IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2022

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

W.P.No.20933 of 2011
&
M.P.No.1 of 2011

M/s. Shri Mookambika Spinning Mills Ltd
Unit II
VadaMadurai
Vedasandur
Dindigul District
Rep by its Chief General Manager
Mr.S.M.Deivanayagam ... Petitioners

Vs.

1.The State of Tamilnadu
rep by its Secretary to Government
Energy Department, Fort St. George,
Chennai-600 009.

2. Tamil Nadu Electricity Board
rep by its Chairman
800, Anna Salai
Chennai-600 002
3.The Director of Electricity Tax
O/o of the Chief Electricity Inspector to Government
Thiru-Vi-Ka Industrial Estate
Chennai-32 ... Respondents

PRAYER: The Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration declaring that the Provisions of the Tamil Nadu Tax on consumption of Sale of Electricity Amendment Act, 2007 being Tamil Nadu Act 38 of 2007 as unconstitutional, beyond the legislative competence, and violative of Article 14 of the Constitution of India.

For Petitioners : Mr.S.N.Umapathi

For Respondents : Ms.N.Senthil Selvi, Govt.Adv for R1
Mr.L.Jai Venkatesh, Standing Counsel for R2 and 3.

O R D E R

The petitioner has filed a writ of declaration to declare the provisions of Tamil Nadu Tax on Consumption of Sale of Electricity Amendment Act, 2007 being Tamil Nadu Act 38 of 2007 as unconstitutional.

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 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 Petition 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) .. C.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"

3. Further the Hon'ble Division Bench of this Court in the case of M/s. Sri Krishna Alloys & other vs. Tamil Nadu Steel Re-Rollers Council & Ors by judgment dated 02.06.2015 disposed of the Writ Appeal and Writ Petitions 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) 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, W.A.M.P.No.969 of 2004 stands closed."

4. In a 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 the Writ Petitions No.13694 to 13696 of 2016 by order dated 29.11.2021. The relevant portion 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."

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

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government
State of Tamilnadu
Energy Department
Chennai-600 009

2.The Chairman
Tamil Nadu Electricity Board
800, Anna Salai
Chennai-600 002

3.The Director of Electricity Tax
O/o of the Chief Electrical Inspector to Government
Thiru-Vi-Ka Industrial Estate
Chennai-32.

+1cc to Mr.N.Umapathi, Advocate SR.No.8574

W.P.No.20933 of 2011
&
M.P.No.1 of 2011

AK II(CO)
GN(04/05/2022)