IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2019

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

W.P. 24030 of 2003 & W.P.M.P. 29608 of 2003
and
W.P. 24031 of 2003 & W.P.M.P. 29609 of 2003

W.P. 24030 OF 2003

M/s.Sterlite Industries (I) Ltd.,
SIPCOT Industrial Complex,
Madurai Byepass Road,
Tuticorin-628 002. ... Petitioner

Vs

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

2. Tamil Nadu Electricity Board,
   Anna Salai,
   Chennai-600 002
   rep. by its Chairman.

3. The Chief Electrical Inspector
   to Government,
   Thiru-vi-ka Industrial Estate,
   Guindy, Chennai-600 032. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, forbearing the respondents, their men, servants or agents or anyone claiming through or under them, from initiating any action against the petitioner including raising any demand or otherwise recovering any amounts either by way of tax or otherwise from the petitioner in terms of the provisions of the Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003 (Act 12 of 2003) or to require the petitioner to comply with any provisions of the said Act.
W.P. 24031 OF 2003

M/s.Sterlite Industries (I) Ltd.,
SIPCOT Industrial Complex,
Madurai Byepass Road,
Tuticorin-628 002. ... Petitioner

Vs

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

2. Tamil Nadu Electricity Board,
Anna Salai,
Chennai-600 002
rep. by its Chairman.

3. The Chief Electrical Inspector
to Government,
Thiru-vi-ka Industrial Estate,
Guindy, Chennai-600 032. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Declaration, declaring that the provisions of the Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003 (Act 12 of 2003) as unenforceable, bad in law and ultra vires the Constitution of India in so far as the petitioner is concerned.

For Petitioner : Mr.S.Raghunathan

For Respondents : Mr.J.Ramesh,
Addl. Govt. Pleader for R1

Mr.S.K.Rameshuwar,
Standing Counsel for R2 & R3

O R D E R

These Writ Petitions have been filed seeking a direction to forbear the respondents from initiating any action against the petitioner including raising any demand or otherwise recovering any amounts either by way of tax or otherwise from the petitioner in terms of the provisions of Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003 (Act 12 of 2003) and challenging the provisions of Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003 (Act 12 of 2003) as unenforceable, bad in law and ultra vires the Constitution of India in so far as the petitioner is concerned.

2. On perusal of both the Writ Petitions, it appears that initially, the petitioner has challenged the Writ Petition declaring the provisions of Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003 (Act 12 of 2003) (hereinafter called as "Act, 2003") as unenforceable and ultra vires. The very same Act was initially upheld by this Court and on appeal before the Hon'ble Apex Court, the Hon'ble Apex Court has upheld the Act, however, granted certain exemptions. Thereafter, another Act called Tamil Nadu Tax on Consumption or Sale of Electricity Validation Act again was challenged before this Court and this Court has upheld that Act and on appeal, the matter is pending before the Hon'ble Apex Court. The Hon'ble Apex Court had passed the interim order, which reads as follows :-

> "155. Thus, what is permissible for the purpose of framing a tariff need not necessarily be permissible for levy of tax. Tariff for supply of High Tension energy is in two parts, (a) units consumed and (b) maximum demand.
>
> The High Court proceeded on a wrong premise to hold that the tax is levied only on the maximum demand, i.e., on the energy consumed. It is now accepted that the maximum demand indicator installed in a factory premises of a consumer of High Tension electrical energy shows the maximum amount of energy drawn during any consecutive thirty minutes in a total month of consumption of electrical energy. Maximum demand charge is fixed on that basis although the connected demand may be much more.
>
> 169. Our attention has been drawn to a simple bill, from a perusal whereof it appears that although permitted MD was 350 KVA, the recorded demand being144 KVA, electricity tax was charged only on the basis of 144 KVA andnot on the basis of 350 KVA. Keeping in view the fact that the maximum demand postulates something other than actual delivery of electricity, the question of imposition of any tax thereupon does not arise. The decision of this Court in M/s.Northern India Iron & Steel Co. (supra) did not assign any reason. The said decision did not take into consideration the provisions of Art.366 (12) of the Constitution of India. It has also not been taken into consideration that the State cannot impose tax only because the State Electricity Board would be entitled to levy tax on certain services. It would bear repetition to state that the concept of tariff and tax is different. Whereas tariff would include a list of charges, the tax must be on actual basis. It is also not the case nor can it be that imposition of tax on actual sale or consumption of electrical energy was impossible keeping in view of the

particular fact situation. As noticed hereinbefore, two different meters are installed; one, for the purpose of actual consumption of electrical energy and another being a trivector, the same merely records the maximum demand."

4. With the above terms, these Writ Petitions are disposed of. No costs. Consequently, the connected Writ Petition Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//
Sub Assistant Registrar

rpp

To

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

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

3. The Chief Electrical Inspector
   to Government,
   Thiru-vi-ka Industrial Estate,
   Guindy, Chennai-600 032.

+2ccs to Mr.S.Raghunathan, Advocate, S.R.No.50952 & 50953
+1cc to the Government Pleader, S.R.No.50626

W.P.s 24030 & 24031 of 2003
and
W.P.M.P.s 29608 & 29609 of 2003

GP(CO)

RRS(19/07/2019)