IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2022

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

WP NOS.1181 AND 1182 OF 2015

M/s.Jai Hind Wire Rods Mills Ltd.,
H.T.Sc.No.137
12/1-A, Nattamangalam Road,
Amanikondalampatty, Salem - 636 040.
Rep. by its Managing Director
G.E.Govindaraj ...Petitioner in WP No.1181/2015

M/s.Jai Hind Wire Rods Mills Ltd.,
H.T.Sc.No.154
12/1-A, Nattamangalam Road,
Amanikondalampatty, Salem - 636 040.
Rep. by its Managing Director
G.E.Govindaraj ...Petitioner in WP No.1182/2015

Vs.

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

2.Tamil Nadu Generation and
Distribution Corporation Ltd.,
(TANGEDCO)
Rep. by its Chairman and Managing Director
144, Anna Salai,
Chennai - 600 002.

3.The Superintending Engineer
TANGEDCO Ltd.,
Salem Electricity Distribution Circle
Salem - 636 014. ...Respondents 1 to 3 both WPs'

PRAYER: These Writ Petitions have been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the 3rd respondent in Lr.No.SE/SEDC/AOR/HT/A/F.HT SC137/D515/2014 dated 31.12.2014 and Lr.No.SE/SEDC/AOR/HT/A1/F.HTSC154/D511/2014 dated 26.12.2014 respectively, and quash the same as illegal, arbitrary and untenable under law and against the directions of this Court and Section 9(3) of the Tamil Nadu Tax on Consumption of Electricity Act, 2003.

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|---|---|---|
| For Petitioner | : | Mr.S.P.Parthasarathy for Mr.K.Seshadri |
| For Respondent-1 (in both WPs') | : | Mr.M.Rajendiran Additional Government Pleader |
| For Respondents 2&3 (in both WPs') | : | Mr.Abul Kalam Standing Counsel |

COMMON ORDER

Challenging the order dated 31.12.2014 and 26.12.2014 respectively directing the petitioners to pay the electricity tax arrears, the petitioner is before this Court.

2.The petitioner in both the writ petitions are one and the same. The petitioner is a continuous process industry involved in the manufacture of Steel ingots having High Tension Electricity Supply in H.T.Sc.Nos.137 and 154. Till January 2012, the second and third respondents were collecting tax on electricity based on the net charges payable by the H.T. consumers. The second and third respondents were deducting the amounts allowed towards rebate on night shift consumption and incentive for maintaining higher power factor besides meter charges, interest on delayed payment, fuel surcharge and fuse of call charges and reconnection charges. While so, the second respondent issued a Circular Memo dated 05.07.2010 to calculate the electricity tax before deduction of incentive allowed for power factor and night hour rebate in respect of H.T. service and before deduction of incentive allowed for high power factor in respect of LTCT/LT Services. Subsequently, the third respondent, on 09.01.2012, demanded arrears of electricity tax and directed the petitioner to pay the same within 15 days from the date of receipt of the said demand notice. Challenging the same, the petitioner has preferred a Writ Petition in W.P.No.1947 of 2012 before this Court on the ground that no assessment shall be made after the expiry of four years as contemplated under Section 9(3) of the Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003. The said Act was amended in 2007 as Tamil Nadu Tax on Consumption of Sale of Electricity Amendment Act, 2007, being Tamil Nadu Act 38 of 2007.

3.It is submitted by the learned counsel for the petitioners that Tamil Nadu Act 38 of 2007 was struck down by the Hon'ble Supreme Court and the respondent passed an Validation Act 12 of 2007 and challenge to that Act is still pending before the Hon'ble Supreme Court. During the pendency of the Special Leave Petitions, the Hon'ble Supreme Court in M/S. SRI KRISHNA ALLOYS& ETC VS. UNION OF INDIA & ORS, ETC., SPECIAL LEAVE TO APPEAL (CIVIL) NOS. 24685-24719 OF 2012 DATED 31.08.2012 has granted interim order on the following lines:

> "Permission to file SLP in SLP(C) 15217 of 2012 is granted.
>
> Issue notice returnable in four weeks.
>
> In the meantime, the respondents are restrained from taking any coercive steps for disconnecting supply of electricity to petitioner's premises, subject to the petitioner's paying all the charges/dues except the tax calculated on the basis of maximum demand"

4.Further, a Division Bench of this Court in M/S.SRI KRISHNA ALLOYS AND OTHER VS. TAMIL NADU STEEL RE-ROLLERS COUNCIL AND OTHERS (WA NO.547 OF 2004 AND WP NO.25851 OF 2003 DATED 02.06.2015] disposed of the Writ Appeal and Writ Petition pending before it subject to the outcome of the Special Leave Appeals pending before the Hon'ble Supreme Court. The relevant portions or the judgment is extracted hereunder:

> "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) No.15217 of 2012 dated 31.08.2012, with an interim direction restraining the respondents therein 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 writ

petitioner and the same interim order would continue to enure for the benefit of the writ appellant 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.”

5.In similar circumstances, my Brother Justice S.M.Subramaniam has followed the order passed in W.P.No.19104 of 2020 dated 17.02.2021 and disposed of W.P.Nos.13694 to 13696 of 2016 by order dated 29.11.2021. The relevant portion of the said judgment is extracted hereunder:

> "2.It is brought to the notice of this Court that a batch of Special Leave petitions are pending before the Hon'ble Supreme Court and the Hon'ble Supreme Court has passed an interim order dated 31.08.2012, restraining the respondents from taking any coercive steps for disconnecting supply of electricity subject to the petitioners paying all the charges/dues except the tax calculated on the basis of maximum demand.
>
> 3. This Court had an occasion to deal with a similar issue in WP No.19104 of 2020 and final orders were passed on 17.02.2021. The relevant portions in the order are extracted hereunder :~
>
>> "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.”

> 4.The above order will also enure to the benefit of the petitioners. In view of the same, all these present writ petitions are disposed of in terms of the interim order passed by the Hon'ble Supreme Court and the subsequent Hon'ble Division Bench order passed in W.A No.547 of 2004 dated 02.06.2015. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.”

6.The present writ petitions are also with respect to the very same issue, which is subjudice before the Hon'ble Supreme Court. In view of the same, the present writ petitions are also disposed of subject to the outcome of the Special Leave Petition pending before the Hon'ble Supreme Court. The Interim order granted by the Hon'ble Supreme Court in C.C.No.15217 of 2012 dated 31.08.2012 shall continue to operate in favour of the petitioner. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

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Sub-Assistant Registrar

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To

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

2.The Chairman and Managing Director
Tamil Nadu Generation and Distribution Corporation Ltd.,
(TANGEDCO)
144, Anna Salai, Chennai - 600 002.

3.The Superintending Engineer
TANGEDCO Ltd.,
Salem Electricity Distribution Circle
Salem - 636 014.

+1cc to the Government Pleader, S.R.No.11094

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PVS(CO)
RN(01/06/2022)