IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.18773, 18774 & 18775 of 2007
and
M.P.Nos.1, 1 & 1 of 2007

K.S.V.Cotton Mills (P) Ltd.,
K.S.V.Garden, Gujiliamparai,
Vedasanthur Taluk,
Rep.by Manager, S.Kathirvel. ...Petitioner in WP.18773/2007

Palaniappa Textiles (P) Ltd.
Karungal Village. D.Gudalur(Post),
Vedasanthur-624 620,
Rep.by its Manager, M.Palanivelraj. ...Petitioner in WP.18774/2007

Thuran Spinning Mills(P) Ltd.
577, Karur Road, Vedasanthur,
Rep.by its Director, K.G.Senthil Kumar. ...Petitioner in WP.18775/2007

Vs

1. Tamil Nadu Electricity Board,
   Rep. by its Chairman,
   800, Anna Salai, Chennai -2

2. The Superintending Engineer,
   Dindigul Electricity Distribution Circle,
   Tamil Nadu Electricity Board, Dindigul. ...Respondents in all WPs.

Prayer in WP.18773/2007:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Declaration, to declare the levy, demand and collection of Belated Payment Surcharge on the electricity tax arrears by the respondent vide No.SED/DEDC/DGL/AO/R/AS/JA/F.E.-Tax/D.No.926/07 dated 5.4.2007 as arbitrary, unlawful and ultra vires the Constitution of India.

Prayer in WP.18774/2007:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Declaration, to declare the levy, demand and collection of Belated Payment Surcharge on the electricity tax arrears by the respondent vide No.SED/DEDC/DGL/AO/R/AS/JA/F.E.-Tax/D.No.926/07 dated 5.4.2007 as arbitrary unlawful and ultra vires the Constitution of India.

Prayer in WP.18775/2007:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Declaration, to declare the levy, demand and collection of Belated Payment Surcharge on the electricity tax arrears by the respondent vide No.SED/DEDC/DGL/AO/R/AS/JA/F.E.-Tax/D.No.926/07 dated 5.4.2007 as arbitrary, unlawful and ultra vires the Constitution of India.

For Petitioners in all WPs. : Mr.M.Saravana Kumar forbearing
Mr.R.S.Pandiya Raj

For Respondents in all WPs : Mr.S.Madhusudanam

COMMON ORDER

The writ of declaration is filed in the present writ petitions to declare the levy, demand and collection of Belated Payment Surcharge on the electricity tax arrears by the respondent dated 5.4.2007 as arbitrary, unlawful and ultra vires the Constitution of India.

2.The petitioners levied electricity tax in two stages, viz., 5% tax on of consumption of electricity under the provisions of the 32 of 1991, ie., the amended Act 4 of 1962 called the Tamil Nadu Tax on Electricity (Taxation on Consumption) Act, 1962 of 15.6.2003. Again from 16.6.2003, the Government levied electricity tax at the rate of 5% tax on the consumption or sale of electricity under Act 12 of 2003, viz., Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003.(Act 12 of 2003)

3.The issue in this regard, in the matter of demand and collection of belated payment of surcharge is no more res integra and the Hon'ble Division Bench of this Court passed an order in Writ Appeal M.D.No.1590 of 2011, dated 22.12.2011, its relevant paragraphs are extracted as under:

21. In short, on a consideration of the entire facts and circumstances of the present case in an integral fashion, this Court comes to an inescapable conclusion that the Appellant/Respondent is not entitled to levy any surcharge on the Belated Payment of Electricity Tax (based on the facts and circumstances which float on the surface, in the case before Court). Therefore, this Court holds that the Learned Single Judge has rightly allowed the writ petition and further, set aside the demand of the respondent in collecting the Belated payment of Surcharge on the payment of arrears of Rs.2,34.308/- alone which are perfectly valid in the eye of law.

22. In short, the order of the learned Single Judge while allowing the writ petition as referred to supra, does not suffer from any material irregularity or patent illegality. As such, the said order does not require any interference in the hands of this Court.

23. Resultantly, the Writ Appeal is devoid of merits. Accordingly, the same is dismissed, leaving the parties to bear their own costs. Consequently, the connected Miscellaneous Petition is also dismissed."

4.The order of the Hon'ble Division Bench was confirmed by the Hon'ble Supreme Court of India in SLA(C) No.12282 of 2014 dated 01.03.2016. In view of the orders of the Division Bench and the Hon'ble Supreme Court of India, the impugned order passed by the respondent in proceeding No. SED/DEDC/DGL/AO/R/AS/JA/F.E.-Tax/D.No.926/07 dated 5.4.2007 stands quashed.

5.Accordingly, the writ petitions stand **allowed**. No costs. Consequently, connected miscellaneous petitions are closed.

(sha) 24.03.2023
Index : Yes
Speaking Order
Neutral Citation : Yes

S.M.SUBRAMANIAM. J.,

(sha)

To

1. Tamil Nadu Electricity Board,
   Rep. by its Chairman,
   800, Anna Salai, Chennai -2

2. The Superintending Engineer,
   Dindigul Electricity Distribution Circle,
   Tamil Nadu Electricity Board, Dindigul.

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