IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2018

CORAM :

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.Nos. 48232 & 48233 of 2006
and M.P.Nos.2&3 and 2&3 of 2006

M/s.Florind Shoes (P) Ltd.,
M.C.Road, Ambur,
Vellore District-635 802.
Rep. by its Managing Director,
K.Shahid Mansoor. ...Petitioner in W.P.No.48232/2006

M/s.Unico Leather Products (P) Ltd.,
No.1, Sri Ramapuram Road,
Killachur Village,
Pallikonda,
Vellore District.
Rep. by its Managing Director,
K.Ehsan Ahmed. ...Petitioner in W.P.No.48233/2006

Versus

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

2.The Superintending Engineer,
Tirupattur Electricity Distribution Circle,
Tirupattur-635 601. ...Respondents in both WPs.

W.P.No.48232 of 2006: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records of the second respondent in his proceedings in L.R.No.499/DFC/RCS/A2/F.E. Tax Court Case/06 dated 16.10.2006 and quash the same in so far it relates to the levy of demand of Belated Payment Surcharge (BPSC) amounting to Rs.3,21,925/- for the petitioner's H.T.S.C.No.30 is concerned and consequently direct the respondents to permit the petitioner to pay the arrears of Electricity Tax pertaining to H.T.S.C.No.30, M/s.Florinda Shoes (P) Ltd., M.C.Road, Ambur, Vellore District in 20 monthly instalments commencing from February 2007.

W.P.No.48233 of 2006:: rit petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records of the second respondent in his proceedings in L.R.No.499/DFC/RCS/A2/F.E. Tax Court Case/06 dated 16.10.2006 and quash the same in so far it relates to the levy of demand of Belated Payment Surcharge (BPSC) amounting to Rs.1,89,370/- for the petitioner's H.T.S.C.No.68 is concerned and consequently direct the respondents to permit the petitioner to pay the arrears of Electricity Tax pertaining to H.T.S.C.No.68, M/s.Unico Leather Product(P) Ltd., Kilachur Village, Pallikonda, Vellore District in 20 monthly instalments commencing from February 2007.

(in both WPs.)
For Petitioner : Mr.S.Ganesh,
For Respondents : Mr.S.K.Rameshwar,
Standing Counsel.

COMMON ORDER

The petitioners have filed these Writ Petitions seeking for issuance of Certiorarified Mandamus calling for the records of the second respondent in his proceedings in L.R.No.499/DFC/RCS/A2/F.E. Tax Court Case/06 dated 16.10.2006 and quash the same in so far it relates to the levy of demand of Belated Payment Surcharge (BPSC) amounting to Rs.3,21,925/- and 1,89,370/- for the petitioners H.T.S.C.Nos.30 and 68 is concerned and consequently direct the respondents to permit the petitioners to pay the arrears of Electricity Tax pertaining to H.T.S.C.Nos.30 and 68, in 20 monthly instalments commencing from February 2007.

2.The case of the petitioner is that, the petitioner in both the cases is a private limited company having high tension service connection No.30 and 68 respectively within the jurisdiction of the Second 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 order was pronounced on 13.07.2006 the order copy was made ready belatedly. In the meantime, the second respondent issued an impugned electricity demand dated 16.10.2006 demanding electricity tax arrears of Rs.12,04,014/- and 7,42,808/- with B.P.S.C., of Rs.3,21,925/- and Rs.1,89,370/- for the HT.S.C.Nos.30 and 68 respectively. Aggrieved against the same, the present writ petition.

3.Heard **Mr.S.Ganesh*** learned counsel appearing for the petitioner and Mr.S.K.Rameshwar, learned standing counsel for the 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 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 16.10.2006.

6.On perusal of the impugned order, it is seen from the first column that the second respondent has demanded E.Tax totaling about Rs.12,04,014/- and Rs.7,42,808/-respectively. However, in the second column, the second respondent has also demanded Belated Payment Surcharges (BPSC) taxes to the tune of Rs.3,21,925/- and Rs.1,89,370/- respectively, 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.12,04,014/- and Rs.7,42,808/- for the High Tension Service Connection Nos.30 and 68 respectively. However, the demand with regard to belated payment surcharges (B.P.S.C.), amount is hereby set aside.

8.On the above terms, these Writ Petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS-IX)
dt.14.08.2018

Corrected as per letter
dated 7.09.2018 given by the
counsel for the petitioner.

Sd/-
Assistant Registrar(CS-IX)
dt. 12.09.2018

//True copy//

Sub Assistant Registrar

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To

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

2.The Superintending Engineer,
Tirupattur Electricity Distribution Circle,
Tirupattur-635 601.

+2cc to Mr.S.Ganesh, Advocate SR.No.39965
+1cc to Mr.M.Varun Kumar, Advocate SR.No.39507

To be substituted order already despatched on 6.09.2018

W.P.Nos. 48232 & 48233 of 2006
and M.P.Nos.2&3 and 2&3 of 2006

CNR(CO)
GN(20/08/2018)
EU 12.09.2018