BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**

**W.P.(MD)No.11288 of 2019**

R.Indira
Managing Director,
M/s.CP Spinning Mills Pvt. Ltd.,
Puliyampatti,
New Tharapuram Road,
Palani, Dindigul District. ... Petitioner

Vs

1. The Chairman,
   Tamil Nadu Electricity &
   Power Generation Corporation,
   Anna Salai, Chennai.

2. The Superintending Engineer,
   Tamil Nadu Electricity &
   Power Generation Corporation,
   Dindigul Distribution Circle,
   Angunagar Complex,
   Meenakshi Nayakkan Patti,
   Dindigul. ... Respondents

**PRAYER**: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to refund the amount of Rs.35,00,000/- collected in excess from the petitioner towards e-tax and peak hour charges with interest at the rate of 12% per annum based on the petitioner representation dated 02.07.2007 and 28.07.2018.

For Petitioner : Mr.B.Prabhalad Ravi
For Respondents : Ms.Parameshwari
for Mr.S.M.S.Johny Basha,
Standing Counsel

**ORDER**

This writ petition has been filed for a Mandamus seeking for a direction to the respondents to refund the amount of Rs.35,00,000/- collected by the respondents in excess from the petitioner towards e-tax and peak hour charges with interest at the rate of 12% per annum, based on the petitioner's representations dated 02.07.2007 and 28.07.2018 within the stipulated time to be fixed by this Court.

2.It is the case of the petitioner that the petitioner is running a spinning mill and the petitioner's spinning mill was denied e-tax exemptions and peak hour charges by the respondents citing G.O.Ms.No.31 and Electricity Amendment Act and only in such circumstances, the petitioner was forced to pay electricity service tax including arrears of tax and peak hour charges totally amounting to Rs.35,00,000/- to the respondents.

3.It is the case of the petitioner that similarly placed persons as that of the petitioner challenged the validity of the Electricity Tax Amendment Act 2007, in a batch of Writ Petitions, before the Hon'ble Principle Seat of this Court and the said writ petitions were allowed and a direction was issued to the respondent to levy tax on consumption and not on maximum demand charges from 16.06.2003 onwards. According to the petitioner, under the aforesaid order, if the respondent would apply tax on consumption of electricity alone and not on maximum demand, the respondent will have to refund the excess amount collected by the respondent from the petitioner towards e-tax from 1991 to 2003.

4.It is also stated in the affidavit filed in support of the Writ Petition that the Department filed an appeal before the Hon'ble Supreme Court and the Hon'ble Supreme Court by its order dated 15.05.2007 passed in Civil No.2551 of 2007 upheld the order passed by the Division Bench of this Court in the Principal Seat. It is also submitted by the petitioner that some of the similarly placed persons as that of the petitioner have also obtained refund from the respondents for the excess amount paid by them towards e-tax and peak hour charges. According to the petitioner, he is also entitled for similar refund. Under such circumstances, this Writ Petition has been filed.

5.A positive direction as sought for in this Writ Petition for refund of Rs.35,00,000/- allegedly paid by the petitioner towards e-tax and peak hour charges to the respondents cannot be granted by this Court. It is for the respondents to consider the request made by the petitioner for refund of amount towards e-tax and peak hour charges on merits and in accordance with law.

6.No prejudice will be caused to the respondents, if representations given by the petitioner for refund of the excess e-tax and peak hour charges allegedly collected by them is decided on merits and in accordance with law.

7.For the foregoing reasons, this Court directs the second respondent to consider the petitioner's representations dated 02.07.2007 and 28.07.2018 seeking refund of Rs.35,00,000/- allegedly collected by the respondents in excess from the petitioner towards e-tax and peak hour charges for electricity service connection at the petitioner's property and pass final orders on merits and in accordance with law, within a period of eight weeks, from the date of receipt of a copy of this order.

8.With the aforesaid direction, the Writ Petition stands disposed of accordingly. No costs.

Sd/-

Assistant Registrar (A.E)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

tsg

**Note:**In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

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PM(CO)
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