IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2023

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MR.JUSTICE N.SESHASAYEE

W.P.Nos.28330 and 28333 of 2023
and W.M.P.Nos.27864, 27865, 27866 and 27867 of 2023

M/s.Best Cotton Mills Pvt. Ltd.,
(Unit of Best Corporation Limited)
S.F.No.113, Chitravuthampalayam Village,
Pollachi Raod,
Padmavathipuram,
Tirupur-641 603
Rep. by its Manager Energy
Administration P.Muthukrishnan
... Petitioner in W.P.No.28330 of 2023

M/s.Best Cotton Mills Pvt Ltd Unit II,
No.199/3B, Pollachi Road,
Chitharavuthanpalayam, Elis Nagar Post,
Dharapuram Taluk, Tirupur,
Rep. by its Manager Energy
Administration P.Muthukrishnan
... Petitioner in W.P.No.27867 of 2023

Vs.

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

2.The Senior Electrical Inspector,
Coimbatore-18.

3.The Electrical Inspector
Palladam. ... Respondents in both W.Ps

Prayer in W.P.No.28330 of 2023: The writ petition filed under Article 226 of the Constitution of India, for issuance of a writ of Certiorarified Mandamus, calling for the records of the first respondent No.EDE 58/SPP/CEIG/D5/Drg/2022, dated 14.07.2022, pertaining to payment of electricity tax on consumption of electricity from petitioner's DG 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 respondents 1 to 3 to issue the Drawing approval for 950kw (AC) Rooftop solar power plant at S.R.No.113, Chitravuthampalayam Village, Pollachi Road, Dharapuram Taluk, Tiruppur District (the "premises"), after verifying compliance with the other conditions within the scope of Central Electricity Authority (Measures relating to Safety & Electric Supply) Regulation, 2010.

Prayer in W.P.No.28333 of 2023: The writ petition filed under Article 226 of the Constitution of India, for issuance of a writ of Certiorarified Mandamus, calling for the records of the first respondent No.EDE 633/SPP/CEIG/D5/Drg/2022, dated 30.05.2022, pertaining to payment of electricity tax on consumption of electricity from petitioner's DG 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 respondents 1 to 3 to issue the Drawing approval for 950kw (AC) Rooftop solar power plant at S.R.No.199/3B, Pollachi Road, Chitravuthampalayam, Elis Nagar Post, Dharapuram Taluk, Tiruppur (the "premises"), after verifying compliance with the other conditions within the scope of Central Electricity Authority (Measures relating to Safety & Electric Supply) Regulation, 2010.

In both W.Ps

For Petitioners : Mr.R.S.Pandiyaraj

For Respondents : Ms.M.Bindran
Additional Government Pleader

COMMON ORDER

By consent, these writ petitions are taken up for final disposal at the admission stage itself.

2.Mr.R.S.Pandiyaraj, the learned counsel for the petitioners submitted that in an earlier batch of cases involving an identical issue, the first respondent came out with his proceedings dated 29.11.2021, which reads as below:

"Chief Electrical Inspector to Government is the competent authority under the central enactment for issuance of safety certificate and for levy and collection of E-Tax under the State enactment and is obliged to implement the provisions of both enactments. It is the duty of the Chief Electrical Inspector to Government to ensure and satisfy electricity tax dues to the Govt. are cleared before issuance of any approval. This affidavit is filed only for a limited purpose that dehors the pendency of E-Tax dues on consumption of Electricity purchase through open access (i.e) Indian Energy Exchange, Power Exchange India Limited, etc. Inspector to Government will issue safety certificate if all the conditions otherwise are satisfied The Chief Electrical without insisting on payment of E-tax dues on consumption of Electricity purchase through open access (i.e) Indian Energy Exchange, Power Exchange India Limited, etc…"

3.Based on this, this Court has passed an order in a batch of Writ Petitions in W.P.Nos.8680 of 2021 etc., batch, dated 01.12.2021. The same order now necessarily needs to be followed here. The relevant portion of the order is extracted hereunder:

"3.According to the learned counsel for the petitioners, the impugned Demand Notices are arbitrary and are legally untenable inasmuch as the payment of electricity tax on sale is unconnected with issuance of Safety Certificate for new equipments installed by the petitioners and such payment cannot be insisted upon by the Respondents, and the same is ultra vires the provisions of the Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003. It is his contention that, while the Petitioner is willing to comply with the final outcome of such assessment proceedings, subject to the statutory remedies, the insistence of such a condition is incorrect and beyond the powers of the Respondents and contrary to the statutory Scheme with regard to the assessment of electricity tax.

4.On the other hand, learned Additional Advocate General appearing for the respondents, on instructions from the Respondents, filed Written Submission dated 29.11.2021 and submitted that, the Chief Electrical Inspector to Government will issue Safety Certificate to the Petitioners, if all the conditions otherwise are satisfied, without insisting on payment of E-tax dues on *consumption of electricity purchase through open access (L.e.) Indian Energy Exchange, Power Exchange India Limited, etc. However, he submitted that, as far as payment on E-Tax consumption of electricity purchase through open access (ie.) Indian Energy Exchange, Power Exchange India Limited, etc. is concerned, Respondents may be permitted to proceed in accordance with law as per the Tamil Nadu Tax on Consumption or sale of Electricity Act, 2003, vide G.O.Ms.No.49, Energy (B1) Department, dated 12.06.2003 and G.O.Ms.No.55, Energy (D2) Department, dated 20.10.2021, and all other relevant orders in force.*

5. In reply, learned counsel for the Petitioners submitted that, Petitioners have no objection to proceed in accordance with G.O.Ms.No.49, Energy (B1) Department, dated 12.06.2003, however, they have serious objections to proceed with G.O.Ms.No.55, Energy (D2) Department, dated 20.10.2021 and that, the Petitioners are willing to satisfy the conditions stipulated by the Respondents for issuance of Safety Certificate.

6.Heard the learned counsel on either side and perused the material documents available on record.

7. In the Written submissions dated 29.11.2021, Respondents have agreed that, the Chief Electrical Inspector to Government will issue Safety Certificate if all the conditions are otherwise satisfied, without insisting on payment of E-tax dues on consumption of electricity purchase through open access. However, Respondents sought permission of this Court to proceed in in accordance with law vide G.O.Ms.No.49, Energy (B1) Department, dated 12.06.2003 and G.O.Ms.No.55, Energy (D2) Department, dated 20.10.2021. When the said Government Orders are not under challenge, this Court cannot render any finding on the same.

8. In view of the above and considering the facts and circumstances of the case, this Court directs the 1st Respondent/Chief Electrical Inspector to the Government to issue Safety Certificates to the Petitioners, without insisting them to pay E-tax dues on consumption of electricity purchase through open access, provided all the conditions otherwise are satisfied. Insofar as E-Tax consumption of electricity purchase through open access is concerned, Respondents are directed to pass

N.SESHASAYEE, J.

Anu

Assessment Orders as per the Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003 and relevant Government Orders."

4.Following the above decision of this Court, this Writ Petition stands disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

27.09.2023

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Index : Yes / No
Neutral citation : yes/no
To.

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