IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.14182 of 2020
&
W.M.P.No.17654 of 2020
(Through Video Conferencing)

Mohan Sharma
S/o Late. T.S. Ramachandran ...Petitioner

Vs

1. The Chennai Metropolitan Water Supply and Sewerage Board
   Rep.by Senior Accounts Officer,
   No.1, Pumping Station, Chintadripet,
   Chennai- 600 002.

2. The Chennai Metropolitan Water Supply and Sewerage Board,
   New Area - 09 Office,
   No.1, Dr. Ranga Road,
   Chennai- 600 018. ...Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records and quash the order/notice of demand dated 16/09/2020 issued by the 1st respondent, namely, the Chennai Metropolitan Water Supply and Sewerage Board, No.1, Pumping Station Road, Chintadripet, Chennai- 600 002, in so far as it relates to the levy of surcharge for the period commencing from the 1st half of the year of 2001-2002 till the 1st half of year 2020-21 and the excess demand of water and sewerage tax made for the period from 1st half of the year 2001-02 till the 2nd half of the year 2003-04.

For Petitioner : Mr.Ravi

For R1 & R2 : Mr.R.K.Panneerselvam
Standing Counsel

ORDER

The petitioner had earlier challenged the demand notice dated 07.12.2010 bearing reference 2037 dated 07.12.2010 in W.P.No. 446 of 2011. Challenged to the above demand notice was primarily on the ground that the Corporation had wrongly determined the annual value of the property and demanded property tax from the petitioner which value was adopted by the respondent for demanding water and sewerage tax from the petitioner.

2.The petitioner had also challenged the property tax demand vide demand notice dated 20.03.2016 in W.P.No.445 of 2011.

3.The Petitioner had also filed a Statutory Appeal before the Taxation Appellate Tribunal against the demand notice dated 20.03.2019 of the corporation as the Tribunal was not sitting the petitioner had filed the above writ petition before this Court. The said writ petition was later closed as infructous by this Court vide its order dated 05.10.2016 after recording that the petitioner had paid the property tax with the following observations:-

> "3. When the matter is called, the learned counsel for the petitioner would submit that as per the demand, the tax amount has already been paid by the petitioner. Therefore, nothing survives in the writ petition."

4. It is submitted that the half yearly property tax payable by the petitioner was scaled down to Rs.3,302/- from Rs.14,093/- pursuant to the order of the Taxation Appellate Tribunal.

5. As far as the demand dated 07.12.2010 bearing reference No.2037 issued to the petitioner by the respondent was concerned in W.P.No.446 of 2011 was closed with the following observations:-

> ''3.Though, this writ petition has been filed to quash the demand bearing Ref.No.2037 dated 07.12.2010 issued by the respondent, as argued by the learned counsel for the petitioner, this Court is of the view that it would be suffice to direct the respondent to revise the water tax for the premises-in-question within a period of four weeks from the date of receipt of a copy of this Order and on receipt of the revised tax demand, the petitioner shall pay the said amount within the period mentioned in that demand.'

6.Pursuant to the aforesaid order of this Court, the respondents have now issued the impugned demand notice to the petitioner wherein the petitioner has also been called upon to pay the surcharge of Rs.1,92,252/- for the period in dispute starting from first half of 2001.

7. The learned counsel for the petitioner submits that the demand has been quantified for the first time in the impugned order dated 16.09.2020. Therefore, there is no justification in demanding surcharge from the petitioner as the earlier demand notice dated 07.12.2010 bearing reference No.2057 for the order to be closed.

8. Opposing the prayer, learned counsel for the respondents submits that the petitioner has not paid the tax and sewerage charges in time even on the admitted liability to the period and it is only for the first time after issuing of the demand notice dated 16.09.2020, the petitioner has paid the tax and therefore, for belated payment the petitioner is bound to pay surcharge.

9.Heard learned counsel for the petitioner and the learned counsel for the respondents.

10.The demand for surcharge from the petitioner can be demanded under provisions of the Chennai Metropolitan Water Supply and Sewerage Board Water and Sewerage Tax (Levy and Collection) Regulations, 1991. The above regulation has been framed under the exercise of the power under Sections 34, 35 and 36 and Sub-Section 1 and Clause J, Sub-Clause 2 of the aforesaid Rule 1978.

11. As per the Regulation 10, the respondent/board can levy surcharge at the rate specified from time to time for the belated payment of rate water and sewerage tax for the period between 01.10.1997 up to 31.03.2003, at the rate of 2% per annum and at 1.25% per month.

12.Thereafter, the assessee had preferred an appeal for revision of annual value before the Taxation Appellate Tribunal. The Tax/charge are payable at the revised rate within 30 days from the date of receipt of a copy of this order or from the date of intimation of the demand from the respondent/board whichever is earlier.

13.In this case admittedly, the petitioner has challenged the levy in W.P.No.446 of 2011 which came to be interfered by the aforesaid order. Pursuant to which the tax payable by the petitioner was revised only if there was a delay in payment of the tax as determined by the respondent, the surcharge under Regulation 10 can be justified in Regulation 10 is reproduced below:-

> "10. The payment of water and sewerage tax shall be made as specified in the demand notice, water and sewerage tax card or as intimated by the Board from

time to time.

(i) The Board shall levy surcharge at the rates specified from time to time for the belated payment of water and sewerage tax. Surcharge is being levied at 2 per cent per month on recurring basis with effect from 01.10.1997 up to 31.03.2003 and 1.25 per month from 01.04.2003 onwards. In respect of appeal preferred by the assessees for revision of Annual Value, the allowable time for payment at revised rate would be 30 days from the date of receipt of order or from the date of intimation from the Board whichever is earlier."

14.Since the petitioner has paid the amount immediately after the demand notice quantifying the water and sewerage tax, the question of imposing the surcharge does not arise.

15.Accordingly, this Writ Petition stands allowed with the above observations. Consequently, connected writ miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

nst/jas

To

1. The Senior Accounts Officer,
   The Chennai Metropolitan Water Supply and Sewerage Board
   No.1, Pumping Station, Chintadripet,
   Chennai- 600 002.

2. The Chennai Metropolitan Water Supply and Sewerage Board,
   New Area - 09 Office,
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SS(CO)
RGA(24/01/2022)