IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2023

CORAM: JUSTICE N.SESHASAYEE

WP.No.25355 of 2023
& WMP.Nos.24760, 24762 & 24764 of 2023

M/s.OPG Power Generation P Ltd.,
OPG Nagar, Periya Oblupuram Village,
Nagaraj Kandigal, Madharapakkam Road,
Gummidipoondi, Thiruvallur,
Tamilnadu – 601 201
Rep by its Authorised Signatory
R.Balaji ...Petitioner

-Vs-

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

2.The Electrical Inspector,
No.1/108, 1st Floor, Baljani Koil Street,
Ponneri, Thiruvallur – 601 204. ...Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent's impugned order No.KPM 1223A/EI/PON/R-43/2020 dated 21.11.2020 and the consequential impugned orders No.KPM 1223/CEIG/D3/2022 dated 20.01.2023 and No.KPM 1223/CEIG/d3/2022 dated 01.03.2023 both issued by the 1st Respondent, pertaining to payment of electricity tax on sale of electricity by the Petitioner and quash the same as illegal arbitrary, without jurisdiction, ultra vires the provisions of the Tamil Nadu tax on Consumption or Sale of Electricity Act 2003 and consequently direct the 1st & 2nd Respondents to issue safety certificate for 31.5MWA Station Transformer in the Petitioner's Power Plant after verifying compliance with the other conditions within the scope of Central Electricity Authority (Measures relating to Safety & Electric Supply) Regulation 2010.

For Petitioner : Mr.R.S.Pandiyaraj

For R1 & R2 : Mr.S.J.Mohamed Sathik,
Government Advocate

ORDER

When the matter came up before this Court on 28.08.2023, this Court recorded the following;

"The petitioner is a generator of electricity with a total installed of capacity of 422 MW. The petitioner has made additions and alterations to their 31.5MWA Station Transformer in the petitioner's 340 MW Power Plant, and the petitioner has made an application dated 31.12.2022 to respondents 1 and 2 for issuance of a safety certificate for such alterations as per Regulation 43 of the Central Electricity Authority (Measures Relating to Safety

and Electric Supply) Regulations, 2010. To the petitioner's dismay, the second respondent, vide the impugned communication dated 21.11.2020. has sought to impose the non-payment of electricity tax on electricity sold from the petitioner's power plant as a precondition and made remittance of such tax, a condition for issuance of drawing approval/safety certificate for the petitioner's 31.5 MWA Station Transformer.

2.Earlier, the second respondent has issued a notice dated 08.07.2019 with respect to levying electricity tax on electricity sold by the petitioner to IEX and other captive consumers. The petitioner has raised detailed objections dated 04.09.2019 to the same as per the TN Tax on Consumption or Sale of Electricity Act, 2003. But till date, the respondent has not passed any final orders. In fact, the Act provides for an appeal against such order, which is an independent legal proceeding.

3.The stands taken by the second respondent in the impugned order pertains to the payment of electricity tax on the sale of electricity from the petitioner's power plant to IEX, in respect of which assessment proceedings are to be taken separately under the TN Tax on Consumption or sale of Electricity Act, 2003. By virtue of the impugned order, the respondent, in Para 8, has made payment of electricity tax a condition precedent for the issuance of drawing approval/safety certificate for the additions and alterations in the petitioner's 31.5 MWA Station

Transformer.

4.The issuance of drawing approval/safety certificate is a function performed by the respondent under Regulation 43. Whereas, the power to assess and levy electricity tax falls under the purview of State legislation, even though the power is vested in the same authority, the two powers and functions of the respondent should be exercised independently of each other. It is legally untenable and arbitrary to make compliance under a central legislation incumbent on remitting tax under a State legislation, that too in a case where no assessment proceeding are pending or initiated.

5.The learned counsel informs this Court that an identical issue was considered by this Court in W.P.No.8680 of 2021 batch, and in its order dated 01.12.2021, this Court has directed the first respondent to issue a safety certificate to similarly placed petitioners without insisting them to pay e-tax dues on consumption or sale of electricity. Regarding the payment of e-tax, the respondent was directed to pass assessment orders as per the TN Tax on Consumption or Sale of Electricity Act, 2003. In fact, the first respondent filed a written submission dated 29.11.2021 before this Court in W.P.No.8680 of 2021 batch, wherein the first respondent undertook to issue a safety certificate without insisting on payment of e-tax dues. Based on such undertaking, this Court passed the final orders in

W.P.No.8680 of 2021 batch dated 01.12.2021 as mentioned above.”

2.The learned Government Advocate appearing for the respondents 1 and 2 makes a statement that the Safety Certificate has been given to the petitioner.

3.In view of the above, nothing survives for consideration in this Writ Petition and accordingly, it is closed. No costs. Consequently, the connected miscellaneous petitions are closed.

30.08.2023

Index : Yes/No
Internet : Yes/No
Tsg

N.SESHASAYEE, J.,

Tsg

To
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Guindy, Chennai – 600 032.

2.The Electrical Inspector,
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Order made in
W.P.No.25355 of 2023

30.08.2023