IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2022

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.11593 of 2022 &
WMP.No.11072 of 2022

Tanjore Power Limited,
(Formerly known as Lanco Tanjore Power
Company Ltd., and earlier known as
Aban Power Company Ltd.,)
Rep. by its Chief Financial Officer S.Kathir kamanathan,
No.25, GN Chetty Road,
T.Nagar, Chennai – 600 017. ... Petitioner

Vs

1.Principal Commissioner,
Officer of the Principal Commissioner of CGST and Central Excise,
Chennai North Commissionerate,
No.26/1, Mahatma Gandhi Road,
Chennai – 600 034.

2.Superintendent of Central Excise (Rage 87),
Service Tax Division XVIII,
Service Tax Commissionerate, Delhi IV,
CR Building I P Estate,
New Delhi – 110 002. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the file of the respondent in proceedings Order in Original No.17 & 18/2022 CH.N.GST dated 07.02.2022 and to quash the same.

For Petitioner	:	Mr.Joseph Prabhakar
For Respondent	:	Mr.A.P.Srinivas, Senior Standing Counsel

<u>O R D E R</u>

Mr.A.P.Srinivas, learned Senior Standing Counsel accepts notice for the respondents and is armed with instructions to enable final disposal of the matter. Hence, by consent of both the parties, this Writ Petition is disposed even at the stage of admission.

2.The petitioner has challenged an order-in-original dated 07.02.2022, passed in terms of Finance Act, 1994 under which service tax is levied. I am of the view that this Writ Petition is not maintainable, since there is an efficacious alternate remedy by way of an appeal provided under the Statute which would be the appropriate remedy for the petitioner in this case.

3.The petitioner had earlier approached this Court challenging the Show Cause Notice issued prior to passing of the present impugned order and that Writ Petition had come to be dismissed on 07.03.2016 in W.P.No.39082 of 2015. As against the aforesaid order Writ Appeal had been filed in W.A.No.709

of 2016 that was also dismissed on 23.11.2017.

4.The brief fact necessary to take note of the position that the remedy of appeal is more appropriate in this case is that the petitioner, engaged in the generation of electricity, had set up a power plant near Thanjavur. It had entered into an agreement with General Electric Inc., USA (in short 'service provider') for maintenance of the plant. Invoices had been raised on a quarterly basis in US Dollars and calculated by the service provider under the same invoice.

5.The service provider had thereafter opened a branch in Gurgaon and obtained a registration under Service Tax law. It is stated to be remitting service tax to the authorities. Proceedings had been initiated as against the petitioner to show cause why it should not be called upon to pay service tax, challenging which the earlier Writ Petition had been filed.

6.Since the matter required consideration of voluminous evidence to decide the liability of the petitioner, if at all, the Writ Petition had been dismissed and thereafter the Writ Appeal directing the authorities to complete the process of assessment.

7.The position remains no different today. No doubt, the petitioner has suffered an order of assessment rejecting its stand that it is not liable to service tax. However, the impugned order of assessment has taken note of all the facts that are now put forth before me and the authority has arrived at a considered conclusion that the petitioner is indeed liable to service tax.

8.In such a situation and seeing as the claim of the petitioner would depend on an examination of the agreements between itself and the service provider as well as the facts in relation to the Indian Branch of General Electric, Inc., it is clear that such a process cannot be undertaken in a Writ Petition.

9.For the aforesaid reasons, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

kbs **07.06.2022**

Index : Yes
Speaking Order

To

1.Principal Commissioner,
Office of the Principal Commissioner of CGST and Central Excise,
Chennai North Commissionerate, No.26/1, Mahatma Gandhi Road,
Chennai – 600 034.

2.Superintendent of Central Excise (Rage 87),
Service Tax Division XVIII, Service Tax Commissionerate, Delhi IV,
CR Building I P Estate, New Delhi – 110 002.

Dr.ANITA SUMANTH, J.

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