IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2022

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THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.10498 of 2013
and W.M.P.No.34379 of 2019

M/s.Tamil Nadu Newsprint & Paper Ltd.,
Represented by its Manager (Marketing)
Mr.V.K.Parameshvaran
67, Mount Road
Chennai 600 032 ... Petitioner

-vs-

1.The Secretary to Government
Energy Department
Fort St. George
Chennai 600 009

2.The Chief Electrical Inspector to Government
Thiru-vi-Ka Industrial Estate
Guindy
Chennai 600 032

3.The Electricity Inspector and Electricity Tax Inspector
LMR Arcade, 2nd Floor
Salem Main Road
Namakkal 637 001 ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records and quash the impugned notice dated 14.05.2012 baring No.844/EI Na.-11-1 and notice dated 11.07.2012 bearing No.855/E1/Na-2011 issued by the third respondent.

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| For Petitioner | : | Mr.Shivakumar |
| For Respondents | : | Mr.P.Sathish<br>Additional Govt. Pleader |

**ORDER**

The writ petition is filed, challenging the orders passed under Section 9 of the Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003 (hereinafter referred to as “the Act”).

2.Notice of demand of tax assessed under Section 9 of the Act was issued to the petitioner and challenging the said proceedings, the petitioner is constrained to move the writ petition.

3.The learned counsel appearing on behalf of the writ petitioner made a submission that the procedures contemplated under the provisions of the Act had not been followed before passing the impugned order. There are several grounds, which all are in favour of the petitioner, more specifically, regarding exemption on payment of consumption tax. The exemption granted and exemption to be granted and the procedures to be followed for assessment and the statutory exemptions are not even considered, while passing the impugned order and therefore, the writ petition is filed.

4.This Court is of the considered opinion that it is a notice of demand of tax assessed under Section 9 of the Act, which is under challenge and there is provision for appeal under Section 10 of the Act.

5.Let us now consider the scheme of the Act, which was enacted to consolidate and rationalize the laws relating to levy of tax on consumption or sale of electricity in the State of Tamil Nadu.

6.Section 2 provides 'definitions'; Section 3 enumerates 'tax on the consumption or sale of electricity'; Section 8 contemplates 'obligation of licensees to keep books of account and to submit return'. Accordingly, every licensee and every person other than a licensee (a) keep books of account in the prescribed form; and (b) submit returns showing the units of electricity supplied and the amount of the electricity tax payable in respect thereof, to the Director in such form within such time as may be prescribed.

7.Section 9 stipulates 'assessment'. Sub-Section (1) of Section 9 states that “if no return in respect of any period is submitted by a licensee or a person required to submit return under Section 8 or if the return submitted by such licensee or person appears to the Director to be incorrect or incomplete the Director shall, after giving such licensee or person as the case may be, a reasonable opportunity of being heard, proceed in such manner as may be prescribed to assess to the best of his judgment the amount of electricity tax payable under the Act by such licensee or person”.

8.Period of limitation is also contemplated under Section 9(3) of the Act. Accordingly, no assessment under Section 9(3) shall be made after the expiry of four years. Thus, the procedures are enumerated for assessment under Section 9 of the Act.

9.Section 10 contemplates 'appeal' and sub-Section (1) stipulates that "any person may in the prescribed manner appeal to the Government against any order of assessment of Electricity Tax within sixty days or such further period as may be allowed by the Government for the reasons shown to their satisfaction from the date of receipt of a notice of demand issued after such order of assessment".

10.Section 14 provides 'exemption and reduction of tax'. Accordingly, the Government may, by notification, make an exemption or reduction in rate in respect of the electricity tax payable under the Act on energy sold for consumption by or in respect of any (i) institution or class of persons; (ii) place of public worship, public burial or burning ground or other place for the disposal of the dead; (iii) premises declared by the State Government to be used exclusively for purposes of public charity; and (iv) vessel whether seagoing or inland. Thus, the provision regulates the submission of return by the licensee or person concerned and procedures for assessment. If any person is aggrieved from and out of the assessment made, or in respect of procedural violations, if any, or non-adjudication of relevant facts by the original authorities, then an appeal to the Government lies and the said appellate remedy is to be exhausted before approaching the High Court under Article 226 of the Constitution of India.

11.The Statutory appellate remedy, at no circumstances, be undermined by the High Courts. In the present cases, the appeal lies before the Government and the Government is competent to deal with such appeal, if any, filed by the aggrieved persons. In the present case, the appellate authority/Government is the final fact finding authority and a complete adjudication of facts is paramount important for the purpose of exercise of judicial review by the High Court under Article 226 of the Constitution of India. Factual adjudication requires verification and scrutinisation of the original records and the evidences to be produced by the respective parties. Such an adjudication can never be entertained by the High Court under Article 226. Thus, the aggrieved person must be provided with an opportunity to exhaust the appellate remedy, which would be of greater assistance for the aggrieved person to redress their grievances in the manner known to law. For instance, the aggrieved persons, against whom an assessment order is passed, will get an opportunity to produce all the documents, related evidences to establish that they have already been granted exemption or they are entitled for exemption or the assessment itself is perverse and not in conformity with the procedures contemplated. However, such elaborate adjudications cannot be undertaken by the High Court with reference to the documents and evidences. In such circumstances, undoubtedly, the aggrieved persons are deprived of their opportunity to adjudicate all the relevant documents, which all are in their possession. Thus, the importance of an appellate remedy is to be considered by the High Court for the purpose of entertaining a writ more specifically, when the orders-in-original are under challenge in the writ proceedings.

12.The learned counsel appearing on behalf of the petitioner submits that there are factual differences in the writ petitions. Obviously, the facts cannot be similar. It is about to be dissimilar in view of the nature of usage of electricity and its consumption by the licensee or the persons concerned. Thus, all those facts are to be considered and suitable orders are to be passed by the appellate authority. In the present case, statutory exemptions are claimed. Certain petitions are filed claiming exemption under Section 14 of the Act. Entitlement of exemption is also a ground taken. The procedures followed for passing assessment orders are also questioned. Further, certain assessment orders are passed beyond the period of limitation as contemplated under Section 9(3) of the Act. This apart, the scope of exemption under the Act is pending before the Hon'ble Supreme Court. Under these circumstances, the appellate authority/Government would be the proper authority for adjudication of all these issues independently and take a decision and pass orders in accordance with law.

13.In view of the facts and circumstances, the petitioner is at liberty to file an appeal under Section 10 of the Act before the competent authority within a period of six weeks from the date of receipt of a copy of this order in a prescribed format by complying with the provisions of the Act and Rules. If any such appeal is received by the appellate authority under Section 10 of the Act, the said appeal shall be entertained and the delay in filing the appeal, if any, may be condoned by taking into account the pendency of the writ petition before the High Court and accordingly, deal with the issues and grounds raised on merits and in accordance with law by affording opportunity to the petitioner and pass orders as expeditiously as possible within a period of four (4) months. The petitioner is at liberty to raise all the factual as well as the legal grounds before the appellate authority in the manner known to law.

14.It is brought to the notice of this Court that pursuant to the interim orders passed by this Court, at the time of admission of some of the petitions, some of the petitioners have deposited some amount. The said deposited amount has to be adjusted or refunded based on the final outcome of the appeal to be dealt with by the competent authority under Section 10 of the Act.

15.It is made clear that the contentions raised in the counter statement by the respondents shall not be taken into consideration, while deciding the issues afresh on merits. In other words, the authorities shall decide the issues uninfluenced by the statements made in the counter affidavit.

N.SATHISH KUMAR, J.

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16. With the above directions, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed. No costs.

18.11.2022

Index : Yes / No
Internet : Yes / No
Speaking / Non speaking order

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