IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 03.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.43883 of 2006

Tuticorin Alkali Chemicals and
Fertilisers Ltd.,
East Coast Centre
534 Anna Salai
Chennai 600 018. ... Petitioner

Vs

1.The Tamilnadu Electrictity Board
Rep.by its Chairman
Anna Salai, Chennai

2. Additional Chief Engineer (I/C)
Tuticorin Electricity Division Circle
Tuticorin 628 002. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India praying for issuance of Writ of Certiorari to call for the records of the 2nd respondent culminating in its order being Lr.No.39250/ACE/TEDC/TTN/HT SEC/A1/2006-1 dated 9.11.2006 of the demanding the sum of Rs.4,77,530/- towards belated payment surcharge at 18% on the Electricity Tax till August 2004 and quash the same.

For petitioner :: Mr.Rajah & Venkatesen and Associates

For respondents:: Mr. Rameshwar SC TNEB for R1 &R2

O R D E R

The petitioner has filed this Writ Petition seeking for issuance of of Writ of Certiorarified Mandamus to call for the records of the 2nd respondent culminating in its order being Lr.No.39250/ACE/TEDC/TTN/HT SEC/A1/2006-1 dated 9.11.2006 of the demanding the sum of Rs.4,77,530/- towards belated payment surcharge at 18% on the Electricity Tax till August 2004 and quash the same.

2.The case of the petitioner is that, the petitioner is having a factory at Harbour Construction Road, Tuticorin 628 005 and is engaged in the business of manufacturing Soda Ash, Ammonium Chlordie Fertiliser, Amonium Bicarbonate, Sodium Bi Carbonate. The petitioner is having a HT service connection bearing Service Connection No.28 coming under the jurisdiction of 2nd 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. The said Writ Petition was dismissed by this Court by its common order dated 21.10.2003 and the same was confirmed in a batch of Writ Appeals in W.A.No.329 of 2004 by the Division Bench of this Court by a common order dated 13.07.2006.

3. The second respondent raised a further demand of Rs.5,60,142.94 which was subsequently revised to Rs.4,77,530.04 on account of arithmetical error vide Lr.No.39250/AO/REV/RCS/2006/2 dated 30.10.2006 as belated payment surcharge at 18% per annum on the Electricity Tax from October 2003 to August 2006, i.e., till the date of the order of this Court dismissing the writ petition challenging the Electricity Tax. In and by the said order, the second responent directed the petitioner to pay the surcharge on or before 15.11.2006, failing which, appropirate action would be taken as deemed fit.

4. The petitioner, by addressing a letter dated 9.11.2006 to the 2nd respondent requested to withdraw the demand of Rs.4,77,530.04 towards belated payment surcharge on the Electricity Tax and in response to the said letter, the 2nd respondent passed the impugned order stating that belated payment surcharge on the arrear of electricity tax may be levied upto 30.8.2004 and not to levy belated payment surcharge from 1.9.2004 on arrear of electricity tax and that the Electricity code 2004 came into force from 1.9.2004 and hence directed the petitioner to pay a sum of Rs.4,77,530/- on or before 1.11.2006. Aggrieved against the same, the present writ petition is filed.

5.Heard Mr.Rajah, learned counsel appearing for the petitioner and Mr.S.K.Rameshwar, learned standing counsel for the 1st and 2nd respondents.

6.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.

7.Mr.S.K.Rameshwar, learned standing counsel for the 1st and 2nd 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 9.11.2006.

8.On perusal of the impugned order, it is seen that the 2nd respondent has demanded Belated Payment Surcharges (BPSC) taxes to the tune of Rs.4,77,530/- 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.
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> 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."

9. In view of the above, the respondents are entitled to collect only E.Tax. However, the demand with regard to belated payment surcharges (B.P.S.C.), amount is hereby set aside.

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

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

msr

To

1.The Tamilnadu Electrictity Board
Rep.by its Chairman
Anna Salai, Chennai

2. Additional Chief Engineer (I/C)
Tuticorin Electricity Division Circle
Tuticorin 628 002.

+ 1 cc to Mr.S.K. Rameshuwar, Advocate Sr.42927
+ 1 cc to MR. E. Jayasankar, Advocate SR.43535

W.P.No.43883 OF 2006

(CS-IX)
EU(01/08/2018)