IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2022

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**THE HONOURABLE MR.JUSTICE C.SARAVANAN**

W.P.Nos.39615 & 39616 of 2006
and
M.P.No.1 of 2006

M/s.Salem Kandaa Textiles Mills (P) Ltd,
Rep by the Managing Director,
50, New Trichy Branch Road,
Gugai, Salem – 636 006. ... Petitioner in both W.Ps.

Vs

1.The Union of India,
Rep by the Secretary,
Department of Energy,
New Delhi.

2.The State of Tamil Nadu,
Rep by the Secretary,
Department of Energy,
Fort St.George, Chennai – 600 009.

3.The Tamil Nadu Electricity Board,
Rep by the Chairman,
800, Anna Salai,
Chennai – 600 002.

4.The Superintending Engineer,
TNEB-Salem Distribution Circle,
Salem – 636 106.

5.The Tamil Nadu Electricity
Regulatory Commission,
Rep by the Secretary,
17, Third Main Road,
Seethammal Colony, Alwarpet,
Chennai – 600 018. ... Respondents in both W.Ps.

Prayer in W.P.No.39615 of 2006: Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration, declaring the clause 20.02 of the Terms and Conditions of supply of electricity of Tamil Nadu Electricity Board Levying belated payment of surcharge 1.5 per cent per month (18% per annum) is arbitrary, unresonable discriminatory violative of Article 14 and 19(1)(g) of Constitution of India for the account years 2002-03 to 2005-06 and consequentially direct not to collect BPSC pursuant to Lr.No.SE/SEDC/AOR/HT/A.3/F.Case File/SC No.145/06, dated 04.10.2006 issued by the fourth respondent.

Prayer in W.P.No.39616 of 2006: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, call for the records of the fourth respondent in Lr.No.SE/SEDC/AOR/HT/A.3/F.Case file/SC.No.145/06 dated 04.10.2006 and quash the same as illegal so far as demand of BPSC is concerned.

For Petitioner : Mr.S.Rajesh
(in both W.Ps) for Mr.S.Sivanandham

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| For Respondents (in both W.Ps) | : No Appearance for R1<br>Mr.P.Sathish<br>Additional Government Pleader for R2<br>Mr.Abdul Kalam<br>for R3 to R5 |

## COMMON ORDER

By this common order, both the writ petitions are being dismissed.

2.The petitioner herein has challenged the impugned demand notice dated 04.10.2006 seeking to demand a tax of Rs.2,95,066/- as belated payment surcharge since the validity of levy of Electricity Tax under the provisions of the Tamil Nadu Electricity (Taxation on Consumption) Act, 1991 as amended by Act 32 of 1991.

3.It appears that the petitioner had earlier filed a writ petition before this Court in a batch of Writ petition challenging the validity of Electricity Tax. The writ petition was dismissed. Further, an Appeal was preferred by the petitioner in W.A.No.531 of 2004 which also came to be dismissed along with a batch on 13.07.2006.

4.It is further submitted that the issue was further appealed before the

Hon'ble Supreme Court and the Hon'ble Supreme Court has upheld the levy.

5.The learned counsel for the petitioner submits that the issue is no longer *res integra* and is covered by the decision of the Hon'ble Division Bench of this Court in the case of **M/s.Sri Krishna Alloys** Vs. **Tamil Nadu Electricity Board, Rep by its Chairman & Others** rendered on 24.04.2008. It is submitted that the Hon'ble Division Bench of this Court has referred to the decision of the Hon'ble Supreme Court in the case of **Kashyap Zip Industries** Vs. **Union of India** reported in 1993 (64) E.L.T. 161 and **Style (Dress Land) Vs. Union Territory, Chandigarh** reported in 1999 (7) S.C.C 89. A specific reference is made to Para 13 of the decision of the Hon'ble Division Bench of this Court in the case of **M/s.Sri Krishna Alloys** Vs. **Tamil Nadu Electricity Board, Rep by its Chairman & Others,** rendered on 24.04.2008.

6.The learned Additional Government Pleader for the second respondent on the other hand would submit that the writ petition is devoid of merits and is liable to be dismissed. It is submitted that question of declaring sub clause 20.02 of the Tamil Nadu Electricity Supply Code does not arise, as the petitioner has not only challenged the levy of Electricity Tax under the provisions of the Tamil Nadu Electricity (Taxation on Consumption) Act, 1991 and had suffered an adverse order. Surcharge is consequential and therefore surcharge is to be paid. Hence, there is no error in the impugned demand notice dated 04.10.2006.

7.I have considered the arguments advanced by the learned counsel for the petitioner, the learned Additional Government Pleader for the second respondent and the learned Counsel for the third to fifth respondents.

8.The levy of interest at 1.5% per month has been reduced to 1% in terms of the aforesaid decision. Under these circumstances, I am inclined to dismiss this writ petition in W.P.No.39615 of 2006 challenging the vires of the Clause 20.02 of the Tamil Nadu Electricity Supply Code. As far as imposition of surcharge at 1.5% is concerned, I am inclined to remit the case back to the 4th respondent to re-quantify the amount. The petitioner is therefore directed to pay the surcharge at 1% immediately for a period of delay within a period of 30 days from the date of receipt of a copy of this order. In case, the petitioner fails to pay the surcharge at 1% per month as has been ordered by the Hon'ble Division Bench of this Court in **M/s.Sri Krishna Alloys** Vs. **Tamil Nadu Electricity Board, Rep by its Chairman & Others,** the 4th respondent is at liberty to initiate appropriate recovery proceedings under the provisions of the Revenue Recovery Act, 1864.

9. Accordingly, W.P.No.39615 of 2006 is dismissed and W.P.No.39616 of 2006 is disposed of with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

**28.09.2022**

Index: Yes/ No
Internet: Yes/No
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**C. SARAVANAN, J.**

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