

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 12.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

WP.No.35813 of 2004
and
WP.MP.No.43130 of 2004

M/s.Sri Vigneswara Steels Pvt. Ltd.,
Rep. by the Managing Director,
SF.110/1-A-1, Mavelipalayam Privu Road,
Akkamepet Post, Sankari Taluk,
Salem District - 637301.

...Petitioner

Vs

1. The State of Tamil Nadu,
Rep. by its Secretary,
Department of Energy,
Fort St.George, Chennai - 9.
2. Tamil Nadu Electricity Board,
Rep. by the Chairman,
800, Anna Salai,
Chennai - 2.
3. The Superintending Engineer,
TNEB - Mettur Distribution Circle,
Mettur Dam - 636401.
4. The Tamil Nadu Electricity Regulatory Commission,
Rep. by the Secretary,
17, Third Main Road,
Seethamalla Colony,
Alwarpet, Chennai - 600018.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorari to call for the records of the 3rd respondent in Lr.No.PR.112/A/Cs.Br./AOR/HT/A2/BF.135/2004, dated 16.11.2004 and quash the same so far as levy and collection of belated payment of Surcharge Rs.2,82,064/- is concerned.

For Petitioner : Mr.S.Sivanandam

For Respondents: Mr.K.Rajendra Prasad, AGP
for R1 and R4

Mr.S.K.Raameshwar, SC
for R2 and R3

O R D E R

The short point involved in the present Writ Petition is a challenge to the validity of the interest levied by the respondents herein on the belated payment of Surcharge at the rate of 18% per annum.

2. The learned counsel for the petitioner by relying upon the Division Bench decision of this Court in 2008 5 MLJ 559, submitted that this Court had dealt with the percentage imposed for such belated payment of Surcharge and held that the interest rate of 12% would be the appropriate interest rate and not 18%.

3. The learned Standing Counsel for the respondents, on the other hand, relied upon two decisions of the Hon'ble Apex Court reported in 1979 4 SCC 560 and 1997 5 SCC 772 and submitted that the petitioner is liable to pay Surcharge at the rate of 1.5% from the date of charges till due.

4. The Hon'ble Division Bench of this Court in the aforesaid decision in 2008 5 MLJ 559 had modified the interest rate from 18% to 12% per annum on the levy of Surcharge by discussing various Judgements of the Hon'ble Apex Court including the two decisions cited by the learned Standing Counsel for the respondents. The relevant portions of the said orders reads as follows:

5. We have heard Mr. P.S. Raman, learned Additional Advocate General, appearing for the respondent Electricity Board. He would submit in his argument that the Superintending Engineer is empowered to extend the time for the payment with a levy of surcharge at 3% per month and the non payment of the consumption charges even beyond the said period would attract 3% surcharge on belated payment and however, the consumers those who do not seek for extension of time but are paying the payments belatedly would get attracted with class 20.02 of the Terms and Conditions which prescribes only 1.5% towards surcharge. The learned Additional Advocate General would further submit that the terms and

conditions of supply of electricity to the High Tension customers have been enacted by the 3rd respondent as per the powers conferred on it under Section 49 of the Electricity (Supply) Act 1948 and the payment of surcharge at 1.5% per month was also fixed for the purpose of avoiding the payments to be made by consumers in time without any delay. He would also submit in his arguments that the validity of clauses 20.02, 20.03 and 20.05 were questioned before this Court in various writ petitions and a Division Bench of this Court had considered the validity of the terms and conditions, including the clauses therein, and had upheld the clauses 20.02, 20.03 and 20.05 in a judgment reported in 2004 W.L.R. 307 (M/s.Sri Krishna Smelters (P) Ltd. vs. The Chairman, Tamil Nadu Electricity Board and another) and therefore, the petitioners cannot question the validity of those clauses once again as the said judgment will bind the petitioners as well and the consumers who have made belated payments are liable to pay the surcharge at 1.5%. He would further submit in his argument that the order of paying enhanced tariff by the Court did not prohibit any levy of interest as per the terms and conditions in force and the learned single Judge had correctly come to the conclusion of applying the principle laid down in 1997 (7) S.C.C. 89, cited supra, and to disallow the claim of the petitioners. He had also drawn the attention of the Court to the judgment reported in 1979 (4) S.C.C. 560 [Adoni Ginning Factory vs. Andhra Pradesh Electricity Board, Hyderabad] and also the judgment reported in 1996 (1) S.C.C. 597 [Kerala State Electricity Board and another vs. M.R.F. Ltd.] and 1997 (5) S.C.C. 772 [Kanoria Chemicals and Industries Ltd. and others vs. U.P. State Electricity Board and others]. He had also drawn the attention of the Court to a judgment of the Andhra Pradesh High Court reported in A.I.R. 2002 A.P. 493 [M/s.Nava Bharath Ferro Alloys Ltd. vs. A.P.S.E.B. and others] in support of his case that it is a settled law that when a party apply and obtains a stay from the Court of law, it is always at its own risk and responsibility and mere passing of an order of stay cannot be presumed to be a conferment of any additional right upon the litigant public. Therefore, the learned Additional Advocate General would submit that the judgment of the learned single Judge is perfectly in accordance with law and, therefore, there is no necessity to interfere with the same. He would also add that the

same ratio is applicable to the petitioners also and therefore the writ petitions are also liable to be dismissed along with the writ appeals.

9. In this context, we have to follow the dictum of our Supreme Court, The judgment of the Apex Court reported in 1997 (7) S.C.C. 89 Style (Dress Land) vs. Union Territoy, Chandigarh] would run as follows :

15... It is a settled principle of law that as and when a party applies and obtains a stay from the Court of law, it is always at the risk and responsibility of the party applying. Mere passing of an order of stay cannot be presumed to be the conferment of any additional right upon the litigating party. This Court in Sri Chamundi Mopeds Ltd. Vs. Church of South India Trust Association [1992 (3) S.C.C. 1] held that the said portion of order by the Court means only that such order would not be operative from the date of its passing. The order would not mean that the order stayed had been whipped out from existence. The order of stay granted pending disposal of a case comes to an end with the dismissal of a substantive proceeding and it is the duty of the Court in such cases to put the parties in the same position they would have been but for the interim orders of the Court. Again in Kanoria Chemicals and Industries Ltd. Vs. U.P. SEB [1997 (5) S.C.C. 772] the Court held that the grant of stay had not the effect of relieving the litigants of their obligation to pay late payment with interest on the amount withheld by them when the writ petition was dismissed ultimately. Holding otherwise would be against the public policy and interest of justice. In Kashyup Zip Industries vs. Union of India [1993 Supp. (3) S.C.C. 493] interest was awarded to the revenue for the duration of stay under the Courts order, since the petitioners therein were found to have the benefit of keeping back the payment of duty under orders of the Court. Similarly, it is also found in the judgment of the Supreme Court reported in 1979 (4) S.C.C. 560 [Adoni ginning Factory and others vs. The Secretary, Andhra Pradesh Electricity Board, Hyderabad and others] that, 5. Surcharge was claimed for the period during which the appeals were pending in the Supreme Court since the Supreme Court did not stay the operation of the G.O. No: 187 but only restrained the Board from collecting the arrears.

That no stay of G.O. No; 187 was ever intended to be granted by the Supreme court is also clear from the circumstance that there was no injunction restraining the Electricity Board from collecting future charges at the enhanced rates. The Electricity Board was, therefore, right in claiming surcharge for the period during which the appeals were pending in the Supreme Court and not claiming surcharge for the period during which the writ petitions and writ appeals were pending in the High Court. The judgment reported in 1997 (5) S.C.C. 772, [Union of India and another vs. Delhi Cloth and General Mills Co. Ltd. and another] is to the effect that, Stay of operation of order or notification only means the order or notification which has been stayed would not be operative from the date of passing the stay order and it does not mean that the order or notification has been whipped out from existence. An order of stay granted pending disposal of a writ petition / suit or other proceeding, comes to an end with the dismissal of the substantive proceeding and it is the duty of the Court in such a case to put the parties in the same position they would have been but for the interim orders of the Court.

13. Therefore, we find no defect in the judgment of the learned single Judge except the quantum of interest at 18% per annum. Therefore, modifying the said interest rate from 18% per annum to 12% annum, the levy of surcharge is sustained. Accordingly, the writ appeals as also the writ petitions stands disposed of with the aforesaid modification in the rate of interest. Consequently, connected miscellaneous petitions are closed. No costs.

5. Since the decisions relied upon by the learned Standing counsel for the respondents have already been considered and distinguished by the Division Bench of this Court in the aforesaid order, I am of the view that the interest rate at the rate of 1.5% per annum imposed by the respondents herein on the belated payment of Surcharge is opposed to the aforesaid law laid down.

6. Consequently, the impugned proceedings in Lr.No. PR.112/A/Cs.Br./AOR/HT/A2/BF.135/2004, dated 16.11.2004, levying 18% interest on the belated payment of Surcharge calculated at the rate of 18% per annum alone, is set aside. The respondents herein are directed to issue a revised demand of calculation on the belated payment of Surcharge at the rate of 12% per annum to

the petitioner herein. On receipt of such a demand made, the petitioner shall make the payment within four weeks from the date of receipt of such demand of calculation.

7. With the above observations, the present Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

hvk

To

1. The Secretary,
Department of Energy,
Fort St.George, Chennai - 9.
2. The Chairman,
Tamil Nadu Electricity Board,
800, Anna Salai,
Chennai - 2.
3. The Superintending Engineer,
TNEB - Mettur Distribution Circle,
Mettur Dam - 636401.
4. The Secretary,
The Tamil Nadu Electricity Regulatory Commission,
17, Third Main Road,
Seethamallla Colony,
Alwarpet, Chennai - 600018.

+1cc to Mr.S.Sivanandam, Advocate SR.No.12573

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and
WP.MP.No.43130 of 2004

RR(CO)
GMY(11/03/2019)