IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 18.01.2021	DELIVERED ON 17.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.NO.19104 OF 2020
AND
W.M.P.NOS.23676 & 23677 OF 2020

M/s.Chennu Amman Aalloy Pvt Ltd.,
HTSC272, No.379-380, Mariamman Kovil Street,
Peelamedu Pudur, Coimbatore
Rep. By its Authorized Signatory, P.Moorthy
...Petitioner

Vs.

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

2. The Chairman and Managing Director,
   TANGEDCO Ltd.,
   144, Anna Salai, Chennai – 600 002.

3. The Superintending Engineer,
   TANGEDCO,
   Palladam Electricity Distribution Circle,
   Palladam.
...Respondents

Prayer:

Writ petition filed under Article 226 of the Constitution of India seeking issuance of writ of mandamus, forbearing the 2nd and 3rd respondents, from demanding and collecting the tax on maximum demand charges from the petitioner in H.T.Sc.No. 272, as per the orders of the Hon'ble Supreme Court of India, New Delhi on 31.08.2012 in SLP(C) No.24993 of 2012 and 25522 of 2012 etc. batch in M/s. Sri Krishna Alloys & Etc., Vs. Union of India and others etc.

For Petitioner : Mr.R.S.Pandiyaraj

For Respondents: Mr.N.Damodaran, Senior Counsel

O R D E R

This writ petition is filed for a mandamus forbearing the 2nd and 3rd respondents from demanding and collecting the tax on maximum demand charges from the petitioner in H.T.Service Connection No. 272, as per the orders of the Hon'ble Supreme Court of India in SLP(C) No. 24993 of 2012 and 25522 of 2012 etc., batch dated 31.08.2012 in M/s. Sri Krishna Alloys & Etc., Vs. Union of India and others etc.

2. The petitioner is a manufacturer of Yarn related products having High Tension Service Connection in H.T.SC.No. 272 with a maximum demand of 5,500 KVA. As per the Tamil Nadu Electricity (Tax and Consumption) Act, 1962, a separate tax has been provided for the consumption of electricity as electricity tax. Subsequently, in the year 1979, the electricity tax was merged with the basic tariff vide G.O.MS.No. 787, Public Works Department dated 30.04.1979. After this revision and levy of tax, all the electricity levies including Electricity Tax are merged and thereafter, no separate Electricity Tax was levied with effect from 01.05.1979. In the year 2003, vide G.O.MS.No. 49, Energy Department, the Government has enacted Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003 (Act 12 of 2003) and as per Section 3 of the said Act, every licensee and every person other than a licensee shall pay tax to the Government every month on the electricity sold or consumed. This provision has been challenged before this Court in a writ petition and the same was dismissed. As against the said writ petition, a writ appeal was also filed. Both the writ petitions and writ appeals were dismissed.

3. Aggrieved by the same, a Special Leave Petition was filed before the Hon'ble Supreme Court wherein, the Hon'ble Supreme Court by order dated 15.05.2007 in a batch of cases partly allowed the appeals with the following observations:-

> 153. We have noticed hereinbefore that the legislative field carved out by reason of Entry 53 of List II and Entry 38 of List III of the Seventh Schedule of the Constitution of India operate in different fields. The 1948 Act was enacted to provide for the rationalization of the production and supply of electricity, and generally for taking measures conducive to electrical development.
>
> "154. Tariff is framed by the State Electricity Boards under Sections 46 and 49 of the 1948 Act. They may have different considerations for imposition of

tariffs. We have noticed hereinbefore, the definition of 'tariff' in BSES Ltd. (supra), whereupon Mr. Andhyarujina himself relied upon. A tax on tariff and a tax on consumption or sale of electrical energy, thus, operate in different fields. If it is to be held that the power of the Electricity Regulatory Commission to fix tariff does not include a power to impose tax, axiomatically, the same principle would apply also when a tax is sought to be levied on consumption or sale of electrical energy and not on tariff. Power of taxation, as noticed hereinbefore, operates differently from power to impose tariff. A tariff validly framed by the licensee, in exercise of its statutory power, may lay down a higher rate on the sale of power to various types of consumers having regard to the necessity to maintain infrastructure. A maximum demand charge, when levied, does not contemplate a sale or consumption of electrical energy. Maximum tariff is provided for various reasons. It has been noticed by this Court in IPI Steel Ltd. (supra)....

161. The reason for insertion of such an explanation is to get over the decision of this Court in State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd. [1959 SCR 379] wherein it has been held that tax cannot be imposed on sale of materials transferred in execution of a works contract...

169. Our attention has been drawn to a simple bill, from a perusal whereof it appears that although permitted MD was 350 KVA, the recorded demand being 144 KVA, electricity tax was charged only on the basis of 144 KVA and not on the basis of 350 KVA. Keeping in view the fact that the maximum demand postulates something other than actual delivery of electricity, the question of imposition of any tax thereupon does not arise. The decision of this Court in M/s. Northern India Iron & Steel Co. (supra) did not assign any reason. The said decision did not take into consideration the provisions of Article 366 (12) of the Constitution of India or the effect of Entry 53 of List II of the Seventh Schedule of the Constitution of India. It has also not been taken into consideration that the State cannot impose tax only because the State Electricity Board would be entitled to levy tax on certain services. It would bear repetition to state that the concept of tariff and tax is different. Whereas tariff would include a list of charges, the tax must be on actual basis. It is also not the case nor can it be that imposition of tax on actual sale or

consumption of electrical energy was impossible keeping in view of the particular fact situation. As noticed hereinbefore, two different meters are installed; one, for the purpose of actual consumption of electrical energy and another being a trivector, the same merely records the maximum demand."

4. To get over this judgment, the Government has made an amendment to the Act 12 of 2003 and amended various provisions of the Act and thereafter, the respondents started demanding tax on maximum demand charges apart from the tax on comsumption charges. This issue is also challenged before the Hon'ble Supreme Court in SLA(Civil) Nos. 24685 & 24719 of 2012 and the Hon'ble Apex Court by order dated 04.09.2012 was pleased to grant an order of interim injunction restraining the respondents from taking any coercive steps for disconnecting supply of electricity to the petitioner's premises subject to the petitioners' paying all the charges / dues except the tax calculated on basis of maximum demand.

5. Mr.N.Damodaran, learned Standing Counsel, who took notice on behalf of the respondents would submit that by following the orders of the Hon'ble Supreme Court, a Division Bench of this Court has disposed of issue on the following terms:-

"In view of the issue raised in the present writ appeal / writ petition being settled against the appellant / petitioner in terms of the Division Bench judgment in W.P.Nos. 159 of 2008 etc.(Batch) decided on 15.06.2012 and thereafter, the Hon'ble Supreme Court having entertained the Special Leave Appeals against the said judgment bearing Special Leave Appeal (Civil) Nos. 24685 to 24719 of 2012 dated 31.08.2012, with an interim direction restraining the respondent from taking any coercive steps for disconnecting the supply of electricity to the premises of the petitioner therein, subject to that petitioner paying all the charges / dues except tax calculated on the basis of maximum demand, it is agreed that the present writ appeal and writ petition be disposed of in terms aforesaid, with the agreement that the ultimate fate of the matter before the Hon'ble Supreme Court would also govern the present appellant and the writ petitioner and the same interim order would continue to enure for the benefit of the writ appeal and writ petitioner during the pendency of the Special Leave Appeals.

2. Writ Appeal and Writ Petition, accordingly,

stand disposed of. No costs. Consequently, W.A.M.P.No. 969 of 2004 stands closed."

6. On the issue of collecting tax on maximum demand charges from the petitioner in the High Tension Service Connection, the Hon'ble Supreme Court and a Division Bench of this Court has already issued a direction, restraining the respondents from taking any coercive steps for disconnecting supply of electricity to the premises of the petitioner subject to the petitioner paying all the charges / dues except tax calculated on the basis of maximum demand.

7. On the above terms, this writ petition is allowed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To:

1. The Secretary to Government,
   Energy Department, Fort. St.George,
   Chennai - 600 009.

2. The Chairman and Managing Director,
   TANGEDCO Ltd.,
   144, Anna Salai, Chennai - 600 002.

3. The Superintending Engineer,
   TANGEDCO,
   Palladam Electricity Distribution Circle,
   Palladam.

+1cc to Mr.R.S.Pandiyaraj, Advocate, S.R.No.10072

W.P.No.19104 of 2020
and
W.M.P.Nos.23676 & 23677 of 2020

BR(CO)
CS/18/03/2021