. The Superintending Engineer,
   TNEB - Virudhunagar Electricity Distribution Circle,
   Virudhunagar.

5. The Tamil Nadu Electricity Regulatory Commission,
   Rep. by the Secretary,
   17, Third Main Road,
   Seethammal Colony, Alwarpet,
   Chennai - 600 018. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus call for the records of the fourth respondent in LR.No.SE/VDR/AO/R/RCS/AS/F.HT SC.28/D.218/2009, dated 23.03.2009 and quash the same as illegal and direct the respondents 3 to 5 to refund the BPSC collected with appropriate rate of interest.

For Petitioner : Mr.S.Sivanandam

For Respondents: Mr.J.Madhanagopal Rao for R1
Mr.S.K.Rameshwar for RR3-5

ORDER

This writ petition has been filed to quash the demand dated 23.03.2009 raised by the fourth respondent and consequently, directly the respondents 3 to 5 to refund the BPSC, with appropriate rate of interest. By the impugned demand, the petitioner was called upon to pay a sum of Rs.12,60,886/- towards BPSC upto 8/2004 for late payment of arrears of Electricity Tax of Rs.40,30,398/- for the period from 4/2002 to 6/2003.

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 respondent Board. However, he produced a copy of the Memo bearing No.CFC/REV/FC/REV/DFC/AS.3/REV/D.No.302/16 dated 23.11.2016, issued by the Chief Financial Controller/Revenue, TANGEDCO (Accounts Branch), wherein, at paragraph 12, it is stated as follows:

> "12.Hence, all the Superintending Engineers of Distribution Circles are hereby informed not to collect BPSC on E.Tax before 01.09.2004 and the BPSC on E.Tax collected prior to 01.09.2004, if any, may refunded in the ensuing CC bill.

However, the consumer is bound to pay not exceeding 12% p.a as interest for the belated payment of tax before/after 01.09.2004."

and submitted that the consumer is bound to pay interest at 12% for the belated payment of tax after 01.09.2004.

4.In the light of the decisions and the subsequent order passed by the TANGEDCO, this Court is of the view that the impugned demand of the respondent is liable to be set aside, as the same was raised towards BPSC upto 8/2004 for the late payment of arrears of Electricity Tax for the period from 4/2002 to 6/2003, which is admittedly, on or before 01.09.2004.

5.Accordingly, this writ petition stands allowed by setting aside the demand of the fourth respondent dated 23.03.2009. Consequently, the BPSC on Electricity Tax collected from the petitioner, if any, is directed to be refunded to them, along with interest at 12%p.a., within a period of four weeks from the date of receipt of a copy of this order. No costs. Connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

arb/vsi2

To

1.The Secretary,
Union of India,
Department of Energy,
New Delhi.

2.The Secretary,
State of Tamil Nadu,
Department of Energy,
Fort St. George, Chennai - 600 009.

3.The Chairman,
Tamil Nadu Electricity Board,
144 (Old No.800), Anna Salai,
Chennai - 600 002.

4.The Superintending Engineer,
TNEB - Virudhunagar Electricity Distribution Circle,
Virudhunagar.

5.The Secretary,
Tamil Nadu Electricity Regulatory Commission,
17, Third Main Road,
Seethammal Colony, Alwarpet,
Chennai - 600 018.

+1 CC to Mr.S.K.Rameshwar, Advocate sr 89773.
+1 CC to The Govt. Pleader sr 89986.

KK(CO)
SP(12/04/2019)