IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 02.04.2019

CORAM:

THE HONOURABLE MR. **JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.40056 of 2006

Tvl.Senthil Textiles Mills (p) Ltd.,
Rep. by the Director,
Attur Main Road,
Minnampally(Near Thingal Sandai)
Salem- 636 106.
Salem District. ... Petitioner

Vs.

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

2.The State of Tamil Nadu,
Rep. by the Secretary
Department of Energy,
Fort St. George,
Chennai - 600 009.

3.The Tamil Nadu Electricity Board,
Rep. by the Chairman,
No.800, Anna Salai,
Chennai - 600 002.

4.The Superintending Engineer,
TNEB - Salem Distribution Centre,
Salem - 636 106.

5.The Tamil Nadu Electricity Regulatory Commission,
Rep. by the Secretary,
No.17, Third Main Road,
Seethammal Colony, Alwarpet,
Chennai - 600 018. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari call for the records of the 4th Respondent in Lr.No.SE/SEDC/AOR/HT/A.3/F.Case file/SC No.146/06 dated 04.10.2006 and quash the same as illegal so far as demand of BPSC is concerned.

For Petitioner : Mr.S.Rajesh
for M/s.S.Sivanandham

For Respondents : Mr.Mr.J.Madanagopal
SCGSC for R-1

Mr.K.S.Suresh
Government Advocate for R-2

Mr.S.K.Rameshwar
Standing Counsel TNEB
for R3 to R5

<u>O R D E R</u>

This Writ Petition is filed for a Writ of Certiorari to call for the records of the 4th Respondent in Lr.No.SE/SEDC/AOR/HT/A.3/F.Case file/SC No.146/06 dated 04.10.2006 and quash the same.

2.The facts and events that are relevant to decide this Writ Petition are simple. The Respondents 3 and 4 were called upon by demand notice dated 04.10.2006 to pay an aggregate sum of Rs.33,50,049/- towards Electricity Tax and Belated Payment Surcharge (BPSC) within 15 days from the date of issue of the order. Out of the said amount, a sum of Rs.6,39,693.53 was demanded towards BPSC arising out of the delayed payment of Electricity Tax. The annexure to the said order shows that the demand is in respect of belated payment surcharge for the period ended in September 2004. However, the exact date or period from which belated payment surcharge was calculated is not clear from the said annexure because the first entry relates to the period up to 15.03.2004. Nevertheless, the demand in respect of the period up to 15.03.2004 is Rs.4,30,128.48 which is the largest component of the total demand of Rs.6,93,693.53 towards BPSC. From the said demand notice, it is also clear that BPSC has been charged at the rate of 1.5% per month or 18% per annum.

3.The case of the Respondents 3 to 5 is that BPSC was chargeable up to 31.08.2004 as per Clause 20.01 of the Terms and Conditions of Supply, which was valid and enforceable until 01.09.2004 when the Tamil Nadu Electricity Supply Code came into force. With effect from 01.09.2004, Respondents 3 to 5 admit that BPSC cannot be levied on delayed payment of Electricity Tax by virtue of Regulation 5(4)(xi) of the Electricity Supply Code. Therefore, the said Respondents state that the demand of BPSC is valid on all charges, except surcharge, up to 31.08.1994 at the rate of 1.5% per month.

4.At the hearing, the learned counsel for the Petitioner submitted that BPSC cannot be levied on Electricity Tax. In order to substantiate the submission, the learned counsel referred to the Tamil Nadu Electricity Supply Code wherein Regulation 5(4)(xi) provides 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"

5.In this regard, the learned counsel also referred to and relied upon the judgment of this Court in **SIVAKASI ELECTROCHEMICALS LTD, REP. BY ITS CHAIRMAN AND MANAGING DIRECTOR Vs. THE SUPERINTENDING ENGINEER, VIRUDHUNAGAR ELECTRIITY DISTRIBUTION CIRCLE, in W.P.(MD)No.254 of 2007** wherein it was held that the Electricity Board is entitled to claim

Electricity Tax as a licensee of the Government but cannot claim BPSC in respect of non payment of Electricity Tax. The said judgment further states that the Electricity Board cannot claim BPSC for non payment of Electricity Tax under Clause 20.01 of the Terms and Conditions of Supply of Tamil Nadu Electricity Board because Electricity Tax is payable to the Government and not to the Electricity Board and, therefore, only the Government can impose interest on belated payment of Electricity Tax. The learned counsel also referred to and relied upon the judgment of the Division Bench of this Court in **THE SUPERINTENDING ENGINEER, VIRUDHUNAGAR ELECTRIITY DISTRIBUTION CIRCLE Vs. SIVAKASI ELECTROCHEMICALS LTD, REP. BY ITS CHAIRMAN AND MANAGING DIRECTOR, in W.A.(MD)No.1590 of 2011** wherein the Division Bench of this Court held as follows:-

> "20.On this submission made by the learned counsel for the Appellant/Respondent, this Court is of the considered view that the said submission is unacceptable for this Court on the simple ground that as per Clause 20.01 of the Terms and Conditions of the Electricity Code, the licencee is entitled to collect the belated amount on the amount due and payable to the licensee viz, the consumption charges. As the Electricity tax is not the amount due and payable to the

> Appellant/Respondent herein, it has no right to collect the surcharge on the belated payment of Electricity Tax and hence the claim of the Appellant/Respondent for a sum of Rs.2,34,308/- being the belated payment of surcharge for the non-payment of Electricity Tax in time is unsustainable in law.

The learned counsel also referred to and relied upon the judgment of this Court in **M/S.SRI KRISHNA SMELTERS PRIVATE LIMITED Vs. THE UNION OF INDIA AND OTHERS in W.P.No.41286 and 41287 of 2006** wherein a Single Bench of this Court followed the Judgment in W.P.(MD)No.254 of 2007 and held that the Respondents are entitled to collect electricity tax but not BPSC. The learned counsel for the Petitioner also provided evidence of payment of the entire amount demanded as Electricity Tax. These payments were made in 12 installments between 19.10.2006 and 19.09.2007.

6.In response, the learned counsel for the Respondents 3 to 5 submitted that the Electricity Supply Code came into force on 01.09.2004 and that, therefore, BPSC on delayed payment of Electricity Tax could be collected for the period up to 31.08.2004 by relying upon Clause 20.01 of the Terms and Conditions of Supply. The learned counsel further submitted that the Electricity Board was entitled to levy interest on delayed payment of Electricity Tax up to 16.06.2003 under the Tamil Nadu Electricity (Taxation on Consumption) Act,1962 (the Electricity Tax Act of 1962). In particular, he referred to Section 8 thereof, which reads, inter alia, as follows:

> **8.Recoveries.__** Any sum due on account of electricity tax, if not paid at the time and in the manner prescribed, shall be deemed to be in arrears and thereupon such interest not exceeding twelve per centum per annum which the Government may, by general or special order fix, shall be payable on such sum; and the sum together with any interest thereon, shall be recoverable either through a Civil Court or as an arrear of land revenue.

Thereafter, the Tamil Nadu Tax on Consumption or Sale of Electricity Act,2003(the Electricity Tax Act of 2003) replaced and repealed the Electricity Tax Act of 1962 and enables the levy of interest on delayed payment of Electricity Tax. In this regard, he relied upon Section 7 of the said Act which reads as follows:-

> **"7.Recovery of Electricity Tax__** Any Electricity Tax due under this Act which remains unpaid__

(a) shall be deemed to be in arrears and thereupon interest at the rate prescribed by the Government, from time to time, shall be payable on such Electricity Tax; and

(b) shall, together with any interest payable under Clause (a) be recoverable either as an arrear of land revenue or by deduction from any amount payable by the Government to the licensee."

7.The affidavit, counter affidavit, documents and oral submissions of the parties were considered carefully.

8.There is no doubt that BPSC cannot be imposed on delayed payment of Electricity Tax after the Electricity Supply Code came into force on 01.09.2004. Regulation 5(4)(xi) thereof makes this position abundantly clear. In addition, the judgment of the Single Judge and Division Bench of this Court in the cases cited supra settle the issue conclusively. The contention of the learned counsel for the Respondents 3 to 5 that BPSC on Electricity Tax can be claimed under Clause 20.01 of the Terms and Conditions of Supply up to 31.08.2004 is an issue that was expressly considered in the judgment in W.P.(MD)No.254 of 2007 wherein it was held that Clause 20.01 enables the licensee (Tamil Nadu Electricity Board) to collect BPSC on consumption charges. As regards belated payment of Electricity Tax, it was held that in view of the fact that the tax is payable by the licensee/TNEB to the Government, BPSC cannot be levied and collected by TNEB by relying upon Clause 20.01. Accordingly, this contention of the learned counsel for the Respondents 3 to 5 is liable to be rejected. In effect, BPSC cannot be levied on Electricity Tax either for the period up to 31.08.2004 or the subsequent period. Therefore, the impugned demand notice dated 04.10.2006 is liable to be quashed.

9.Electricity Tax is imposed by the Government on the licensee, i.e. TNEB and the TNEB passes on the tax to consumers as per Section 6 of the Electricity Tax Act of 2003. As regards interest on delayed payment of Electricity Tax, notwithstanding the fact that BPSC cannot be levied on delayed payment of Electricity Tax, it is clear both from the Electricity Tax Act of 1962 and the Electricity Tax Act of 2003 that interest can be claimed on delayed payment of Electricity Tax at the rate prescribed by the Government. However, interest should be prescribed and imposed by the Government and not by the Electricity Board, except as a collection agent of the Government. It is also relevant to state, in this regard, that BPSC on delayed payment of Electricity Tax was claimed at 18% per annum whereas, the Electricity Tax Act of 1962 stipulated that interest may be claimed at the prescribed rate not exceeding 12% per annum and the Electricity Tax Act of 2003 enables the Government to prescribe the rate of interest, but does not fix a ceiling.

10.In the result, this Writ Petition is allowed and the Impugned Order dated 04.10.2006 is quashed. Nevertheless, this Order shall not preclude the Government from demanding interest on delayed payment of Electricity Tax as per Section 7 of the Tamil Nadu Tax on Consumption or Sale of Electricity Act,2003 in accordance with the requirements thereof and after taking into account the dates of payment of Electricity Tax and any concessions/dispensations made by the Respondents with regard to the payment thereof. There shall be no order as to costs.

02.04.2019

Index : Yes
Internet : Yes
Speaking Order/Non speaking order
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To

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

2.The Secretary
The State of Tamil Nadu,
Department of Energy,Fort St. George,
Chennai - 600 009.

3.The Chairman,
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SENTHILKUMAR RAMAMOORTHY, J.,

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