IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2018

CORAM :

THE HONOURABLE MR. JUSTICE **M.DHANDAPANI**

W.P. No. 41286 & 41287 of 2006

M/s.Sri Krishna Smelters Private Limited,
Rep.by its Managing Director
77-B, Old Edapady road,
Sankari Post-637 301. ...Petitioner in both WPs.

Versus

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

2.The State of Tamil Nadu, rep.by
its Secretary,
Department of Energy,
Fort St.George, Chennai-9.

3.The Tamilnadu Electricity Board,
Rep.by the Chairman,
800, Anna Salai, Chennai.

4.The Superintending Engineer,
TNEB-Mettur Distribution circle,
Mettur Dam-636 401.

5.The Tamilnadu Electricity Regulatory
Commission,
rep.by the Secretary
17, Third Main Road,
Seethammal Colony, Alwarpet,
Chennai-18. ...Respondents in both WPs.

W.P.No.41286 of 2006: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Declaration declaring that clauses 20.02 and 20.03 of the Terms and Conditions of supply of electricity of Tamil Nadu Electricity Board levying belated payment of surcharge 1.5 per cent per month (18% per annum) are arbitrary, unreasonable discriminatory violative of Article 14 and 19(1)(g) of Constitution of India for the account years 2001-02 to 2004 -05 and consequentially direct the respondents not collect BPSC pursuant to Lr.No.SEM/A/Cs.Br./HT/A2/BF.132/PR.319/06 dated 20.10.2006 issued by the fourth respondent.

W.P.No.41287 of 2006: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Certiorari, calling for the records of the fourth respondent in Lr.No.SEM/A/Cs.Br/HT/A2/BF/132/PR.319/06 dated 20.10.2006 and quash the same.

(in both WPs.)
For Petitioner : Mr.S.Rajesh
for Mr.S.Sivanandham

For Respondents : Mr.Madhana Gopal Rao (For R1).

Mr.M.Govindasamy,
Special Government Pleader (for R2).

Mr.S.K.Rameshwar,
Standing Counsel (for RR3 and 4).

No appearance (for R5)

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COMMON ORDER

The petitioner has filed these Writ Petitions seeking for issuance of declaration, declaring that clauses 20.02 and 20.03 of the Terms and Conditions of Supply of Electricity of Tamil Nadu Electricity Board levying belated payment of surcharge 1.5 per cent per month (18% per annum) are violative of Article 14 and 19(1)(g) of Constitution of India, for the account years 2001-02 to 2004-05 and for consequential relief and for issuance of Writ of Certiorari calling for the records of the fourth respondent in Ltr.No.SEM/A/Cs.Br./HT/A2/BF/132/PR.319/06 dated 20.10.2006 and to quash the same.

2.The case of the petitioner is that, the petitioner is a private limited company having high tension service connection No.132 within the jurisdiction of the fourth respondent. The petitioner initially challenged the validity of electricity tax before this Court and questioned Section 3-A of Tamilnadu Electricity (Taxation on Consumption) Act, 1991 and also questioned levy and collection of electricity tax under Tamilnadu Tax on consumption or sale of Electricity Act, 2003. However, a batch of writ appeals in W.A.No.329 of 2004 and etc., batch regarding levy of electricity tax was dismissed by the Division Bench of this Court by a common order dated 13.07.2006. Though the petitioner filed SLP, this Court, pending SLP issued an impugned electricity demand dated 20.10.2006 demanding electricity tax arrears with B.P.S.C., totaling Rs.1,22,61,671/-. Aggrieved against the same, the present writ petition.

3.Heard Mr.S.Rajesh, learned counsel appearing for the petitioner, Mr.Madhana Gopal Rao, learned counsel for the first respondent, Mr.M.Govindasamy, learned counsel for the second respondent and Mr.S.K.Rameshwar, learned standing counsel for the third and fourth respondents.

4.The learned counsel for the petitioner would submit that, based on the decision of the Division Bench of this Court in W.A.(MD) No.1590 of 2011, the petitioner is bound to pay the electricity tax. However, the petitioner need not pay the B.P.S.C., charges on the ground of Clause 20.01 of the Terms and Conditions of the Tamil Nadu Electricity Board.

5.Mr.S.K.Rameshwar, learned standing counsel for the third and fourth respondents would submit that, with regard to Section 3 of the Tamil Electricity Tax Act, levy of electricity charges were dismissed by the Division Bench of this Court in the batch of writ petitions as stated by the petitioner.

Accordingly, the respondent board is entitled to collect tax of arrears of payment. Hence, the Electricity Board has passed the impugned order dated 20.10.2006.

6.On perusal of the impugned order, it is seen from the first column that the fourth respondent has demanded E.Tax totaling about Rs.1,08,32,385/-. However, in the second column, the fourth respondent has also demanded Belated Payment Surcharges (BPSC) taxes to the tune of Rs.14,29,286/- which is against the Rule 5(4)(IX) of the Tamil Nadu Electricity Supply Code, 2004. Section 5(4)(IX) of the Tamil Nadu Electricity Supply Code reads as follows:

> *“(xi)The belated payment surcharge shall not be levied on electricity tax and electricity tax shall not be levied on the belated payment surcharge.”*

The above Rule was approved by this Court. However, as against the collection of B.P.S.C., on the belated payment of arrears on E.Tax, this Court in the case of ***Sivakasi Electrochemical S Ltd. Rep. by its Chairman and Managing Director Vs. The Superintending Engineer, Virudhunagar Electricity Districbution Circle in*** W.P.(M.D.) No.254 of 2007 reported in ***CDJ 2009 MHC 3522*** has quashed the impugned order. The relevant portion of the judgment is extracted hereunder:

"15.In other words, the licensee acts as a collecting agent for the Government and ultimate recipient of tax is the Government and the Government alone can impose any interest on the belated payment of Electricity Tax and it is made clear under Section 8 of the said Act.

16.As per the Clause 20.01 of the Terms and Conditions of the Tamil Nadu Electricity Board, the licensee is entitled to collect belated payment only on the amount due and payable to the licensee namely consumption charges. As the Electricity Tax is not the amount due and payable to the licensee and it is payable only to the Government, the licensee, the respondent herein, has no right to collect the surcharge on the belated payment of Electricity Tax and therefore, the claim of the respondent of a sum of Rs.2,34,308/- being the belated payment of surcharge for the non payment of E-Tax on time, cannot be sustained and the respondent is not entitled to levy any surcharge on the E-Tax.

17.Therefore, the writ petition is allowed and the demand of the respondent in collecting the B.P.S.C., on the belated payment of arrears on E-Tax of Rs.2,34,308/- alone is set aside. Consequently, connected Miscellaneous Petition is closed. No costs."

7.In view of the above, the respondents are entitled to collect E.Tax of Rs.1,08,32,385/-. However, the demand with regard to belated payment surcharges (B.P.S.C.), amount is hereby set aside.

8.On the above terms, this Writ Petition is disposed of. No costs.

21.06.2018

Index : Yes/No
Internet : Yes/No
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M.DHANDAPANI,J.,

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