



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04-02-2022

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP NO.4819 OF 2012

M/s.V3 Automotives Pvt. Ltd.,
Represented by its Director - M.Palaniappan,
No.1, Developed Plot,
Industrial Estate,
Rajiv Gandhi Salai (OMR),
Perungudi,
Chennai - 600 096.

.. Petitioner

vs.

The Assistant Executive Engineer,
O & M/Chennai Electricity,
Distribution Centre/South,
Sholinganallur,
Chennai.

.. Respondent

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the respondent in its Provisional Assessment Order for Theft of Energy under Section 135 of Electricity Act, 2003 in Letter No.AAE/O&M/SNLR/F.T.OE/D.Camp/2011 dated 23.09.2011, quash the same and further direct the respondent to order refund of the sum of Rs.7,44,547/- collected from the petitioner.

For Petitioner : Mr.S.Rajasekar

For Respondent : Mr.L.Jai Venkatesh,
Standing Counsel for TANGEDCO.

O R D E R

The provisional assessment order for theft of energy under Section 135 of the Electricity Act, 2003, is under challenge in the present writ petition.



2. The petitioner is an Automobile Dealer at Chennai. They are provided with an electricity service connection.

3. The learned counsel appearing on behalf of the petitioner states that the Industrial Tariff was permitted and accordingly, consumption charges were being paid by the petitioner. However, the respondent has subsequently demanded Commercial Tariff from the petitioner. Thus, the dispute aroused.

4. Perusal of the provisional assessment order reveals that during the inspection conducted by the Anti Theft Squad, the theft of energy was detected in the premises of the petitioner and accordingly, an inspection report was submitted and the Competent Authorities determined the consumption charges to be paid and thereafter issued the provisional assessment order for theft of energy.

5. This Court is of the considered opinion that with reference to the allegations of theft of energy, the inspection report and the determination of consumption charges issued in the provisional assessment order require an adjudication with reference to the documents and evidences on record. The High Court cannot conduct an enquiry in respect of such disputed facts by scrutinising the original records available. The petitioner may deny the theft of energy. Under those circumstances, the innocence or otherwise is to be established. Thus the adjudication becomes necessary for the purpose of resolving the issues.

6. The power of judicial review of the High Court under Article 226 of the Constitution of India is to ensure the processes through which the decision taken by the Competent Authorities, is in consonance with the provisions of the Act and Rules, but not the decision itself.

7. In the present case, an opportunity to file an objection is provided in the impugned order itself. The impugned order is the provisional assessment made and the Authorities are yet to pass a final assessment order. Thus, the petitioner-Company is at liberty to file their objections, if any against the provisional assessment made by the Competent Authorities along with all other relevant documents and thereafter, the Authorities are bound to consider the same and pass a final assessment order on merits and in accordance with law. If the petitioner is aggrieved from and out of the final assessment order, if any passed, thereafter the petitioner has to approach the Appellate Authority under Section 127 of the Electricity Act, 2003, in the manner prescribed.



8. This being the statutory remedy contemplated under the Act, it is to be exhausted by the aggrieved person before approaching the High Court by filing the writ proceedings. Originally, an adjudication cannot be done by the High Court in writ proceedings. Merely based on certain xerox copies of the documents, assessment made by the Authorities cannot be verified or approved by the High Court, as it will result in commission of error or commission or in such an event, there is a possibility of miscarriage of justice. Therefore, the importance of exhausting the appellate remedy is to be insisted and only after a complete finding of the disputed facts and circumstances, the High Court will be in a position to form an opinion for the exercise of the power of judicial review under Article 226 of the Constitution of India. Therefore, exhausting the remedy is the rule, which is to be followed in all circumstances. Dispensing with the appellate remedy is an exception, which can be invoked only if there is a gross injustice.

9. This being the principles to be followed, the petitioner-Company is at liberty to file their objections/explanations along with the documents, if any, within a period of three weeks from the date of receipt of a copy of this order and in the event of filing any such objections or otherwise, the respondent shall proceed with the final assessment order and pass final assessment order on merits and in accordance with law, as expeditiously as possible.

10. With the abovesaid liberty, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Svn



To

The Assistant Executive Engineer,
O & M/Chennai Electricity,
Distribution Centre/South,
Sholinganallur,
Chennai.

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AJS (CO)
PM/15/02/2022