IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2021

CORAM :

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.9437, 9440 & 19189 of 2020
and
W.P.No.2214 of 2021

W.P.No.9437 of 2020:

M/s.SNN Textiles (P) Ltd.,
Sanampalayam,
Nagammapudur (PO),
Annur, Coimbatore – 641 653,
represented by its Managing Director,
S.N.Swaminathan ... Petitioner

vs.

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

2. Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
10th Floor, 144, Anna Salai,
Chennai 600 002
represented by its
Chairman and Managing Director.

3. The Chief Engineer/NCES,
2nd Floor, Eastern Wing,
144, Anna Salai,
Chennai 600 002.

4. The Superintending Engineer,
Non-Conventional Energy Sources,
TANGEDCO,
15, 15A, Kumaralingam Road,
Udumalpet.

5. The Accounts Officer/Revenue,
Superintending Engineer Office,
Coimbatore Electricity Distribution Circle/North,
TANGEDCO,
Coimbatore. ... Respondents

Prayer;Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorarified Mandamus, calling for the records of the 4th Respondent's impugned C.C.Bill No.9094300593072001, dated 01.07.2020, insofar as it relates to the levy of e-tax on the quantum of electricity generated from the Petitioner's solar power plants bearing SPG HTSC No.03-947-438-0029 and SPG HTSC No.03-949-438-0030 used for self-consumption to the tune of Rs.38,465/- alone in Serial No.22 'self generation tax' as illegal, arbitrary, without the authority of law and contrary to clause 12.1 of the Tamil Nadu Solar Energy Policy, 2019, issued by the 1st Respondent and consequently direct the 4th and 5th Respondents to give refund/adjustment of Rs.3,68,630/- collected from the Petitioner towards alleged levy of e-tax on the quantum of electricity generated from the Petitioner's solar power plant used for self-consumption from April 2019 to May 2020.

W.P.No.9440 of 2020:

M/s.Eveready Spinning Mills (P) Ltd.,
No.12, Jothi Theatre Road,
Tirupur – 641 601,
represented by its Joint Managing Director,
S.Chandrakumar ... Petitioner

vs.

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

2. Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
10th Floor, 144, Anna Salai, Chennai 600 002
represented by its
Chairman and Managing Director.

3. The Chief Engineer/NCES,
   2nd Floor, Eastern Wing,
   144, Anna Salai, Chennai 600 002.

4. The Superintending Engineer,
   Dindigul Electricity Distribution Circle,
   TANGEDCO,
   Dindigul.

5. The Accounts Officer/Revenue,
   Superintending Engineer Office,
   Tirupur Electricity Distribution Circle,
   TANGEDCO, Tirupur. ... Respondents

Prayer;Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorarified Mandamus, calling for the records of the 4th Respondent's impugned C.C.Bill No.9094500347072003, dated 04.07.2018, insofar as it relates to the levy of e-tax on the quantum of electricity generated from the Petitioner's solar power plant used for self-consumption to the tune of Rs.2,15,160/- alone in Serial No.22 'self generation tax' as illegal, arbitrary, without the authority of law and contrary to clause 12.1 of the Tamil Nadu Solar Energy Policy, 2019, issued by the 1st Respondent and consequently direct the 4th and 5th Respondents to give refund/adjustment of Rs.10,34,522/- illegally collected from the Petitioner towards alleged levy of e-tax on the quantum of electricity generated from the Petitioner's solar power plant used for self-consumption from January 2020 to May 2020.

W.P.No.19189 of 2020:

M/s.Cheran Spinning Mills Pvt. Ltd.,
No.5, Church Street, Opp. to Tiruppur Club,
Avinashi Road, Tiruppur – 641 603.
represented by its Authorized Signatory,
M.Selvaraj ... Petitioner

vs.

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

2. Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO),
10th Floor, 144, Anna Salai,
Chennai 600 002, represented by its
Chairman and Managing Director.

3. The Chief Engineer/NCES,
2nd Floor, Eastern Wing,
144, Anna Salai,
Chennai 600 002.

4. The Accounts Officer/Revenue,
Superintending Engineer Office,
Dindigul Electricity Distribution Circle,
TANGEDCO, Dindigul.

5. The Superintending Engineer,
Non-Conventional Energy Sources,
No.102, Dhali Road,
Udumalpet. ... Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorarified Mandamus, calling for the records of the 4th Respondent's impugned C.C.Bill No.9094500120112006, dated 07.11.2020, insofar as it relates to the levy of e-tax on the quantum of electricity generated from the Petitioner's solar power plants bearing SPG HTSC No.059494500036 used for self-consumption to the tune of Rs.61,857/- alone in Serial No.22 'self generation tax' quash the same as illegal, arbitrary, without the authority of law and contrary to clause 12.1 of the Tamil Nadu Solar Energy Policy, 2019, issued by the 1st Respondent and consequently direct the 4th and 5th Respondents to give refund/adjustment of the amount collected from the Petitioner towards alleged levy of e-tax on the quantum of electricity generated from the Petitioner's solar power plant used for self-consumption.

W.P.No.2214 of 2021:

M/s.Sri Parvathi Angalamman Mill Private Limited,
represented by its Managing Director,
No.8, A.K.E. Road,
No.2, Tiruchengode - 637 211,
Namakkal District. ... Petitioner

vs.

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

2. The Chairman,
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
No.144, Anna Salai, Chennai 600 002.

3. The Superintending Engineer,
Namakkal Electricity Distribution Circle,
Namakkal District. ... Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorarified Mandamus, calling for the records of the 3rd Respondent pertaining to the impugned Bill dated 04.12.2020, insofar as levy of Electricity Tax on the quantum of electricity generated from the Petitioner's solar power plant used for self-generation in Serial 22 of monthly bill, quash the same as illegal and contrary to the Tamil Nadu Solar Energy Policy, 2019, issued by the 1st Respondent and consequently direct the Respondents to consider the letters dated 20.02.2020 and 15.12.2020 sent by the Petitioner, thereby refunding the excess collected or adjust in future monthly CC Bills.

For Petitioner in W.P.No.2214 of 2021 :Mr.S.Sivanandam

For Petitioner in W.P.No.9437 and 9440 of 2020 and W.P.No.19189 of 2020 :Mr.R.S.Pandiyaraj

For Respondents in all W.Ps. :Mr.J.Ravindran, Addl. Advocate General assisted by Mr.L.Jai Venkatesh

C O M M O N O R D E R

Challenging the levy of e-tax on the quantum of electricity generated from their solar power plants used for self-consumption, which is contrary to the 1st Respondent's 'Tamilnadu

Solar Energy Policy 2012' issued through G.O.(Ms) No.121, dated 19.10.2012 and for a consequential direction to the Respondents seeking refund of e-tax amount illegally collected from them, Petitioners have come up with the above Writ Petitions.

2.As the issue involved in all the Writ Petitions is one and the same, cases are taken up for disposal by a common order.

3.It is stated by the Petitioners that, the Government of Tamilnadu announced its Solar Policy viz. 'Tamilnadu Solar Energy Policy 2012' during the year 2012 through G.O.(Ms.) No.121, dated 19.10.2012. Considering the environment friendly attributes of solar power, Petitioners decided to establish solar power project for captive consumption. It is further stated by the Petitioners that, as per clause 22.3 of the Tamilnadu Solar Energy Policy, 2012, the 1st Respondent exempted payment of electricity tax to the extent of 100% on electricity generated from solar power plant projects used for self-consumption/sale to utility, for a period of 5 years. The case of the Petitioners is that, when such is the position, levy of e-tax on the energy generated from their solar power plants for a period of five years, is without jurisdiction and against the Solar Policy of the 1st Respondent. Aggrieved by the levy of e-tax, though the Petitioners made representations to the Respondents, the same did not evoke any response. Hence, having no other alternative, they are before this Court with the above Writ Petitions.

4.Learned counsel for the Petitioners drew the attention of this Court to Clause 22.3 of the Tamilnadu Solar Energy Policy, 2012, whereby, exemption from payment of Electricity Tax is granted to the extent of 100% on electricity generated from solar power plant projects used for self-consumption/sale to utility for a period of five years. Thereafter, the 1st Respondent issued Tamilnadu Solar Energy Policy, 2019, whereby, clause 12.1 confers a right on the consumers to claim exemption on the payment of electricity tax for Solar Power Plants, to the extent of 100% on electricity generated from solar power projects used either for self-consumption or for sale to utility for a period of two years. He contended that, the present levy of e-tax has the effect of denying exemption granted by the 1st Respondent to the solar power developers in the State, such as the Petitioners herein and hence, the impugned orders in question, are clearly ultra vires the powers conferred by the 1st Respondent vide G.O.(Ms.) No.121, dated 19.10.2012.

5.On the other hand, learned Additional Advocate General appearing for the Respondents submitted that, though as per clause 12.1 of the Tamilnadu Solar Energy Policy, 2019, exemption from payment of Electricity Tax is granted to the extent of 100% on electricity generated from solar power plant projects used for self-consumption/sale to utility for a period of two years, the Tamilnadu Tax on Consumption or Sale of Electricity Act, 2003 empowers the TANGEDCO to act as an agent in the matter of collection of electricity Tax and that, as per the provisions of the said Act, a duty is cast on TANGEDCO to collect and remit the dues to the Government. However, TANGEDCO does not have any power to impose or exempt Electricity Tax as per the said Act.

6.Learned Additional Advocate General went on to state that, as per Section 14 of the Tamilnadu Tax on Consumption or Sale of Electricity Act, 2003, the Government, may, by Notification, make an exemption or reduction in rate in respect of the electricity tax payable, as per Tamilnadu Solar Energy Policy, 2012. However, he pointed out that, there is no specific Government Order granting exemption from payment of electricity tax on electricity generated from solar power plant projects and hence, the orders impugned in the above Writ Petitions, are perfectly valid.

7.Heard the learned counsel on either side and perused the material documents available on record.

8.On a perusal of the records, it is seen that, Tamilnadu Solar Energy Policy, 2019, came into effect on 04.02.2019. As per Tamilnadu Solar Energy Policy, 2012, exemption on payment of electricity tax on the energy generated from solar power plants used for self-consumption/sale to utility has been granted for a period of five years. While so, as per Tamilnadu Solar Energy Policy, 2019, the exemption on payment of electricity tax on the energy generated from solar power plants used for self-consumption/sale to utility is for a period of two years from the date of the said policy.

9.Though, according to the learned Additional Advocate General, there is no specific Government Order granting exemption from the payment of electricity tax on the energy generated from solar power plants insofar as Tamil Nadu Solar Energy Policy, 2019 is concerned, it is to be pointed out that, vide G.O.(Ms) No.121, dated 19.10.2012, the Government had introduced 'Tamilnadu Solar Energy Policy, 2012', which was introduced after it was drafted by an Expert Committee constituted by the Government. The Tamil Nadu Solar Energy Policy, 2019, is an off-shoot of Tamil Nadu Solar Energy Policy, 2012 and without the said policy, the present 2019 policy could not have been drafted. Therefore, the Tamil Nadu Solar Energy Policy, 2019 should be read in conjunction with Tamil Nadu Solar Energy Policy, 2012.

10.In the said backdrop, a perusal of clause 12.1 of Tamil Nadu Solar Energy Policy, 2019 reveals that 'consumer category solar energy will be exempted from electricity tax for two years from the date of this policy'. The crucial word in clause 12.1 is ''from the date of this policy". From the above, it is abundantly clear that, the Government was conscious of the exemption being given to the consumer category, who generate power for captive consumption/sale to utility and only with a view to encourage the same, exemption has been given. Merely because, a separate Government Order has not been issued, would not enable TANGEDCO to charge electricity tax on the consumption of electricity by captive consumers/sale to utility, as any such interpretation, if given by this Court, would render clause 12.1 otiose.

11.Therefore, this Court is of the considered opinion that, in view of the reasoning aforesaid, the orders impugned in the above Writ Petitions are not sustainable and the same are liable to be set aside. Accordingly, orders impugned herein are set aside and the Respondents/TANGEDCO are directed to adjust the amount, if any, already paid by the Petitioners towards payment of electricity tax.

12.Writ Petitions are allowed on the above terms. No costs. Consequently, connected W.M.P.Nos.11532, 11533, 11534 and 11535 of 2020; W.M.P.Nos.23775, 23778 and 23781 of 2020 and W.M.P.No.2512 of 2021 are closed.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

(aeb)

To:

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

2. The Chairman and Managing Director,
   Tamil Nadu Generation and Distribution
   Corporation Limited (TANGEDCO),
   10th Floor, 144, Anna Salai,
   Chennai 600 002.

3. The Chief Engineer/NCES,
   2nd Floor, Eastern Wing,
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   Chennai 600 002.

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5. The Accounts Officer/Revenue,
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   Coimbatore Electricity Distribution Circle/North,
   TANGEDCO, Coimbatore.

6. The Superintending Engineer,
   Dindigul Electricity Distribution Circle,
   TANGEDCO, Dindigul.

7. The Accounts Officer/Revenue,
   Superintending Engineer Office,
   Tirupur Electricity Distribution Circle,
   TANGEDCO, Tirupur.

8. The Accounts Officer/Revenue,
   Superintending Engineer Office,
   Dindigul Electricity Distribution Circle,
   TANGEDCO, Dindigul.

9. The Superintending Engineer,
Non-Conventional Energy Sources,
No.102, Dhali Road,
Udumalpet.

10. The Superintending Engineer,
Namakkal Electricity Distribution Circle,
Namakkal District.

+3cc to Mr.R.S.Pandiyaraj, Advocate Sr.63661

W.P.Nos.9437, 9440 & 19189 of 2020
and
W.P.No.2214 of 2021

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