IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2020

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No. 35050 of 2015
and
W.M.P. No. 24888 of 2018 &
M.P. Nos. 1 to 3 of 2015

Sakthi Sugars Limited,
Represented by Vice President - Legal & Taxation,
180, Race Course Road,
Post Box No.3775,
Coimbatore - 641 018. ...Petitioner

Vs

1. State of Tamil Nadu,
Represented by the Secretary to Government,
(A2) Energy Department,
Secretariat, Fort. St. Goerge,
Chennai - 600 009.

2. The Director of Electricity Tax,
O/o. Of the Chief Electrical Inspector to Govt.
Thiru-Vi-Ka Industrial Estate,
Chennai - 600 032.

3. The Electrical Inspector,
Plot No. 618, Karpaga Nagar,
10th Street, K.Pudur,
Madurai - 625 007. ...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the impugned Order bearing Letter No. 886/A2/2015-3 dated 31.08.2015 issued by the First Respondent and quash the same as being arbitrary and illegal and violative of the provisions of Tamil Nadu Tax on Consumption of Sale of Electricity Act, 2003.

For Petitioner : Mr. Rahul Balaji
For Respondents : Ms. Narmadha Sampath
Additional Advocate General
Assisted by
Mr. R.P. Prathap Singh
Government Advocate

ORDER

Heard the learned counsel for the Petitioner and the learned Additional Advocate General for the Respondents.

2. The Petitioner is aggrieved by the impugned Order dated 31.08.2015 passed by the Secretary to Government, (A2) Energy Department, Chennai. The operative portion of the impugned Order reads as under:-

> “3. According by this, you approached the Government as per Section 10(1) consideration:
>
> (a) Assessment barred by limitation under Section 9 of the E. Tax Act, 2003.
>
> (b) No tax payable on sale of electricity to TNEB through PTC as such sale is statutorily exempt and
>
> (c) the Electrical Inspector, the Second Respondent herein, has no power to carry out an assessment and raise a demand as such power is exclusively conferred on the First Respondent and has not been delegated.
>
> 4. The First Respondent, namely the Director of Electricity Tax, O/o the Chief Electrical Inspector to Government has made his submissions for the above grounds as follows:
>
> (a) The Appellant has not filed any return or paid any amount as tax from the date of enactment of the E.Tax Act, 2003. The details clled for by the Second Respondent were also not furnished inspite of several reminders. It is the onerous responsibility of the consumer as per Section 8(b) of the E. Tax Act, 2003 read with Rule 15 (1) to pay tax and to submit returns every month. Hence the assessment barred by limitation, stipulated under Section 9(3) of the E. Tax Act, 2003 is not applicable to this case.
>
> (b) As per the Power Purchase Agreement, it is obvious that Power Trading Corporation is merely a commercial entity, operating as an intermediary in the capacity of trader as per E. Tax Act, 2003 for the supply of electricity to the Tamil Nadu Generation and Distribution Corporation Ltd. Incidentally, the Tamil Nadu Generation and

Distribution Corporation Ltd., has to meet more cost for the energy purchased from the Power Trading Corporation instead of direct purchase from the petitioners company. As per section 3(1) (b) of the Tamil Nadu Tax on Consumption or Sale of Electricity (Amendment) Act, 2007, Electricity Tax is exempted on the sale of electricity to the Board, whereas sale of electricity to the Power Trading Corporation which involves commercial transaction between them is not exempted.

(c) As per Section 13 (1) (iii) of the E. Tax Act, 2003 "Electricity Tax Inspecting Officers may exercise such powers and perform such other functions as may be necessary for carrying out the purposes of this Act or the Rules made there under". Based on this, the Second Respondent ie., Electrical Inspector, Madurai has made an official communication to the Appellant about the non-payment of tax. Moreover, it is not all all feasible for his department, at the capacity of single post of Director of Electricity Tax, to make an assessment and send demand notice to each and every consumer (7300 High Tension Consumers, 16730 Wind Mill Generators and about 50,000 Generator Sets) throughout the State. Since this official communication is not send by invoking the provision of Section 9(1) of the E. Tax Act, 2003, in which the Director of Electricity Tax is conferred with the power to make the assessment, the situation of not issuing notices and providing an opportunity of being heard as alleged by the Appellant does not arise.

5. Final Order

(i) The Second Respondent i.e., Electrical Inspector, Madurai letter dated 23.5.2012 is in accordance with the E. Tax Act, 2003 & Rules made there under.

(ii) The Appellant company has violated the E. Tax Act, 2003 and Rules by non-payment of Electricity Tax."

3. The impugned Order has been filed by the First Respondent against the Order passed by the Second Respondent-Cheif Electrical Inspector, Chennai on 02.09.2014 bearing reference letter No.3040/A1/2014-1. The Petitioner has taken several grounds in their appeal against the Order passed by the Second Respondent on 02.09.2014.

4. However, in the impugned Order there is no discussion. It merely records the submission of the Petitioner and the

submission of the Respondents and rejects the appeal of the Petitioner. Since there is no reasoning given in the impugned Order, I am inclined to set aside the same and remit the case back to the First Respondent to pass a speaking Order within a period of three months from the date of receipt of a copy of this Order. It is needless to state that, the Petitioner shall be heard by the Respondents before passing such Order.

5. This Writ Petition is disposed accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
   State of Tamil Nadu,
   (A2) Energy Department,
   Secretariat, Fort. St. Goerge,
   Chennai - 600 009.

2. The Director of Electricity Tax,
   O/o. Of the Chief Electrical Inspector to Govt.
   Thiru-Vi-Ka Industrial Estate,
   Chennai - 600 032.

3. The Electrical Inspector,
   Plot No. 618, Karpaga Nagar,
   10th Street, K.Pudur,
   Madurai - 625 007.

+1 CC to Mr.B. Parthasarathy, Advocate sr 13513.
+1 Cc to Govt. Pleader sr 14272.

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PM (CO)
RPP (21/05/2020)
SP(16/07/2020)