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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2022

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THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

W.P.No.16177 of 2008
and M.P.No.1 of 2008

Gobi Textiles Limited,
G.D.Road, Kolappalur,
Gobi - 638 452
Rep. by its Director P.S.Muthuvelappan .... 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,
   Tamil Nadu Electricity Board,
   800, Anna Salai, Chennai - 2.

3. The Superintending Engineer,
   Gobi Electricity Distribution Circle,
   Gobi, Erode District. .... Respondents

PRAYER: The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration, declaring the Tamil Nadu Tax on Consumption or Sale of Electricity Amendment Act,

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2007 (Tamil Nadu Act 38 of 2007) as ultra vires, illegal and unconstitutional as violative of the law laid down by the Hon'ble Apex Court in the decision reported in 2007 (3) CTC 273 and invalid as it has not erased the defects pointed out by the Hon'ble Supreme Court in so far as the petitioner is concerned and consequently direct the respondents to refund to the petitioner the electricity tax so far collected from the petitioner on Maximum Demand Charges, Peak Hour Charges and Power Factor Surcharge.

For Petitioners : Mr.M.Saravanakumar
for M/s.Palani Selvaraj

For Respondents : M/s.L.Jai Venkatesh
Standing Counsel

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ORDER

The present Writ Petition has been filed for the issuance of a Writ of Declaration, to declare the Tamil Nadu Tax on Consumption or Sale of Electricity Amendment Act, 2007 (Tamil Nadu Act 38 of 2007) as ultra vires, illegal and unconstitutional as violative of the law laid down by the Hon'ble Apex Court in the decision reported in 2007 (3) CTC 273 and invalid as it has not erased the defects pointed out by the Hon'ble Supreme Court in so far as the petitioner is concerned and consequently, direct the

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respondents to refund to the petitioner the electricity tax so far collected from the petitioner on Maximum Demand Charges, Peak Hour Charges and Power Factor Surcharge.

2. It is submitted by the learned counsel for the petitioner that Tamil Nadu Act 38 of 2007 was struck down by the Hon'ble Supreme Court and the respondents passed a Validation Act 12 of 2007 and challenge to that Act is still pending before the Hon'ble Supreme Court. During the pendency of the same, the Hon'ble Supreme Court, in the case of ***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) .. Cc 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"***

3. Further the Hon'ble Division Bench of this Court, in the case

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of ***M/s. Sri Krishna Alloys & other Vs. Tamil Nadu Steel Re-Rollers Council & Ors,*** by its judgment dated 02.06.2015, had disposed of the Writ Appeal, and the Writ Petitions pending before it subject to the outcome of the Special Leave Appeals pending before the Hon'ble Supreme Court. The relevant portions of the judgment are 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) No15217 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,***

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W.A.M.P.No.969 of 2004 stands closed."

4. In a similar circumstance, 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 the Writ Petition ***Nos.13694 to 13696 of 2016*** by order ***dated 29.11.2021.*** The relevant portions are 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***

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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."

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> ***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."***

In view of the above orders, the present Writ Petition is 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. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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M. GOVINDARAJ, J.

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   Chennai - 600 009.

2. The Chairman,
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