IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.03.2023

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.14982 of 2020 &
WMP.Nos.18640, 18641 & 18642 of 2020

Nandha Energy Limited (Formerly
Mohan Breweries & Distilleries Limited)
Bio Mass Plant at:Palayaseevaram,
Kancheepuram District – 631 606
Administrative Office at:
No.351, Avvai Shanmugam Salai,
Vadhiraja Centre, Third Floor
Gopalapuram
Chennai 600 086.

... Petitioner

Vs

1.The Principal Secretary to Government
Energy (D2) Department
Secretariat, Chennai – 600 009.

2. The Special P.A. to Hon'ble Minister
(Electricity, Prohibition & Excise)
Secretariat, Chennai – 600 009.

3. Industries (MIA-1) Department
Rep by the Principal Secretary
Government of Tamil Nadu
Fort St. George

Chennai – 600 009.

4. The Chief Electrical Inspector to
Government,
Thiru – Vi – Ka Industrial Estate,
Guindy, Chennai – 600 032.
[R2 deleted from the array of
respondents vide order dated 16.10.2020
made in W.P.14982 of 2020]

... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the impugned order of the 1st respondent passed vide G.O.(Rt.) No.210 dated 05.09.2019 and quash the same.

For Petitioner	: Mr.Rahul Balaji
For Respondents	:Mr.K.V.Sajeev Kumar Special Government Pleader

O R D E R

The petitioner challenges an order of the Appellate Authority, the Principal Secretary to Government, Energy (D2) Department/R1, dated 05.09.2019, under the Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003 (in short 'Act') .

2. The petitioner had set up a 18 Mega Watt Biomass Power Plant generating electricity from June 2003 onwards. Between the aforesaid date and February 2009, electricity was sold to the Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) as per Power Purchase Agreement (PPA). Admittedly, no returns have been filed by the petitioner in terms of Section 8 of the Act.

3. However, and there is no liability to tax between the period 2003 to 2009, when supplies were effected only to the licensee, TANGEDCO, Mr.K.V.Sajeev Kumar, learned Special Government Pleader appearing for the respondents agree. From February 2009 onwards, the petitioner had also effected supplies to 3rd parties through the TANGEDCO grid and hence, there is a statutory responsibility cast upon the petitioner to file returns and defray liability to tax.

4. The period for which the impugned demand is raised ('period in question') in question is between 2009 to 2012 and the 1st notice in this regard was issued on 25.10.2012 by the 4th respondent/the Chief Electrical Inspector to Government. That notice calls upon the petitioner to show cause why a demand not be raised for the aforesaid period, on the ground that, no returns have been filed for the period 2009 to 2012 in respect of supplies having been effected to 3rd parties.

5. The petitioner responded to the same and there is exchange of communication between the parties during the period 2012 to 2015. In 2017, the peititioner was defending the matter before the National Company Law Tribunal ('NCLT') and this position has not escaped the attention of the authorities. In letter dated 26.04.2018, R4 makes referrence to an order passed by the NCLT on 31.07.2017 to the effect that the petitioner was undergoing Corporate Insolvency Resolution Process ('CIRP') under the provisions of Insolvency and Bankruptcy Code, 2016 and a Resolution Professional ('RP') had been pointed.

6. R4 thus raised a claim before the RP as an operational creditor. This is clearly erroneous, insofar as no order of assessment had been passed till that date and in fact, the limitation for passing of an orders in terms of Section 9, had long expired. Only a demand raised pursuant to an order of assessment could be validly pursued by way of a claim.

7. It was only on 31.10.2018, that an order of assessment has came to be passed in terms of Section 9 of the Act read with Rule 16(3) and a demand in form E2 served on the petitioner. In appeal before the 1st respondent, one of the grounds raised by the peititioner was that order dated 31.08.2018 is barred by limitation. This ground has been rejected by the appeallate authority, referring

to the proviso to Section 9 and taking benefit of the fact that the petitioner was before the NCLT during the intervening period.

8. The fact that the petitioner was before the NCLT will not afford any strategic advantage to the respondents, as Section 9 (3) is categoric in the prescription for limitation reading thus:

> *9 (1)........*
>
> *(3)No assessment under this section shall be made after the expiry of four years.*
>
> *Explanation – For the purpose of this section, "year" means the year commencing on the first day of April and ending on the last day of March.'*

9. In the present case, the period in question is 2009 to 2012 and hence four years from the last day of March of the relevant year would be 31.03.2013, 31.03.2014, 31.03.2015 and 31.03.2016 in respect of the years ending 31.03.2009, 31.03.2010, 31.03.2011 and 31.03.2012.

10. The conclusion of the appellate authority on this ground is thus found to be contrary to law and the impugned order has necessarily, to be set aside on this score. Incidentally, yet another ground raised by the petitioner touches upon the charge under Section 3 of the Act, which is either on 'sale' or 'consumption'. Such dual charge could only be enforced on an alternate basis.

11. Thus, the primary liability is sale and alternatively, and only if the petitioner had been in a position to establish that TANGEDCO had collected taxes from the consumers, would the petitioner have been exonerated from such payment. Despite an opportunity having been granted to the petitioner at the original stage for this purpose, no proof has been produced to establish the suggestion of the petitioner that TANGEDCO has collected tax from the consumers. The impugned order is adverse to the petitioner on this ground, and on this score, I agree.

12. The impugned order of the 1st respondent in G.O.(Rt.) No.210 dated 05.09.2019 is set aside on the ground of limitation and this Writ Petition is allowed. No costs. Connected miscellaneous petitions are closed.

mpl **30.03.2023**

Index : Yes / No
Speaking Order / Non Speaking Order
Neutral Citation:Yes/No

To

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Dr.ANITA SUMANTH, J.

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