IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.06.2019

CORAM

The Honourable Mr.Justice M.DHANDAPANI

W.P.Nos.20333, 20334, 20335 & 20336 of 2006
and
W.M.P.Nos.1,1,1 & 1 of 2006

M/s.Tarsem Singh,
191, Vanagaram Road,
Athipet,
Chennai - 600 058. ...Petitioner in W.P.No.20333/2006

M/s.Chakra Engineering Industries
59A, SIDCO Industrial Estate,
Chennai - 600 098. ...Petitioner in W.P.No.20334/2006

M/s.MM Industries,
represented by its proprietrix,
59A, SIDCO Industrial Estate,
Chennai - 600 098. ...Petitioner in W.P.No.20335/2006

M/s.Darshen Singh,
209/2, Vanagaram Road,
Chennai - 600 058. ...Petitioner in W.P.No.20336/2006

Versus

1.The Superintending Engineer / CEDC / West
Tamilnadu Electricity Board,
33/11KV, Thirumangalam,
SS Complex, Anna Nagar, Chennai - 600 040.

2.The Deputy Financial Controller
O/o. The Superintending Engineer / CEDC / West
Tamilnadu Electricity Board,
33/11KV, Thirumangalam,
SS Complex, Anna Nagar, Chennai - 600 040. ..Respondents in all petitions



COMMON PRAYER: These Writ Petitions are filed under Article 226 of the Constitution of India praying to issue a writ of certiorari, calling for records relating to the order passed by the 1st respondent in Lr.No. SE/CEDC/W/DFC/AS/A5/HTNos.1656, 1663, 1680 & 1662/D No.45/06 respectively dated 29.05.2006 and quash the same.

For Petitioner : Mr.S.Ravichandran
in all petitions

For Respondents: Mrs.K.Bhuvaneswari, AGP
in all petitions

C O M M O N O R D E R

Since the prayer in the above Writ Petitions is one and the same, it is clubbed together and a common order is passed.

2. The above Writ Petitions are filed for issuing a writ of certiorari, calling for records relating to the order passed by the first respondent in Lr.No. SE/CEDC/W/DFC/AS/A5/HTNos.1656, 1662, 1663 & 1680/D No.45/06 dated 29.05.2006 and quash the same.

3. The case of the petitioners is that the petitioners are private limited companies having high tension service connection Nos. 1656, 1662, 1663 & 1680 within the jurisdiction of the first respondent. The petitioners 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 etc., batch filed by certain other persons regarding levy of electricity tax was dismissed by the Division Bench of this Court by a common order dated 13.07.2006. Subsequently, when the second respondent raised a demand for the payment of Electricity Tax for the period from February 2002 to June, 2003, the petitioners had paid the entire amount in ten instalments. Though the first-respondent admitted the payment, now arbitrarily has issued the impugned demand Notice dated 29.05.2006 demanding B.P.S.C., totalling Rs.1,51,032/-, Rs.1,60,847/-, Rs.1,43,877/-, and Rs.1,36,546/- respectively. Aggrieved against the same, the present writ petitions.

4. Heard Mr.S.Ravichandran, learned counsel appearing for the petitioners, Mrs.K.Bhuvaneswari, learned Additional Government Pleader appearing for the respondents.

5. The learned counsel for the petitioners would submit that, based on the decision of the Division Bench of this Court in W.A.(MD).No.1590 of 2011, the petitioners are bound to pay the electricity tax. However, the petitioners 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.

6. Mrs. K. Bhuvaneswari, AGP appearing for the respondents would submit that, with regard to Section 3 of the Tamilnadu electricity Tax Act, the Appeals against the levy of electricity charges were dismissed by the Division Bench of this Court in the batch of Writ Appeals. Accordingly, the respondent board is entitled to collect tax of arrears of payment.

7. On a perusal of the impugned order, it is seen that though the first respondent has acknowledged the payment of E.Tax totaling about Rs.2,71,738/-, Rs.2,46,239/-, Rs.2,60,556.56/- and Rs.2,46,239/- respectively in ten instalments by the petitioners, however demanded Belated Payment Surcharges (BPSC) taxes to the tune of Rs.1,51,032/-, Rs.1,60,847/-, Rs.1,43,877/-, and Rs.1,36,546/- 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 order 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.2,34,30/- alone is set aside. Consequently, connected Miscellaneous Petition is closed. No costs."

8. In view of the above, the impugned demand made by the first respondent with regard to belated payment surcharges (B.P.S.C), amount is hereby set aside.

9. On the above terms, these Writ Petitions are allowed . No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Deputy Registrar(CJ.conf)

//True copy//

Sub Assistant Registrar

mrn/dua

To

1.The Superintending Engineer / CEDC / West
Tamilnadu Electricity Board,
33/11KV, Thirumangalam,
SS Complex, Anna Nagar, Chennai - 600 040.

2.The Deputy Financial Controller
O/o. The Superintending Engineer / CEDC / West
Tamilnadu Electricity Board,
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W.P.Nos.20333, 20334, 20335 & 20336 of 2006
and
W.M.P.Nos.1,1,1 & 1 of 2006

NS(CO)
GMY(05/07/2019)