BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **17.03.2022**
CORAM:
THE HONOURABLE MR.JUSTICE **C.SARAVANAN**
W.P.(MD) No.4731 of 2022
and
W.M.P.(MD) No.3941 of 2022

M/s. Carbonaire Industries (Madras) Private Limited,
Represented by its Director,
Anand R.Kathare (M/55),
S/o. Rajaram R.Kathare,
Branch off: No.1-7, R.Kombai Village,
Kujiliamparai Panchayat,
Vedasandur Taluk,
Dindigul District. ... Petitioner

/vs./

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

2.The Electrical Inspector,
Office of the Electrical Inspector,
45/1, Spencer Compound,
Chidambaram Bankers 2nd Floor,
Nagal Nagar,
Dindigul – 624 003. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned rejection order passed by the 1st respondent in his proceedings in Letter No.3361/CEIG/A3/2021, dated 22.12.2021 and consequential order in Letter No.SPP297/E1/Dindigul/2022 dated 14.02.2022 on the file of 2nd respondent and quash the same as illegal and consequently directing the respondents to refund the exempted tax amount of Rs.7,83,738/- collected from the petitioner dated 01.10.2021 within a time frame fixed by this Court.

For Petitioner : Mr.J.Jeyakumaran

For Respondents : Mr.K.S.Selva Ganesan,
Additional Government Pleader

ORDER

The petitioner has filed this writ petition for a Certiorarified Mandamus to call for the records pertaining to the impugned rejection order passed by the 1st respondent in Letter

No.3361/CEIG/A3/2021, dated 22.12.2021 and the consequential order in Letter No.SPP297/E1/Dindigul/2022 dated 14.02.2022 on the file of 2nd respondent, to quash the same and to direct the respondents to refund the exempted tax amount of Rs.7,83,738/- collected from the petitioner dated 01.10.2021.

2.It is the specific case of the petitioner that the Government of Tamil Nadu had evolved a policy for exempting units generating solar energy and as per the aforesaid policy, the petitioner is exempted from payment of electricity tax under the provisions of the Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003. A reference was made to paragraph No.5.2 from the aforesaid Policy, which reads as under:-

> *"5.2.This policy uses the terms "utility category systems" and "consumer category systems", which are defined as follows:-*
>
> *5.2.1 Utility category systems: Where the objection is sales of solar energy to a distribution licensee or a third party or self consumption at a remote location(wheeling). For these systems the grid connection is through a dedicated gross metering interface.*
>
> *5.2.2 Consumer category systems: Where the objection is self-consumption of solar energy and export of surplus energy to the grid. For these systems the grid connection is through a consumer service connection of a distribution licensee."*

3.It is the case of the petitioner that in the case of Utility Category Systems, where the object is sale of solar energy to a distribution licensee or a third party or self consumption at a remote location(wheeling), exemption has been provided in paragraph No.12 from payment of electricity tax for a period of 2 years from the date of the policy. It is the case of the petitioner that though the petitioner is generating solar energy, it is used for consumption from a remote place and therefore, the petitioner is entitled for exemption from payment of electricity tax on consumption or sale under the provisions of the aforesaid Rules when read in conjunction with Tamil Nadu Solar Energy Policy, 2019.

4.Opposing the prayer, the learned Additional Government Pleader for the respondents submits that the writ petition is devoid of merits as the petitioner has an alternate remedy under Section 10 of the aforesaid Act.

5.I have perused the impugned order, Tamil Nadu Solar Energy Policy, 2019 and the Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003.

6.As per Section 3 of the Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003, every licensee and every person other than a licensee shall pay every month to the Government in the prescribed manner, a tax on the electricity sold or consumed during the previous month at the rates specified thereunder. The said Act exempts certain excludes and certain category of persons from payment of tax. The Act is of the year 2003. The solar incentive policy is of the year 2019, which was the first comprehensive solar energy policy in the country. The objectives of the solar energy policy are as under:-

"*4.0. Solar Energy Policy Objectives:-*

4.1. Define clear and transparent policy governance.

4.2 Establish an eco-system that translates the solar energy vision into enabling policy systems and processes.

4.3 Use regulatory mechanisms to ensure that Tamil Nadu will achieve, or exceed, the solar energy portfolio obligations as may be determined by the Tamil Nadu Electricity Regulatory Commission (TNERC) from time to time.

4.4 In accordance with regulations, facilitate open access to the public electricity grid and thereby create opportunities for grid-connected distributed generation of solar power.

4.5 Encourage and incentivise electricity consumers to set up solar energy systems.

4.6 Establish a 'Single Window System' for technical support, funding support and project clearance through cooperation between the concerned Government Departments.

4.7 Encourage public-private partnerships and joint ventures to mobilize investments in solar energy projects, manufacturing facilities, research, and technology development.

4.8 Facilitate 'Ease of Doing Business' in the solar energy sector.

4.9 Create an investment -friendly environment that provides opportunities for private individuals, companies, local bodies, government departments and others to contribute to and participate in the generation of solar energy, particularly for the electricity consumer to become a "prosumer" (a producer-consumer).

4.10 Create a win-win situation for all stakeholders.

4.11 Create a road map to achieve the objectives of the "National Renewable Energy Policy" to be issued by the Central Government."

7.It is for the aforesaid purpose. In paragraph No.5.2.1 and 5.2.2, the utility category systems and the consumer category systems have been defined, which has been extracted above. Only the utility category systems are exempted from payment of electricity tax for a period of 2 years from the date of policy. The policy is dated 04.02.2019 as it is evident from reading of Clause 18 of the aforesaid policy. The incentive is not available for a period beyond the aforesaid period.

8.In the present case, the petitioner has been asked to file returns for the period from 26.07.2019 to 31.01.2021 ie., partly within the aforesaid period. The policy stipulates that suitable incentive scheme will be designed to promote solar energy generation in the agricultural sector as well. *Prima facie* it appears that the petitioner is not entitled for exemption merely because the petitioner is generating solar energy. The petitioner has not brought out either in the affidavit or in the representation given to the respondents that 2 MW solar power plant put up by the petitioner at R.Kombai Village, Guziliyamparai Taluk, Dindigul District was for consumption by the petitioner and therefore, the petitioner came within the category of consumer category systems or the utility category systems generating electricity for self consumption.

9.*Prima facie* there is no merits in this writ petition. It is noticed that the petitioner has an alternate remedy by way of an appeal under Section 10 of the Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003. Since the petitioner has also paid the disputed electricity tax to the respondents, I give liberty to the petitioner to approach the Appellate Authority by way of an appeal within a period of 30 days from the date of receipt of a copy of this order. If such appeal is filed within such time, the Appellate Authority shall number the appeal and take up the appeal for final hearing and dispose of the same on merits and in accordance with law within a period of 60 days therefrom.

10.The writ petition is disposed of, in terms of the above observations. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AE)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

mm

To

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

2.The Electrical Inspector,
Office of the Electrical Inspector,
45/1, Spencer Compound,
Chidambaram Bankers 2nd Floor,
Nagal Nagar,
Dindigul - 624 003.

+1 CC to M/s.J.JEYAKUMARAN, Advocate (SR-12931[F] dated 18/03/2022)

+1 CC to M/s.SPL GP (SR-12973[F] dated 18/03/2022)

W.P.(MD)No.4731 of 2022

sb(CO)
TR(12.04.2022) 5P 5C