IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2020

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. Nos. 10599 to 10603 of 2012
and
M.P. Nos. 1, 1, 1, 1, & 1 of 2012

M/s. Rosvar Steels (P) Ltd.,
Represented by its Director - R.Ravichandran,
No.350-A, Rosun Building,
Subramaniyampalayam Road,
G.N.Mills Post,
Coimbatore - 641 029. ... Petitioner in
W.P. Nos. 10599 & 10602 of 2012

M/s. Sri Varahiamman Steels (P) Ltd.,
Represented by its Managing Director
R.Ravichandran,
No.350-A, Rosun Building,
Subramaniyampalayam Road,
G.N.Mills Post,
Coimbatore - 641 029. ... Petitioner in
W.P. Nos. 10600 & 10601 of 2012

M/s. Shri V.N.Steels,
Represented by its Proprietor - M.Palanisamy,
No.6-A1, Selvapuram,
Annur Road, Mettupalayam,
Coimbatore - 641 301. .. Petitioner in W.P. No. 10603 of 2012

Vs

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

2. The Chairman,
Tamil Nadu Electricity Board,
No.144, Anna Salai,
Chennai - 600 002.

3. The Superintending Engineer,
Tamil Nadu Electricity Board,
Coimbatore Electricity Distribution
Circle (North),
Coimbatore - 641 012. ... Respondents in all W.Ps

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Prayer in W.P. No. 10599 of 2012: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the Third Respondent culminating in his impugned demand letter bearing Lr.No.SE/CEDC/N/CBE/AO/Rev/F.E.Tax/HT SC 237 D.184/12 DT.18.02.2012 issued to the Petitioner, quash the same as being violative of the Tamil Nadu Tax on Sale or Consumption of Electricity Act, 2003 and also unconstitutional.

Prayer in W.P. No. 10600 of 2012: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the Third Respondent culminating in his impugned demand letter bearing Lr.No.SE/CEDC/N/CBE/AO/Rev/F.E.Tax/HT SC 528 D.184/12 DT.18.02.2012 issued to the Petitioner, quash the same as being violative of the Tamil Nadu Tax on Sale or Consumption of Electricity Act, 2003 and also unconstitutional.

Prayer in W.P. No. 10601 of 2012: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the Third Respondent culminating in his impugned demand letter bearing Lr.No.SE/CEDC/N/CBE/AO/Rev/F.E.Tax/HT SC 196 D.184/12 DT.18.02.2012 issued to the Petitioner, quash the same as being violative of the Tamil Nadu Tax on Sale or Consumption of Electricity Act, 2003 and also unconstitutional.

Prayer in W.P. No. 10602 of 2012: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the Third Respondent culminating in his impugned demand letter bearing Lr.No.SE/CEDC/N/CBE/AO/Rev/F.E.Tax/HT SC 337 D.184/12 DT.18.02.2012 issued to the Petitioner, quash the same as being violative of the Tamil Nadu Tax on Sale or Consumption of Electricity Act, 2003 and also unconstitutional.

Prayer in W.P. No. 10603 of 2012: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the Third Respondent culminating in his impugned demand letter bearing Lr.No.SE/CEDC/N/CBE/AO/Rev/F.E.Tax/HT SC 204 D.184/12 DT.21.03.2012 issued to the Petitioner, quash the same as being violative of the Tamil Nadu Tax on Sale or Consumption of Electricity Act, 2003 and also unconstitutional.

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For Petitioners: Mr. S. Rajasekar
(in all W.Ps)

For R1 : Mr. P.D. Anbarasan
(in all W.Ps) Government Advocate

For R2 & R3 : Mr. M. Vijaya Mehanathan
(in all W.Ps)

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COMMON ORDER

The Petitioners filed these writ petitions, seeking for issuance of a Writ of Certiorari, to call for the records of the Third Respondent culminating in his impugned demand letter bearing Lr.No.SE/CEDC/N/CBE/AO/Rev/F.E.Tax/HT SC 237, 528, 196, 337 & 204, D.184/12 DT.18.02.2012 & 21.03.2012 issued to the Petitioners, quash the same as being violative of the Tamil Nadu Tax on Sale or Consumption of Electricity Act, 2003 and also unconstitutional.

2. Heard the learned counsel for the Petitioners and the learned Government Advocate for the First Respondent and also the learned counsel for the Second and Third Respondents.

3. In these writ petitions, respective demand notices have been issued to the Petitioners without complying with the mandatory requirement of Section 9 (1) & 9 (3) of the Tamil Nadu Tax on Consumption or Sale of electricity Act, 2003 (in short the TNTCSE Act, 2003).

4. It is noticed that under similar circumstances, a Division Bench of this Court, by an order dated 14.11.2011 in W.P. No. 26190 of 2011 in the case of "Supreme Cot-Spin Mills (India) Pvt. Ltd., Coimbatore District Vs The Secretary, Energy Department, Chennai - 600 009", has dealt the issue and held as under in Paragraph (3) which is extracted as under:-

> "3. The question as to whether the demand could be made for a period beyond four years prior to the date of demand and as to whether at the time of demand, the provision of Section 2(12) read with Section 3 relating to the net charge had been duly taken into consideration or not, are all matters not to be adjudicated at this point of time, for the simple reason that the impugned order is liable to be set aside on the sole ground that before such a demand is made, the petitioner-consumer has not be afforded an opportunity as required under Section 9 of the Act. On the said ground alone, we are inclined to interfere with the impugned order. Accordingly, the Writ Petition is allowed, the impugned order will be treated as a show cause notice and the petitioner is at liberty to make objections on all the available grounds including the grounds which we have referred to in this order, in a period of fifteen days from the date of receipt of a copy of this order before the third respondent. In the event of such objections are received, the third respondent shall consider the same and after affording opportunity to the petitioner, pass a fresh order of demand. We also

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make it clear that in the event the petitioner fails to make any objection within the period stipulated in this order, the third respondent is entitled to proceed further on the basis of the impugned demand. As we have directed that the impugned order shall be treated to be one of show cause notice, till such time final order is passed, in the event of receipt of objection as directed, the third respondent shall not disconnect the electricity service connection of the petitioner. We further make it clear that this order is with reference to the demand made in the impugned proceedings. With these observations and directions this Writ Petition is allowed. Consequently, M.P. Nos.1 & 2 of 2011 are closed. No costs."

This view was also followed by a single Judge of this Court in W.P. No. 1702 of 2012, vide order dated 25.01.2012 in the case of M/s.Thangavelu Textiles Mills Pvt. Ltd., Vs The Secretary, Energy Department, Chennai.

5. In the light of the above decisions, I am of the view that this is a fit case for remitting the case back to the Third Respondent to pass a fresh orders. Accordingly, the impugned orders are hereby quashed. However, the impugned order shall be treated as show cause notices. The Third Respondent shall issue a corrigendum if any within a period of thirty days from the date of receipt of a copy of this order. Thereafter, the Petitioners shall file a reply/representation within a period of sixty days irrespective of the fact whether a corrigendum is issued or not. The Third Respondent shall thereafter pass a speaking order in accordance with law within a period of Three months from date of filing of the representation of the Petitioners/after hearing the Petitioners.

6. With the above directions, the present Writ Petitions stand allowed by way of remand. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

arb

To

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

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2. The Chairman,
Tamil Nadu Electricity Board,
No.144, Anna Salai,
Chennai - 600 002.

3. The Superintending Engineer,
Tamil Nadu Electricity Board,
Coimbatore Electricity Distribution
Circle (North),
Coimbatore - 641 012.

+1cc to Mrs.R.Hemalatha, Advocate SR.4932
+1cc to the Government Pleader SR.5346

W.P. Nos. 10599 to 10603 of 2012
and
M.P. Nos. 1, 1, 1, 1, & 1 of 2012

SR(CO)
CB(19/03/2020)

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