IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :30.07.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.Nos. 1465 to 1470 of 2009
and
M.P.Nos. 1, 1, 1, 1, 1, 1 & 2, 2 & 2 of 2009

Sri Jaya Jyothi & Co. Ltd,
Represented by its Director,
Having Office t 70, Alagi Nagar,
Rajapalayam ...Petitioner in 1465 and 1466 of 2009

Divyalakshmi Textiles Private Limited,
Represented by its Director,
Having Office at Kulasekaranallur,
Thiruchuli Road,
Ramasamy Nagar Post,
Aruppukkottai. ..Petitioner in 1467 & 1468 of 2009

Jayalakshmi Textiles (P) Ltd.,
Represented by its Director,
Having Office at Puliyuran Road,
Sembatty,
Aruppukkottai. ..Petitioner in 1469 & 1470 of 2009

..Vs..

1. State of Tamil Nadu,
   Rep by the Secretary to Government
   Energy Department, Secretariat,
   Fort St.George, Chennai - 600 009.

2. The Tamil Nadu Electricity Board,
   Rep by its Chairman
   800 Anna Salai, Chennai 600 002.

3. The Electrical Inspector,
   Electrical Inspection Department,
   Virudhunagar. .. Respondents in all Writ petitions

Prayer in W.P.Nos.1465 & 1468 & 1469 of 2009: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ Mandamus, directing the respondents to forthwith refund the tax collected under the Tamil Nadu Tax on Consumption of Sale of Electricity Act 12 of 2003 in view of the judgment of the Hon'ble Supreme Court in Southern Petrochemicals Industries Co. Ltd., Vs Electricity Inspector and E.T.I.O. & Ors in AIR 2007 SC 1984.

Prayer in W.P.Nos. 1466 & 1467 & 1470 of 2009: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ Declaration, declaring that the Provisions of the Tamil Nadu Tax on Consumption of Sale of Electricity Amendment Act being Act 38 of 2007 as unconstitutional, beyond the legislative competence, and violative of Article 14 of the Constitution of India.

For Petitioners in all WP.Nos. : Mr.K.Chandrasekaran (in all Writ petitions)

For Respondents in all WP.Nos. : Mr.Ramesh, AGP For R1
Mr.S.K.Rameshwar for R2 & R3.
(in all Writ petitions)

C O M M O N O R D E R

Since the prayer in the above Writ Petitions are similar, they are clubbed together and a common order is passed in all the writ petitions.

2. The petitioners are filing the present writ petitions challenging Act 38 of 2007 which is a validating Act to amend the Tamil Nadu Tax on Consumption or Sale of Electricity Act 2003 (Act 12 of 2003).

3. The petitioners are engaged in the manufacture of yarns. The current annual turnover is more than Rs.100 crores. The petitioners company are the major exporters of yarn to various parts of the world, particularly Japan, Korea, Malasia, Bangladesh, Srilanka, Italy, etc.

4. The companies are consuming Electricity supplied by the Respondent Board as well as through their own generation. The reason as to why the companies had to go in for self generation was due to the then policy of the Government of Tamil Nadu to encourage setting up of captive power plants. The companies, apart from enjoying the benefit of exemption by virtue of putting up wind mills, were also entitled to exemption for a period of three years, which was extended for a further period of five years. The companies based upon the policies of the Government, altered their position by investing large sums of money. It is also pertinent to state that the petitioners had paid taxes for their captive generation and consumption out of such generation, pursuant to interim orders, after approaching this Court challenging the Principal Act before Hon'ble Apex Court in SLP(Civil).No. of 2007 the same was disposed off by a

common order in the Judgement of SPIC's case. It is to be pointed out that the entire payment of tax had been made with the condition that the same is subject to the final outcome of the challenge.

5. The Hon'ble Apex Court entertained the Special Leave Appeal (Civil) Nos. 24685 to 24719 of 2012 and by judgement dated 31.08.2012, the Apex Court granted interim stay directing the appellant therein to deposit the Bank Guarantee before the Registrar.

6. The parties herein have also agreed that the present Writ Petitions be disposed of on the aforesaid terms of the Hon'ble Supreme Court, with the agreement that the ultimate fate of the matter before the Hon'ble Supreme Court would also govern the present writ petitioners and in order to enure benefit to the petitioners during the pendency of the Special Leave Petition.

7. Therefore, these Writ Petitions stand disposed of, on the aforesaid terms. No costs. Consequently, connected miscellaneous petitions are closed.

kmm

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government
State of Tamil Nadu,
Energy Department, Secretariat,
Fort St.George, Chennai - 600 009.

2. The Chairman
Tamil Nadu Electricity Board,
800 Anna Salai
Chennai 600 002.

3. The Electrical Inspector,
Electrical Inspection Department,
Virudhunagar.

W.P.Nos. 1465 to 1470 of 2009

Kak(31/10/2019)