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W.P(MD).No.7587 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 04.11.2022

ORDER PRONOUNCED ON : 14.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.7587 of 2013

and

M.P(MD)No.1 of 2013

A.V.Industries

Represented by its Partner A.Anthony Xavier

... Petitioner

*(Petitioner substituted vide Court order, dated
14.09.2022 in W.M.P(MD)No.6367 of 2019)*

Vs.

1.The Superintending Engineer,
TANGEDCO,
Thoothukudi Electricity Distribution Circle,
Thoothukudi.

2.The Executive Engineer/Urban,
TANGEDCO,
Thoothukudi Electricity Distribution Circle,
Thoothukudi.

..... Respondents

PRAYER: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of certiorarified mandamus, to call the records relating to the proceedings of the 1st respondent made in Lr.No 3375/SE/TEDC/TTN/AEE/G1/JE2/F.IKt/10 dated 20.10.2010 and quash the



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same and consequently direct the 1st respondent to refund the sum of Rs.27,03,509/- to the petitioner.

For Petitioner : Mr.R.Murali
for Mr.V.Perumal

For Respondents : Mr.S.Dheena Dhayalan
Standing Counsel

ORDER

The present writ petition has been filed challenging an order passed by the first respondent herein, under which he has rejected the request of the petitioner for refund of the penalty amount paid by the petitioner company.

2. According to the petitioner, they are running a Carbide manufacturing unit and a surprise inspection was conducted by the Electricity Board authorities on 12.08.2008. The respondents have alleged short circuiting of electricity meter and passed a final assessment order for a sum of Rs.54,07,017/- (Rupees Fifty Four Lakhs Seven Thousand and Seventeen only) invoking section 135 of the Indian Electricity Act, 2003.

3. The petitioner had contended that a criminal complaint was lodged and the service connection was immediately disconnected without any notice.

As a condition for Anticipatory Bail, the petitioner had deposited a sum of



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Rs.5,00,000/- (Rupees Five Lakhs only) and for restoration of electricity, the petitioner had deposited a sum of Rs.5,00,000/- (Rupees Five Lakhs only) on 24.10.2008, Rs.7,50,000/- (Rupees Seven Lakhs and Fifty Thousand only) on 05.01.2009 and Rs.9,53,509/- (Rupees Nine Lakhs Fifty Three Thousand Five Hundred and Nine only) on 12.01.2010. According to the learned counsel for the petitioner, the petitioner had deposited a sum of Rs.27,03,509/- (Rupees Twenty Seven Lakhs Three Thousand Five Hundred and Nine only), which is 50% of the final assessment order in terms of the interim order passed by this Court in W.P(MD)Nos.23287 and 24478 of 2008.

4. According to the learned counsel for the petitioner, the petitioner had challenged the invocation of Regulation 23 (AA) of Tamil Nadu Supply Code for imposing penalty upon the petitioner in W.P(MD)No.23287 of 2008. This writ petition came to be dismissed on 11.11.2009. Challenging the same, the petitioner had filed W.A(MD)Nos.1801 and 1802 of 2009. While the writ appeals were pending, the petitioner was acquitted in C.C.No.3 of 2009 on the file of the Principal Sessions's Court, Tuticorin on 15.07.2010. The said order of the learned District Judge was challenged by the Electricity Board in CrI.R.C.No.31 of 2011 and the said revision was withdrawn by the electricity board on 22.02.2011. Hence, according to the learned counsel for



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the petitioner, the acquittal of the writ petitioner from the charges of theft of energy has attained finality.

5. The learned counsel for the petitioner submitted that when the petitioner has been acquitted of the criminal charges and the penalty has been imposed invoking regulation 23 (AA) of the Tamil Nadu Supply Code tracing its power to Section 135 of the Electricity Act, the amount deposited by the writ petitioner in the Anticipatory Bail proceedings as well as pursuant to interim orders of this Court in the writ petition have to be refunded. However, by way of impugned order, the respondent authorities have refused to refund the said penalty amount, citing pendency of W.A(MD)No.1801 of 2009. In the impugned order, the respondent board has also found that the amount was deposited pursuant to the orders in the Anticipatory Bail petition and orders in the W.A(MD)No.1801 of 2009 and hence, the same cannot be refunded. Therefore, according to the learned counsel for the petitioner, when W.A(MD)No.1801 of 2009 has already been withdrawn on 23.04.2014, there is no impediment on the part of the respondent board to refund the said amount. Hence, he prayed for setting aside the order passed by the first respondent herein and to direct refund of the amount to the petitioner company.



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6. Per contra, the learned standing counsel appearing for the respondents had contended that though the petitioner has been acquitted in the criminal proceedings, the assessment order passed under the Tamil Nadu Supply Code can be independently enforced. The assessment orders are not dependent on the conviction or acquittal of the consumer. He further contended that the final assessment orders passed as against the petitioner were challenged by the writ petitioner in W.P(MD)No.23287 of 2008 and the same was dismissed on 11.11.2009 and the writ appeal filed by the writ petitioner as against the said orders has been withdrawn by the petitioner himself on 23.04.2014. Hence, the final assessment order passed against the writ petitioner has attained finality. Therefore, the petitioner cannot be heard to contend that he is not liable to pay the penalty assessed in the final assessment order in view of his acquittal in the criminal proceedings.

7. The learned standing counsel appearing for the respondent board had further contended that the petitioner has been acquitted on 15.07.2010. The revision filed by the board as against the said order of acquittal was withdrawn on 22.02.2011. The petitioner had withdrawn the writ appeal challenging the final assessment order (W.A(MD)Nos.1801 and 1802 of 2009) only on 23.04.2014. Hence, it is clear that even after the order of



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acquittal had reached finality, the petitioner did not prefer to challenge the final assessment order and has voluntarily withdrawn the writ appeals on 23.04.2014. When the petitioner has accepted the final assessment order, thereafter, he cannot turn around and contend that the acquittal in the criminal proceedings will exonerate the writ petitioner from the civil liability, which has been imposed upon the writ petitioner in the final assessment orders.

8. The learned standing counsel appearing for the respondents had relied upon a judgment of this Court reported in **1999 (3) MLJ 447 [Far East Tanning Co. Vs. The Superintending Engineer, (West) Vellore Electricity System and another]** to contend that even if the consumer is acquitted, if it is otherwise proved that there was a theft of energy, the civil liability would continue. The learned standing counsel for the respondents had further relied upon a Division Bench judgment of our High Court in **W.A(MD)No.102 of 2010 (A.V.K Velayudha Raja Vs. Tamil Nadu Electricity Board)** dated 14.12.2010. The Hon'ble Division Bench in Paragraph No.12 of the said order has approved the judgment in **1999 (3) MLJ 447 [Far East Tanning Co. Vs. The Superintending Engineer, (West) Vellore Electricity System and another]** and has proceeded to hold that when the meter was found to be tampered with, consumer cannot escape from financial liability arising out of



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theft from the tampered meter, even if he had been acquitted in the criminal case. According to the learned standing counsel for the respondents, mere fact that the petitioner has been acquitted from the criminal case will not absolve his civil liability to pay the amount as assessed in the final assessment order, which has attained finality. Therefore, the request of the petitioner for refund of the amount paid by him is not legally maintainable. Hence, he prayed for dismissal of the writ petition.

9. I have carefully considered the submissions made on either side.

10. There is no dispute that the petitioner had suffered final assessment order at the hands of the respondent board for theft of energy arising under Section 135 of the Electricity Act. As per the said final assessment order, penalty to a tune of about Rs.54,07,017/- (Rupees Fifty Four Lakhs Seven Thousand and Seventeen only) has been imposed upon the petitioner. The petitioner had chosen to challenge the said final assessment order in W.P(MD)No.23287 of 2008. The said writ petition was dismissed on 11.11.2009. The petitioner had filed W.A(MD)Nos.1801 and 1802 of 2009 and he has chosen to withdraw the same on 23.04.2014.



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11. Though the petitioner has been acquitted from the criminal case on 15.07.2010 and the revision filed by the board challenging the said order of acquittal was disposed of on 22.02.2011, for reasons best known, the petitioner has chosen to withdraw W.A(MD)Nos.1801 and 1802 of 2009 on 23.04.2014. Hence, as rightly contended by the learned counsel for the petitioner, the final assessment orders have attained finality.

12. Paragraph No.12 of the judgment of the Hon'ble Division Bench of our High Court in ***W.A(MD)No.102 of 2010 (A.V.K Velayudha Raja Vs. Tamil Nadu Electricity Board)***, dated 14.12.2010 is extracted as follows:

“12. As per Section 39 of Indian Electricity Act, 1910 where it is proved that any artificial means or means not authorised by the licensee exist for the abstraction, consumption or use of energy by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of energy has been dishonestly caused by such consumer. When the meter in the name of the Appellant was found tampered with, the Appellant cannot escape the financial liability arising out of the theft from the tampered meter. In Far East Tanning Co. Vs. The Superintending Engineer; (West) Vellore Electricity System and Another, Hindustan Engineering Industries Vs. The Assistant Divisional



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Engineer, O and M, Madras Electricity System and Others, it has been consistently held that acquittal in criminal case of theft of energy will not absolve the consumer from the financial liability.”

13. A careful perusal of the judgment of the Hon'ble Division Bench clearly indicates that acquittal in criminal case for theft of energy will not absolve the consumer from the financial liability. In the present case, the only ground, on which, refund of the amount is being sought for is that the petitioner has been acquitted in the criminal case. The said amounts have been deposited by the writ petitioner as a condition for granting Anticipatory Bail or as a condition for grant of interim orders in the writ appeals arising out of final assessment order. Hence, it is clear that the amount which are claimed to be refunded, they reflect 50% of the penalty demanded in the final assessment order. When the final assessment order has attained finality, the petitioner cannot get exonerated from the civil liability citing his acquittal in the criminal case.

14. In view of the above said facts, the petitioner is not entitled to get refund of the 50% of the penalty amount deposited by the writ petitioner, which is demanded in the final assessment order. Therefore, I do not find any illegality or infirmity in the order passed by the first respondent herein.



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15. In view of the above said facts, there are no merits in the writ petition and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

14.11.2022

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Internet : Yes/No

Index : Yes/No

To

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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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