IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 17-10-2022

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.13500 of 2017

Dhanalakshmi Srinivasan Sugars Private Limited... Petitioner

-vs-

1.The Chief Electrical Inspector to Government,
Thiru-Vi-Ka Industrial Estate,
Guindy,
Chennai – 600 032.

2.Tamil Nadu Generation and Distribution Corporation Limited,
(Formerly Tamil Nadu Electricity Board)
10th Floor, NPKRR Maaligai,
144, Anna Salai,
Chennai – 600 002.

3.Electrical Inspector,
4/7, Kesavan Nagar,
Tirupapuliyur,
Cuddalore – 607 002. ... Respondents

Petition under Article 226 of the Constitution of India, praying for issuance of a writ of certiorarified mandamus, to call for the records of the first respondent pertaining to the final order bearing Lr.No.11582/A3/2016, dated 08.05.2017, quash the same and consequently direct the respondents to forbear from levying any tax under the Tamil Nadu Tax on Consumption or Sale of Electricity Act,2003, on electricity supplied to PTC.

For Petitioner : Mr.Srinath Sridevan

For Respondent 1 : Mr.P.Sathish,
Addl.Govt.Pleader.

For Respondents 2 & 3 : Mr.Abul Kalam,
Standing Counsel.

ORDER

This Writ Petition has been filed challenging the impugned order of the first respondent, dated 08.05.2017, requiring the petitioner to pay tax and interest for the power supplied to Power Trading Corporation and to third parties, as per their office letter No.11582/A3/16, dated 03.10.2016.

2. The petitioner is a captive generator and, according to them, they supplied power to Power Trading Corporation under Public-Private Partnership for onward sale to the Board. According to them, electricity generation tax is not applicable to them, as they are exempted under Section 3 of the Tamil Nadu Tax on Consumption or Sale of Electricity Act,2003, in short, "the Act".

3. Learned counsel for the petitioner brought to the notice of this Court that in a batch of cases in W.P.No.16041 of 2012, a similar challenge had been made as in

the present writ petition and this Court, by its order, dated 09.07.2021, considering the provisions of the above said Act, held that since the appeal remedy was provided under Section 10 of the Act before the competent authority, the writ petition was not maintainable. However, liberty was granted to the writ petitioners 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 the order in a prescribed format by complying with the provisions of the Act and the Rules and 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. Hence, the learned counsel submitted that the same order may be passed in this Writ Petition also.

4. In the said batch of cases in W.P.No.16041 of 2012, this Court, by its order, dated 09.07.2021, in Paragraph14, passed the following order :

> *"14. In view of the facts and circumstances, the petitioners are at liberty to file an appeal under Section 10 of the Act before the competent authority within the 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 the 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 petitioners and pass orders as expeditiously as possible. The petitioners are at liberty to raise all the factual as well as the legal grounds before the appellate authority in the manner known to law."

5. In such view of the matter, as the issue in the present case is one and the same as in the said batch of cases, the petitioner is permitted 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 which event, the appellate authority shall entertain the appeal, by condoning the delay in filing the appeal, if any, by taking note of the fact that the petitioner has bonafidely pursued the remedy before this Court in the writ petition.

6. It is stated by the petitioner that 20% of the tax demanded has already been deposited at the time of admission of the writ petition. In the given situation, it is made clear that if such deposit, as stated by the petitioner, is made, the same shall be either adjusted or refunded, depending upon the outcome of the appeal.

7. With the above observations, this Writ Petition is disposed of. No costs. Consequently, the connected W.M.P.No.14573 of 2017 is closed.

17-10-2022

dixit

To

1.The Chief Electrical Inspector to Government,
Thiru-Vi-Ka Industrial Estate,
Guindy,
Chennai – 600 032.

2.Tamil Nadu Generation and Distribution Corporation Limited,
(Formerly Tamil Nadu Electricity Board)
10th Floor, NPKRR Maaligai,
144, Anna Salai,
Chennai – 600 002.

3.Electrical Inspector,
4/7, Kesavan Nagar,
Tirupapuliyur,
Cuddalore – 607 002.

N.SATHISH KUMAR,J.

dixit

W.P.No.13500 of 2017

17-10-2022