IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.11.2022

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.27277 of 2013 & W.M.P. No.25355 of 2018 &
W.P.Nos.15914 and 16866 of 2017 &
W.M.P.Nos.17220 to 17222 of 2017, 18336 to 18338 of 2017

M/s Ashok Leyland Limited,
formerly Ennore Foundries Ltd.,
rep. By its Authorised signatory,
Kathivakkam High Road,
Ennore, Chennai – 57 ...Petitioner in W.P.No.27277 of 2013

[Amended vide order dated
16.08.2022 made in W.M.P.
No.19678 of 2022 in W.P.
No.27277 of 2013 by MSQJ]

M/s Ponni Sugars (Erode) Limited,
rep. By its Deputy General Manager
(Accounts), ESVIN House,
13, Rajiv Gandhi Salai (OMR)
Perungudi, Chennai – 600 096 ...Petitioner in W.P.No.15914 of 2017

M/s JSW Steel Limited
rep. By its Vice President (F&A),
Salem Works:
P.O.Pottaneri, Mecheri,
Mettur Taluk, Salem – 636 453 ...Petitioner in W.P.No.16866 of 2017

Vs.

1. State of Tamilnadu,
rep. By the Secretary to Government,
Energy Department,
Secretariat, Fort St.George,
Chennai – 600 009

2. The Director of Electricity Tax,
o/o the Chief Electrical Inspector to Government,
Thiru-vi-ka Industrial Estate,
Chennai – 600 032

3. The Electrical Inspector,
58, Tiruvananthapuram Road,
Opp to V.O.C.Ground,
Palayamkottai,
Tirunelveli – 627 002 ... Respondents in W.P.No.27277 of 2013

1. Tamilnadu Generation and
Distribution Corporation Ltd.,
rep. By its Chairman and Managing
Director, 144, Annasalai,
Chennai – 600 002

2. The Electrical Inspector,
LMR Arcade, II Floor,
Salem Main Road,
Namakkal – 637 001

3. The Chief Electrical Inspector,
Thiru-vika Industrial Estate,
Guindy, Chennai – 600 032

4. Additional Chief Secretary to the
Government, Energy Department,
Chennai – 600 009 ...Respondents in W.P.No.15914 of 2017

1. State of Tamilnadu,
rep. By the Secretary to Government,
Energy Department,
Secretariat, Fort St.George,
Chennai – 600 009

2. The Chief Electrical Inspector to Government (A/c)
Thiru-vi-ka Industrial Estate,
Chennai – 600 032

Prayer in W.P.No.27277 of 2013

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records of the impugned demand notice of 3rd respondent in Letter No.3024/EI/TIN/201 dated 19.08.2013 and quash the same as being violative of the provisions of Tamilnadu Tax on Consumption of sale of Electricity Act, 2003 and the exemption notifications in G.O.Ms.No.25 dated 24.03.2008, G.O.Ms.No.106 dated 04.09.2008, G.O.Ms.No.79 dated 14.09.2009, G.O.Ms.No.106 dated 04.09.2008, G.O.Ms.No.85 dated 09.09.2010 for the period from 01.03.2008 to 01.05.2008 and for the period from 04.09.2008 till 31.03.2011.

Prayer in W.P.No.15914 of 2017

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records of the impugned order dated 01.03.2017 bearing G.O.(D) No.3 Energy (A2) Department issed by the 4th respondent and quash the same as being arbitrary, illegal and without authority of law and contrary to the provisions of Electricity Act, 2003 and consequently direct the 2nd respondent herein to refund the payments towards electricity tax including the sum of Rs.213.35 Lakhs paid till date of the present Writ Petition and any further payments till the disposal of the writ petition together with interest thereon from the date of payment till the date of refund.

Prayer in W.P.No.16866 of 2017

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records of the impugned demand notice issued by the 2nd respondent culminating in the final demand notice bearing Lr.No.309/A1/2014 dated 15.05.2017 and quash the same as being violative of the provisions of Tamilnadu Tax on Consumption of sale of Electricity Act, 2003 and the exemption notifications in G.O.Ms.No.25 dated 24.03.2008, G.O.Ms.No.106 dated 04.09.2008, G.O.Ms.No.79 dated 14.09.2009, G.O.Ms.No.43,44 dated 30.04.2010, G.O.Ms.No.85 dated 09.09.2010 for the period from 01.03.2008 to 01.05.2008 and for the period from 04.09.2008 till 31.03.2011.

W.P.No.27277 of 2013

For Petitioners : Mr.Rahul Balaji

For Respondents : Mr.J.Ravindran
Additional Advocate General
assisted by Mr.S.Ravikumar
Special Government Pleader for R1
Mr.L.Jaivenkatesh for R2 & R3

W.P.No.15914 of 2017

For Petitioners : Mr.Rahul Balaji

For Respondents : Mr.J.Ravindran
Additional Advocate General
assisted by Mr.L.Jaivenkatesh
for R1, R2, and R3
Mr.S.Ravikumar
Special Government Pleader for R4

W.P.No.16866 of 2017

For Petitioners : Mr.Rahul Balaji

For Respondents : Mr.J.Ravindran
Additional Advocate General
Assisted by Mr.S.Ravikumar for R1
Mr.L.Jaivenkatesh for R2

COMMON ORDER

Since the issue involved in all the Writ Petitions pertains to the challenge of the demand of electricity tariff on the captive generative plant, all the Writ Petitions are taken up together and a common order is being passed.

2. According to the petitioners, they have set up Captive Generating Plants in the form of windmills at substantial cost to augment the supply of power from TANGEDCO. The demand of the respondents is against the provisions of Section 9(1) of the Tamilnadu Tax on Consumption or Sale of Electricity Act, 2003 and without assessment per law. Further, no assessment can be made after expiry period of four years.

3. It is the further case of the petitioners that the Government has exempted electricity tax on captive generation plants by G.O.Ms.No.25 dated 24.03.2008. The said exemption was extended for the period from 04.09.2008 till 31.03.2009 vide G.O.Ms.No.106 dated 04.09.2008. Thereafter, exemption has been granted in series of Government orders in G.O.Ms.No.79 dated 14.09.2009; G.O.Ms.Nos.43 and 44 dated 30.04.2010; G.O.Ms.No.85 dated 09.09.2010 till 31.03.2011. The said Government Orders applies to the petitioners, as they are Captive Generating Plants, which is used for generating power for own use. Hence it is the contention that the petitioners have not paid any tax for the periods covered by the Government Orders. The said Government Orders use the phrase Captive Generating Plants, namely, Gensets. The term Genset has not been defined anywhere in the Electricity Act, 2003, the Electricity

Rules, 2005 and the Tamilnadu Tax on Sale or Consumption of Electricity Act, 2003. The term Gensets cannot be taken to mean anything other than generator sets which phrase can apply to all forms of generators including the generators such as those used by the petitioners which are Captive Wind Energy Generators. Hence at this stage, it is the contention that demanding the tax contrary to the Government Orders is not maintainable.

4. Per contra, though the counter has all the facts with regard to the facts pleaded, however, the counter denied with regard to the crux of the government orders referred above. It is the contention that the rationale behind the exemption allowed by the Government is to exempt consumers availing HT supply in order to enable them to make good of power deficit prevailing at different periods using their smaller capacity of captive generating plants namely, gensets. But in the petitioners company, the generators are being operated in parallel with Tamil Nadu Generation and Distribution Corporation's grid. The captive power plants in the petitioners company premises are being operated all the day irrespective of the period of power cut to cope up with their requirement of electricity for production. Hence the petitioners-company are not entirely grid dependent. Hence it is the contention that the petitioners-company are not

entirely grid dependent, therefore, the exemption allowed by the government through various government orders is not applicable to the petitioners-company. Hence the levy of tax and interest on belated payment of tax due is as per the provisions of the Electricity Act, 2003 and is valid.

5. It is also the stand of the respondents in the counter that the exemption allowed for the power consumed from DG Sets owned by High Tension consumers are not applicable to the petitioners, no doubt, the term 'namely' which precedes the term 'gensets' in the exemption notification is an adverb used for giving exact information about the category of Captive Power Plants, particularly, as intended by the Government and it is not used in an illustrative sense, as averred by the petitioners, hence it is their contention that Government orders are not applicable.

6. The learned counsel for the petitioners would submit that government orders exempting electricity tax is very clear and unambiguous. The government orders exempts consumption of electricity tax on generators used by HT consumers, which generate electricity to their own genset for their self consumption, particularly, the consumer

using the captive generating plants, namely, genset for the period on and from March 2008 and the government orders have been extended from time to time. Further, it is the contention that when the language is very clear in the government orders and the benefit is extended under the government orders, the respondents, now, cannot demand tax merely on the ground that the petitioners also supplied electricity to the TANGEDCO. Also, it is the contention on behalf of the petitioners that such interpretation cannot be given to the government order. When there is no distinction in the government orders, the respondents merely on the basis of some clarification obtained from the higher officials, now, cannot contend that government orders are only restricted to HT consumers using gensets, which are not operated throughout the year unlike the generators of the captive power plant used in petitioners premises. In the absence of any distinction by the government and when the government order is silent about any distinction, the respondents themselves cannot sub-plant new meaning to the government orders, hence submitted that the petitioners are certainly entitled to exemption under the government orders and his further contention is that though the appeal remedy is also provided, since it is only the question of interpretation and the appellate authority are also the respondents, only the Writ Petitions are maintainable.

7. The learned Additional Advocate General for the respondents would submit that the government orders have been passed only in order to enable the HT consumers to make good of power deficit prevailing at different periods using their smaller capacity of captive generating plants namely, 'gensets'. Therefore, when the petitioners-company generators are being operated in parallel with Tamilnadu Generation and Distribution and Corporation's Grid, the captive power plants in the petitioners company premises are being operated all the day irrespective of the period of power cut to cope up with their requirement of electricity for production, therefore, it is the contention that the government orders are not applicable to the petitioners to claim exemption. The further contention is that the government orders are applicable only to the consumers using the captive generation plants, namely, gensets for their own use, whereas the petitioners besides own use, also supplied electricity to the TANGEDCO, hence the government orders are not applicable. It is also the contention of the learned Additional Advocate General that the appeal remedy is available as against the demand and the appeal lies before the Government, therefore, the Writ Petition is not maintainable.

8. Heard the learned counsel on either sides and perused the documents placed on record.

9. The short question involved in these Writ Petitions is, with regard to the interpretation of the Government Order, viz., G.O.Ms.No.25 dated 24.03.2008 and on perusal of the said Government Order, it is seen that the Tamilnadu 'Tax' on Consumption or Sale of Electricity Act, 2003 (Tamilnadu Act 12 of 2003) and Amendment to Section 14 regarding exemption from the levy of Electricity Tax on generation by H.T. Consumers who generate energy through their own gensets for self consumption for the period from 01.03.2008 to 31.05.2008 and issued Notification which reads as follows:-

> *"In exercise of the powers conferred by sub-section (2) of Section 14 of the Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003 (Tamilnadu Act 12 of 2003), the Governor of Tamilnadu hereby makes exemption in respect of the Electricity tax payable under the said Act on the consumption of electricity for own use by H.T.consumers using their captive generating plants, namely, gensets for the period on and from the 1st March 2008 to the 31st May 2008".*

10. The above Government Order clearly indicate that the captive HT consumers, who are using captive generation plants and consumed electricity to their own use, are exempted from tax and amendment has been passed. Notification clearly shows that the exemption in respect of the electricity tax payable under the said Act on the consumption of the electricity for own use for H.T. consumers using the captive generators, namely gensets, for the period from 01.03.2008 to 31.05.2008, thereafter it has been extended from time to time. The Government Order does not indicate that captive generator supplying excess electricity to the grid will not be applicable. The Captive Generating Plant, as per definition 2(8) of the Electricity Act reads as follows:-

> *"Captive generating plant" namely, a power plant set up by any person to generate electricity primarily for his own use and includes a power plant set up by any co-operative society or association of persons for generating electricity primarily for use of members of such cooperative society or association."*

11. The above said Government Order exempted the payment of electricity tax on consumption of electricity for own use by high tension consumers using their self generated electricity and the petitioners are certainly entitled to the benefit of exemption up to the level of their own

consumption. Even accepting the contention of the respondents that the rational behind the exemption allowed by the government is to exempt consumers availing HT supply in order to enable them to make good of power deficit prevailing at different periods using their smaller capacity of captive generating plaints, namely, gensets. The fact remains that as long as the petitioners used the consumption by their own generation, merely because some excess energy has to be supplied to their grid, the benefit extended under the Government order cannot be deprived by sub-planting the words in the name of clarification by the officials.

12. Yet another contention advanced by the learned Additional Advocate General is that when the appeal remedy is available, the Writ Petitions are not maintainable. No doubt, normally, when there is an alternative remedy, the Writ Petitions are not maintainable. As the very issue involved in these Writ Petitions are with regard to the interpretation of the Government Order and the very appeallate authority is the Government and the Government has taken a view that government order is not applicable, again driving the petitioners to avail the appellate relief before the appellant authority, who is none other than the Government, will not serve any purpose.

13. When the government order does not make any distinction, the respondents subplanted the words to deny the benefits. The contention of the learned Additional Advocate General that use of word, namely, genset in the notification will apply only to the small captive generators using diesel gensets, the said stand is also taken by him in the counter. It is relevant to note that the word 'namely', used in the notification is only illustrative and cannot be construed that the same imposes any specific limitation or restrictions, in this regard, the **Hon'ble Apex Court in the case reported in (2004) 10 SCC 190 [Vee Nissan Electronics Vs. Commissioner of Central Excise Mumbai]**, in Paragraph No.3 it is held as follows:-

> *“3. Thus any musical system which is commercially known as a 'stereo or hi-fi system' falls within this tariff item. Undeniably the system of the appellants is commercially known as a 'stereo or hi-fi sytem'. The use of the word 'namely' in the tariff item does not mean that only the items specified thereafter fall under the definition of the term 'musial system'. The term 'namely' only clarifies that even those items would constitute a musical system.”*

therefore, the contention of the respondents that the word 'namely' used in the notification restrict the benefits only to the small captive generators, using the diesel generators, cannot be countenanced.

13. Similarly, the Hon'ble Apex Court in the case **reported in (2021) 5 Supreme Court Cases 602 [Government of Kerala & Another Vs. Mother Superior Adoration Convent**] at Paragraph No.19, held as follows:-

> *"19. However, there is another line of authority which states that even in tax statutes, an exemption provision should be liberally construed in accordance with the object sought to be achieved if such provision is to grant incentive for promoting economic growth or otherwise has some beneficial reason behind it. In such cases, the rationale of the judgments following Wood Papers (supra) does not apply. In fact, the legislative intent is not to burden the subject with tax so that some specific public interest is furthered. Thus, in CST v. Industrial Coal Enterprises (1999) 2 SCC 607, this Court held:*
>
> *"11. In CIT v. Straw Board Mfg. Co. Ltd. 1989 Supp (2) SCC 523 this Court held that in taxing statutes, provision for concessional rate of tax should be liberally construed. So also in Bajaj Tempo Ltd. v. CIT (1992) 3 SCC 78 it was held that provision granting incentive for promoting economic growth and*

development in taxing statutes should be liberally construed and restriction placed on it by way of exception should be construed in a reasonable and purposive manner so as to advance the objective of the provision.

12. We find that the object of granting exemption from payment of sales tax has always been for encouraging capital investment and establishment of industrial units for the purpose of increasing production of goods and promoting the development of industry in the State. If the test laid down in Bajaj Tempo Ltd. case (1992) 3 SCC 78 is applied, there is no doubt whatever that the exemption granted to the respondent from 9-8-1985 when it fulfilled all the prescribed conditions will not cease to operate just because the capital investment exceeded the limit of Rs 3 lakhs on account of the respondent becoming the owner of land and building to which the unit was shifted. If the construction sought to be placed by the appellant is accepted, the very purpose and object of the grant of exemption will be defeated. After all, the respondent had only shifted the unit to its own premises which made it much more convenient and easier for the respondent to carry on the production of the goods undisturbed by the vagaries of the lessor and without any necessity to spend a part of its income on rent. It is not the case of the appellant that there were any mala fides on the part of the respondent in obtaining exemption in the first instance as a unit with a capital investment below Rs 3 lakhs and increasing the capital investment subsequently to *an amount exceeding Rs 3 lakhs with a view to defeat the provisions of any of the relevant statutes. The bona fides of the respondent have never been questioned by the appellant.""*

in the light of the above judgment there is no ambiguity in the government order and the government order exempted captive generative plant and there is no restrictions imposed in the government order, the petitioner being involved in captive generation, is certainly entitled to exemption, as per government order and the word employed in the government order has to be given its original meaning. The respondents cannot subplant their own reasons to deny the benefits by interpreting the government order to the effect that it is applicable only to the captive generatives used in the D.G.Gensets.

Therefore, this Court is of the view that the orders passed by the respondents demanding tax by way of the impugned notice dated 19.08.2013; 01.03.2017 and 15.05.2017 are set aside and the Writ Petitions are allowed. Consequently, connected miscellaneus petitions are closed. No costs.

23.11.2022

Index : Yes/No
Internet : Yes/No
Speaking /Non-Speaking Order
ssd

To

1. State of Tamilnadu,
rep. By the Secretary to Government,
Energy Department,
Secretariat, Fort St.George,
Chennai – 600 009

2. The Director of Electricity Tax,
o/o the Chief Electrical Inspector to Government,
Thiru-vi-ka Industrial Estate,
Chennai – 600 032

3. The Electrical Inspector,
58, Tiruvananthapuram Road,
Opp to V.O.C.Ground,
Palayamkottai,
Tirunelveli – 627 002

4. Tamilnadu Generation and
Distribution Corporation Ltd.,
rep. By its Chairman and Managing
Director, 144, Annasalai,
Chennai – 600 002

5. The Electrical Inspector,
LMR Arcade, II Floor,
Salem Main Road,
Namakkal – 637 001

6. The Chief Electrical Inspector,
Thiru-vika Industrial Estate,
Guindy, Chennai – 600 032

7. Additional Chief Secretary to the
Government, Energy Department,
Chennai – 600 009

N.SATHISH KUMAR, J.,

ssd

W.P.No.27277 of 2013 &
W.P.Nos.15914 and 16866 of 2017

23.11.2022