IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2024

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.24845 of 2008
and
M.P.No.1 of 2008

Cheslind Textiles Limited, HT.No.170 ... Petitioner

Vs.

1. The State of Tamil Nadu,
   rep. by its Secretary to Government,
   Energy Department, Fort St.George,
   Chennai – 600 009.

2. Tamil Nadu Electricity Board,
   represented by its Chairman,
   800, Anna Salai,
   Chennai – 600 002. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Declaration, declaring that the provisions of the Tamil Nadu Tax on Consumption of Sale of Electricity Amendment Act, 2007, being Tamil Nadu Act 38 of 2007 as unconstitutional, beyond the legislative competence, and violative of Article 14 of the Constitution of India.

For Petitioner : Mr.S.P.Parthasarathy

For Respondents : Mr.I.Syed Sibghatulla,
SC for TANGEDCO

ORDER

The writ of declaration is filed in the present writ petition to declaring the levy, demand and collection of belated payment surcharge on the electricity tax arrears by the respondents.

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 15.06.2003. Again from 16.06.2003, 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. It is made clear that the respondent Board is not entitled to levy any surcharge on the payment of electricity tax. However, the petitioner is liable to pay charges, as applicable.

5. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

29.01.2024

skr
Index : Yes
Speaking order

To

1. The Secretary to Government of Tamil Nadu,
   Energy Department, Fort St.George,
   Chennai – 600 009.

2. The Chairman , The Tamil Nadu Electricity Board,
   800, Anna Salai,
   Chennai – 600 002.

S.M.SUBRAMANIAM, J.

skr

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