IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2019

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH

WP. Nos.36463 and 36464 of 2004
and
W.P.M.P.Nos.43791 and 43792 of 2004

Sri Ambiga Sugars Ltd.
Rep. by its Company Secretary
Krithivasan Nagarajan ..Petitioner in both the petitions

Vs

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

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

3. Chief Electrical Inspector to Government,
Government of Tamil Nadu,
Electrical Inspectorate,
Thiru-vi-ka Industrial Estate,
Chennai 600 032. ..Respondents in both the petitions

PRAYERS: Writ Petitions are filed under Article 226 of the Constitution of India, seeking for Writ of Certiorari to call for the records relating to the demand letters bearing Nos.5265/A1/2002-1 and 5265/A1/2002-2 dated 22.11.2004 issued by the third respondent and quash the same.

For Petitioner (in both the petitions) : Mr.R.Thiagarajan, Senior Counsel for Mr.M.Muthappan

For Respondents (in both the petitions) : Mr.S.Suresh Kumar, G.A. for R1, Mr.P.Gunaraj, Standing Counsel for TNEB, for RR2 & 3

COMMON ORDER

The orders under challenge in the present Writ Petitions is to the demand made by the respondents herein calling upon the petitioner to pay the Electricity Tax under the provisions of the Tamil Nadu Electricity Tax (Taxation on Consumption) Act, 1962 and Tamil Nadu Electricity Duty Act, 1939.

2. It is seen that pursuant to the aforesaid Acts, the Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003 was enacted. In view of Section 20 therein, both the Electricity Duty Act and the Electricity Tax on Consumption Act were repealed. Pursuant to the 2003 enactment, a batch of Writ Petitions came to be filed before this Court challenging the vires of the Act, which came to be dismissed on 20.10.2003. Writ Appeals against those Writ Petitions were also dismissed on 13.07.2006. As against the order passed in the Writ Appeals, a batch of Civil Appeals were preferred before the Apex Court and the Apex Court through the decision reported in 2007 (5) SCC 447 (Southern Petrochemical Industries Co. Ltd. vs. Electricity Inspector & ETIO and others), allowed the batch of appeals and thereby, granted permanent exemption for payment of Electricity Taxes. The relevant portion of the said decision of the Apex Court reads as follows:

> "114. On 9.10.1995, the Ministry of Power, Union of India wrote to all State Electricity Boards and State Governments urging them to take steps to tap the potential in captive/ cogeneration power plants as energy shortage was visualized at 15% and peaking shortage at 30%. The State Governments, therefore, were urged to create an institutional mechanism to meet the said shortage.
>
> 115. On or about 23.09.1996, the Government of Tamil Nadu issued the following exemption notification bearing GOMs. No. 126:
>
>> "In exercise of the powers conferred by sub-section (1) of Section 13 of the Tamil Nadu Electricity (Taxation on Consumption) Act 1962 (Tamil Nadu Act 4 of 1962), the Governor of Tamil Nadu hereby directs that the consumption of self-generated electrical energy for captive generators by the Paper, Textile, Chemical and Sugar Industries irrespective of the fuel they use be exempted permanently from the electricity tax payable under the said Act. The Governor also directs that the consumption of energy generated through Non-Conventional Energy Sources like Sun,

Wind etc., be exempted from the Electricity Tax payable under the above Act."

....

118. It is in the aforementioned context, the doctrine of promissory estoppel is sought to be invoked. We will notice hereinafter that even a right can be preserved by reason of invocation of doctrine of promissory estoppel.

....

121. The doctrine of promissory estoppel would undoubtedly be applicable where an entrepreneur alters his position pursuant to or in furtherance of the promise made by a State to grant inter alia exemption from payment of taxes or charges on the basis of the current tariff. Such a policy decision on the part of the State shall not only be expressed by reason of notifications issued under the statutory provisions but also under the executive instructions. Appellants had undoubtedly been enjoying the benefit of (sic. exemption from) payment of tax in respect of sale/ consumption of electrical energy in relation to the cogenerating power plants.

......

156. For the reasons aforementioned, we are of the opinion that the impugned judgment cannot be sustained which is set aside accordingly. The appeals are allowed to the extent mentioned hereinbefore. No costs."

3. In view of the decision of the Apex Court extracted above, the petitioner herein would be entitled for permanent exemption from payment of Electricity Taxes and as such, the impugned order is to be modified.

4. At this juncture, the learned Standing Counsel for the respondents submitted that pursuant to the order of the Apex Court, the Government has enacted the Tamil Nadu Tax on Consumption or Sale of Electricity (Amended) Act, 2007. The validity of the said Act was also challenged before this Court and now vires of the said Act and its validity is now pending before the Apex Court by way of batch of appeals.

5. It is needless to mention herein that the Act came to be passed in the year 2007 alone, and the order impugned in the Writ Petition relates to the period till 15.06.2003. As such, the provisions of the repealing Act may not have any bearing on the impugned order. Nevertheless, since the issue involved in

the present Writ Petition is also the subject matter before the Apex Court, in case of any observations made therein during its final decision, empowering the respondents herein to make a demand, it is always open to them to do so within the limit prescribed in the said decision, which is yet to be rendered.

6. In the light of the above observations, the impugned demand letters dated 22.11.2014 in Nos.5265/A1/2002-1 and 5265/A1/2002-2, are set aside. Accordingly, the Writ Petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

pvs

To

1. The Secretary to Government,
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Energy Department,
Fort St. George, Chennai 600 009.
2. The Chairman,
Tamil Nadu Electricity Board,
800, Anna Salai, Chennai 2.

3. Chief Electrical Inspector to Government,
Government of Tamil Nadu,
Electrical Inspectorate,
Thiru-vi-ka Industrial Estate,
Chennai 600 032.

+1cc to Mr.P.Gunaraj, Advocate SR.No.14962

+1cc to Mr.M.Muthappan, Advocate SR.No.14711

+1cc to Government Pleader SR.No.15604

WP. Nos.36463 and 36464 of 2004

RSV(CO)
GMY(06/03/2019)