In the High Court of Judicature at Madras

Dated : 02.2.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.2091 of 2018 & WMP.No.2604 of 2018

Mrs.Nirmala Raman ...Petitioner

Vs

1.The Chairman, Taxation Appeals Tribunal (Greater Corporation Chennai) (Chennai Metropolitan Water Supply and Sewerage Board), Ripon Buildings, Chennai.

2.The Chairman and Managing Director, Chennai Metropolitan Water Supply and Sewerage Board, H.O., No.1, Pumping Station Road, Chintadripet, Chennai-2.

3.The Area Engineer, Area-9, Chennai Metropolitan Water Supply and Sewerage Board, No.1, Dr.Ranga Road, Mylapore, Chennai-18. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to M.W.S.T.A.No.118 of 2017 on the file of the Taxation Appeals Tribunal (Greater Corporation of Chennai) (Chennai Metropolitan Water Supply and Sewerage Board), quash the order dated 28 December 2017 passed therein and consequentially the demand notice dated 10 August 2017 issued by respondents 2 & 3 levying and demanding a sum of Rs.96,152/- from the petitioner herein towards the alleged dues of water tax, water charges and surcharge against Old CMC No.10/143/1610/000000 and new No.2582 09/123/05247/000.

For Petitioner : Mr.K.Vasu Venkat
For Respondents: Mr.N.Ramesh

ORDER

Mr.N.Ramesh, learned Standing Counsel accepts notice for the respondents. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner has challenged an order passed by the first respondent in an appeal filed by the petitioner under Section 71 of the Chennai Metropolitan Water Supply and Sewerage Act, 1978 against the notice dated 10.8.2017 issued by the respondent Board demanding payment of arrears of water and sewerage tax and charges from the petitioner. Since the appeal is dismissed by the first respondent, the petitioner is before this Court.

3. In this writ petition, the petitioner does not dispute the demand of water tax. But, her contention is with regard to demand of water charges on the ground that not even an ounce of metro water was consumed by the petitioner, who owns a shop or her customers and that no meter was installed to quantify the amount of water consumed by the petitioner. It is further submitted that in respect of the petitioner's neighbour, who also owns a shop in the same complex by name one Ms.P.A.Vidhya, a similar demand was raised. The said Ms.P.A.Vidhya approached the Taxation Appeal Tribunal in MWSTA No.116 of 2017 contending that the building is liable to be classified as "partly commercial" for the purpose of payment of water charges in terms of Regulation 5 of the Chennai Metropolitan Water Supply and Sewerage Service Charges (Levy and Collection) Regulations, 1998 and without adopting such classification, the respondent Board classified the petitioner's portion as commercial premises.

4. It is further pointed out that the petitioner relied upon the decision of the Taxation Appeal Tribunal in the case of the said neighbouring shop owner. But, the Tribunal did not discuss as to how that decision is not applicable to the petitioner's case except for noting the submissions made by the assessee.

5. In so far as the contention that the petitioner has not even consumed an ounce of water is concerned, the Tribunal rightly rejected the contention by referring to Regulation 12 of the said Regulations. Further, the Tribunal noted the stand taken by the respondent Board that the respondent provided a single water and sewerage connection as per the norms to the entire building complex, that the occupiers of the building are utilizing water supply through the sump provided by the Tamil Nadu Housing Board in the complex and that the ground floor is having toilet facility.

6. Further, Regulation 12 of the said Regulations provides for such a levy and the petitioner has been charged under unmetered tariff as provided under Regulation 24 of the said Regulations. The contention of the petitioner that she has not consumed a single ounce of water is liable to be rejected and the finding rendered by the Tribunal to that effect is

confirmed.

7. The next contention to be considered is as to the classification adopted by the respondent Board by classifying the petitioner's shop as commercial premises. The respondent Board does not dispute the fact that the entire building complex is treated as a single entity for the purpose of water supply and sewerage connection. This has been noted by the Tribunal in its order in paragraph 7. Therefore, whatever classification is adopted by the respondent Board in respect of other owners of non residential premises would equally apply to the petitioner and if it is not applied, it would amount to discrimination. The Tribunal held in MWSTA.No.116/2016 in respect of the petitioner's neighbour that proper classification of the building would be "partly commercial" as per Regulation 5 of the said Regulations. The order dated 27.10.2016 passed by the Tribunal in respect of the petitioner's neighbour has attained finality and it appears that the respondent Board has not challenged the same. Therefore, the petitioner's portion has to be assessed to water tax as 'partly commercial'.

8. For all the above reasons, the writ petition is partly allowed and the finding rendered by the petitioner holding that the petitioner's building has to be classified as "commercial" for the purpose of levy of surcharge is set aside. The respondent Board is directed to redo the assessment by adopting the category of the petitioner's portion as 'partly commercial', issue a fresh demand to the petitioner, which shall be paid by the petitioner within a period of three weeks from the date of issuance of such demand. It is needless to state that future payments at appropriate rates applicable to 'partly commercial' building shall paid by the petitioner without default. No costs. Consequently, the connected WMP is closed.

Sd/-
Assistant Registrar(CS-iv)

//True Copy//

Sub Assistant Registrar

To
1.The Chairman, Taxation Appeals Tribunal (Greater Corporation Chennai)
(Chennai Metropolitan Water Supply and Sewerage Board), Ripon Buildings, Chennai.

2.The Chairman and Managing Director, Chennai Metropolitan Water Supply
and Sewerage Board, H.O. No.1, Pumping Station Road, Chintadripet,
Chennai-2.

3.The Area Engineer, Area-9, Chennai Metropolitan Water Supply
and Sewerage Board, No.1, Dr.Ranga Road,
Mylapore, Chennai-18.

+1cc to Mr.K.VASUVENKAT, Advocate, S.R.No. 7823
+1cc to Mr.N.RAMESH Advocate, S.R.No. 7864

RS

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WMP.No.2604 of 2018

BR(CO)
TR(19/02/2018)