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W.P. No.19316 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2024

CORAM:

THE HON'BLE MR. JUSTICE G.K. ILANTHIRAIYAN

W.P. No.19316 of 2013 and
W.M.P.No.1675 of 2018

Hi-Tech Carbon
(A Unit of Aditya Birla Nuvo Ltd.)
K/16, Phase II, SIPCOT Industrial Complex P.O.
Gummidipoondi District,
Thiruvallur-601 201.
Rep. by its Vice President
(Finance & Commercial)
Mr.Y.K.Goyal

... Petitioner

vs.

1. The State of Tamilnadu,
Rep. by the Secretary to Government,
Energy Department,
Secretariate, Fort St., George,
Chennai-600 009.

2. The Tamilnadu Generation and Distribution
Corporation Ltd.,
Rep. by its Managing Director,
800, Anna Salai,
Chennai-600 002.

3. The Chief Electrical Inspector,
Thiru Vi Ka Industrial Estate,
Guindy, Chennai-600 032.

4. The Electrical Inspector,



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Kancheepuram North Division,
Thiru Vi Ka Industrial Complex,
Guindy, Chennai-600 032.

... 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 4th respondent relating to the impugned letter dated 03.06.2013 bearing reference No.101/E1/KPM(N)/2212 and quash the same as illegal and direct the 4th respondent to consider the petitioner's representation dated 17.09.2012 on merits by providing an opportunity to the petitioner to put forth its contentions and in accordance with law as per the common order dated 08.04.2013 in W.P.No.6856 and 6857 of 2013 of this Hon'ble Court and until such time not to enforce the (1) Letter No.101/E1/KPM(N)/2012 dated 05.09.2012 issued by the 4th respondent by demanding or collecting electricity tax from the petitioner amounting Rs.32,17,917/- together with interest of Rs.5,32,220/- for the period from October 2010 to March 2011; and/or (2) letter No.101/E1/KPM(N)/2012 dated 05.09.2012 issued by the 4th respondent by demanding or collecting electricity tax from the petitioner amounting to Rs.50,87,482/- together with interest of Rs.3,85,067/- for the period from April 2011 to March 2012.



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For Petitioner : Mr.Krishna Srinivasan
Senior Counsel for
Mr.S.Ramasubramaniam

For Respondents 1, 3 & 4: Mr.E.Vijay Anand
Additional Government Pleader

For Respondent 2 : Mr.L.Jaivenkatesh

ORDER

This writ petition has been filed challenging the order passed by the 4th respondent dated 03.06.2013 and also for direction directing the 4th respondent to consider the request made by the petitioner as directed by this Court in W.P.Nos.6856 and 6857 of 2013 dated 08.04.2013.

2. The petitioner involved in manufacturing of Carbon Black in the name and style of Hi-Tech Carbon. During the manufacturing process of black carbon, combustible gases of high calorific value emerge and these gases are separated from Carbon Black particles through filter bags. The combustible off gases thus separated is fed into the specially designed boiler for generation of steam and the said steam is used for generation of power through turbo generator sets. The electricity generated by the petitioner out of the turbo generator sets is metered in units. The part of



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the power generated from captive power plant is used by the petitioner for its own use. The petitioner also consumes a part of the generated electricity for the operation of the captive generating plant. The surplus power so generated is sold to the Tamilnadu Electricity Board (TNEB), now TANGEDCO. As per provisions of the TamilNadu Tax on consumption or sale of Electricity Act, 2003, electricity tax on captive consumption of electricity is required to be paid to the Respondents. However, the petitioner was exempted from the payment of electricity tax towards captive consumption of electricity for the period from March 2008 to May 2008 and for the period from September 2008 to March 2011 by the Government order passed by the first respondent in G.O.Ms.No.25 Energy (B1) Department dated 24.03.2008. The relevant Government Orders and the corresponding exemption periods are provided below:



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<i>S.No</i>	<i>Government Order</i>	<i>Dated</i>	<i>Exemption Period</i>	
			From	To
1.	G.O.Ms.No.25, Energy (B1) Department	24.03.2008	01.03.2008	31.05.2008
2.	G.O.Ms.No.06, Energy (B1) Department	04.09.2008	04.09.2008	31.03.2008
3.	G.O.Ms.No.79, Energy (B1) Department	14.09.2009	01.04.2009	30.09.2009
4.	G.O.Ms.No.44, Energy (B1) Department	30.04.2010	01.10.2009	31.03.2010
5.	G.O.Ms.No.85, Energy (B1) Department	09.09.2010	01.04.2010	31.03.2011

3. Accordingly, the exemption was granted by Government in respect of the electricity tax payable under the Act on the consumption of electricity for own use by HT consumers using their captive generating plants namely gensets. Therefore, the petitioner is exempted from payment of electricity tax on its own for captive consumption of electricity generated by its turbo generator sets for its own use for the period cover under the Government Order as stated supra. However, inadvertently the petitioner had paid electricity tax on its captive consumption of electricity generated using its Turbo Generator sets during the periods of exemption under the Government Order to the tune of Rs.1,43,83,394/-. Therefore, the petitioner submitted representation to refund of the said amount or deposit the said amount in future electricity



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tax since the exemption was extended till 31.03.2011. However, the request made by the petitioner was not considered and without depositing the amount which was paid by the petitioner for future tax. Subsequently, the petitioner was issued with demand notice towards captive consumption of electricity for subsequent period i.e., April 2011. Therefore, the petitioner approach this Court by way of writ petition in W.P.No.6856 and 6857 of 2013 and this Court by an order dated 08.04.2013 directed the 4th respondent to consider the representations submitted by the petitioner on merits in accordance with law within a period of four weeks from the date of receipt of copy of the order. However, without giving sufficient opportunity to the petitioner the 4th respondent rejected the claim made by the petitioner. Aggrieved by the same, the present writ petition is filed.

4. Mr.Krishna Srinivasan, the learned senior counsel appearing on behalf of the petitioner submitted that this Court specifically directed the 4th respondent to consider the representation submitted by the petitioner seeking exemption till march 2011 in accordance with law. However, the 4th respondent without giving any opportunity of hearing to the petitioner mechanically rejected the representation submitted by the petitioner.



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Further, the very same issue this Court dealt with in batch of writ petitions and held that the Government orders are very much applicable to captive power generation plant consumed electricity for their own use and they were exempted from tax. He relied upon the judgement passed by this Court in W.P.No.27277 of 2013 etc., batch cases dated 23.11.2022.

5. The learned counsel for the respondents filed counter and submitted that during the years 2008 to 2011, due to acute shortage of power in the state, the Government of TamilNadu was forced to impose scheduled power cuts. Due to the soaring demand of power for HT industries and in order to make good of power deficit, many HT consumers used their generators/erected new generators to produce energy during the period of power cut. Therefore, the Government granted exemption to HT industries for payment of electricity tax on self-consumption of electricity for the period from 01.03.2008 to 31.05.2008 and 04.09.2008 to 31.03.2011 as per Section 14(2) of the Electricity Tax Act, 2003. The government orders have been passed only in order to enable the HT consumers to make good of power deficit prevailing at different periods using their smaller capacity of captive generating plants



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namely 'gensets'. Therefore, when the petitioners-company generators are being operated in parallel with TamilNadu Generation and Distribution and Corporation's Grid, the captive power plants in the petitioners company premises are being operated all the day irrespective of the period of power cut to cope up with their requirement of electricity for production and as such it is the contention that the government orders are not applicable to the petitioners to claim exemption.

6. The further contention is that the government orders are applicable only to the consumers using the captive generation plants, namely, gensets for their own use, whereas the petitioners besides own use, also supplied electricity to the TANGEDCO, hence the government orders are not applicable. The appeal remedy is available as against the demand and the appeal lies before the Government, therefore, the Writ Petition is not maintainable. However, the petitioners are being operated in the parallel with TANGEDCO grid, the captive power plants of the petitioner's premises are being operated all the day irrespective of the period of power cut to cope up with their own consumption. Therefore, the petitioner is not depending on energy consumption. He further submitted that the petitioner is a licensee as well as Captive Generating



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Plant as defined under Section 2(10) of the Electricity Tax Act, 2003.

Therefore, the exemption provided under the Government Orders are not applicable LT consumers. The exemption is application only for the HT consumers and the claim made by the petitioner was rightly rejected by the 4th respondent. The very same issue already dealt with by this Court as against the demand notice of electricity tax in W.P.No.27277 of 2013 etc., batch cases dated 23.11.2022. In that writ petition the relevant portion of submission made by the learned Additional Advocate General as follows :

"the Government orders have been passed only in order to enable the HT consumers to make good of power deficit prevailing at different periods using their smaller capacity of captive generating plants namely 'gensets'. Therefore, when the petitioners-company generators are being operated in parallel with TamilNadu Generation and Distribution and Corporation's Grid, the captive power plants in the petitioners company premises are being operated all the day irrespective of the period of power cut to cope up with their requirement of electricity for production, therefore, it is the contention that the government orders are not applicable to the petitioners to claim exemption. The further contention is that the government orders are applicable only to the consumers using the captive generation plants, namely, gensets for their own use, whereas the petitioners besides own use, also supplied electricity to the TANGEDCO,



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hence the Government orders are not applicable. It is also the contention of learned Additional Advocate General that the appeal remedy is available as against the demand and the appeal lies before the Government, therefore, the Writ petition is not maintainable".

7. It is relevant to extract the relevant portion of G.O.Ms.No.25 dated 24.03.2008 observed in W.P.No.27277 of 2013 dated 23.11.2022 as follows :

"9. The short question involved in these Writ Petitions is, with regard to the interpretation of the Government Order viz., G.O.Ms.No.25 dated 24.03.2008 and on perusal of the said Government Order, it is seen that the Tamilnadu 'Tax' on consumption of Sale of Electricity Act, 2003 (Tamilnadu Act 12 of 2003) and Amendment to Section 14 regarding exemption from the levy of Electricity Tax on generation of H.T. Consumers who generate energy through their own gensets for self consumption for the period from 01.03.2008 to 31.05.2008 and issued Notification which reads as follows:

"In exercise of the powers conferred by sub-section (2) of Section 14 of the TamilNadu Tax on consumption or Sale of Electricity Act, 2003 (Tamilnadu Act 12 of 2003), the Governor of Tamilnadu hereby makes exemption in respect of the Electricity Tax payable under the said Act on the consumption of electricity for own use by H.T. consumers using their captive generating



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plants, namely, gensets for the period on and from the 1st March 2008 to the 31st May 2008.

10. The above Government Order clearly indicate that the captive HT consumers, who are using captive generation plants and consumed electricity to their own use, are exempted from tax and amendment has been passed. Notification clearly shows that the exemption in respect of the electricity tax payable under the said Act on the consumption of the electricity for own use for H.T. consumers using the captive generators, namely gensets, for the period from 01.03.2008 to 31.05.2008, thereafter it has been extended from time to time. The Government Order does not indicate that captive generator supplying excess electricity to the grid will not be applicable. The Captive Generating Plant, as per definition 2(8) of the Electricity Act reads as follows:-

"Captive generating Plant" namely, a power plant set up by any person to generate electricity primarily for his own use and includes a power plant set up by any co-operative society or association of persons for generating electricity primarily for use of members of such co-operative society or association."

11. The above said Government Order exempted the payment of electricity tax on consumption of electricity for own use by high tension consumers using their self generated electricity and the petitioners are certainly entitled to the benefit of exemption up to the level of their own consumption. Even accepting the contention of the respondents that the rational



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behind the exemption allowed by the government is to exempt consumers availing HT supply in order to enable them to make good of power deficit prevailing at different periods using their smaller capacity of captive generating plants, namely, gensets. The fact remains that as long as the petitioners used the consumption by their own generation, merely because some excess energy has to be supplied to their grid, the benefit extended under the Government order cannot be deprived by sub-planting the words in the name of clarification by the officials.

12. Yet another contention advanced by the learned Additional Advocate General is that when the appeal remedy is available, the Writ Petitions are not maintainable. No doubt, normally, when there is an alternative remedy, the Writ Petitions are not maintainable. As the very issue involved in these Writ Petitions are with regard to the interpretation of the Government Order and the very appellate authority is the Government and the Government has taken a view that government order is not applicable, again driving the petitioners to avail the appellate relief before the appellant authority, who is none other than the Government, will not serve any purpose.

13. When the government order does not make any distinction, the respondents sub-planted the words to deny the benefits. The contention of the learned Additional Advocate General that use of word, namely, genset in the notification will



*apply only to the small captive generators using diesel gensets, the said stand is also taken by him in the counter. It is relevant to note that the word 'namely', used in the notification is only illustrative and cannot be construed that the same imposes any specific limitation or restrictions, in this regard, the **Hon-ble Apex Court in the case reported in (2004) 10 SCC 190 [Vee Nissan Electronics Vs. Commissioner of Central Excise Mumbai]**, in Paragraph No.3 it is held as follows:-*

"3. Thus any musical system which is commercially known as a 'stereo or hi-fi system' falls within this tariff item. Undeniably the system of the appellants is commercially known as a 'stereo or hi-fi system'. The use of the word 'namely' in the tariff item does not mean that only the items specified thereafter fall under the definition of the term 'musial system'. The term 'namely' only clarifies that even those items would constitute a musical system."

therefore, the contention of the respondents that the word 'namely' used in the notification restrict the benefits only to the small captive generators, using the diesel generators, cannot be countenanced.

*13. Similarly, the Hon-ble Apex Court in the case **reported in (2021) 5 Supreme Court Cases 602 [Government of Kerala & Another Vs. Mother Superior Adoration Convent]** at Paragraph No.19, held as follows:-*

"19. However, there is another line of authority which states that even in tax statutes, an exemption provision should be



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liberally construed in accordance with the object sought to be achieved if such provision is to grant incentive for promoting economic growth or otherwise has some beneficial reason behind it. In such cases, the rationale of the judgments following Wood Papers (supra) does not apply. In fact, the legislative intent is not to burden the subject with tax so that some specific public interest is furthered. Thus, in CST v. Industrial Coal Enterprises (1999) 2 SCC 607, this Court held:

"11. In CIT v. Straw Board Mfg. Co. Ltd. 1989 Supp (2) SCC 523 this Court held that in taxing statutes, provision for concessional rate of tax should be liberally construed. So also in Bajaj Tempo Ltd. v. CIT (1992) 3 SCC 78 it was held that provision granting incentive for promoting economic growth and development in taxing statutes should be liberally construed and restriction placed on it by way of exception should be construed in a reasonable and purposive manner so as to advance the objective of the provision.

12. We find that the object of granting exemption from payment of sales tax has always been for encouraging capital investment and establishment of industrial units for the purpose of increasing production of goods and promoting the development of industry in the State. If the test laid down in Bajaj Tempo Ltd. case (1992) 3 SCC 78 is applied, there is no doubt whatever that the exemption granted to the respondent from 9-8-1985 when it fulfilled all the prescribed conditions will not cease to operate just because the capital investment exceeded the limit of Rs 3 lakhs on account of the respondent becoming the owner of land and



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building to which the unit was shifted. If the construction sought to be placed by the appellant is accepted, the very purpose and object of the grant of exemption will be defeated. After all, the respondent had only shifted the unit to its own premises which made it much more convenient and easier for the respondent to carry on the production of the goods undisturbed by the vagaries of the lessor and without any necessity to spend a part of its income on rent. It is not the case of the appellant that there were any mala fides on the part of the respondent in obtaining exemption in the first instance as a unit with a capital investment below Rs 3 lakhs and increasing the capital investment subsequently to an amount exceeding Rs 3 lakhs with a view to defeat the provisions of any of the relevant statutes. The bona fides of the respondent have never been questioned by the appellant."

in the light of the above judgment there is no ambiguity in the government order and the government order exempted captive generative plant and there is no restrictions imposed in the government order, the petitioner being involved in captive generation, is certainly entitled to exemption, as per government order and the word employed in the government order has to be given its original meaning. The respondents cannot sub-plant their own reasons to deny the benefits by interpreting the government order to the effect that it is applicable only to the captive generatives used in the D.G.Gensets."



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8. So far no appeal was preferred as against the order passed by the 4th respondent. The very same issue involved in this writ petition and under the Government Order, the petitioner claimed refund of electricity tax which was already made by them. However, the said request was rejected by the 4th respondent.

9. In view of the above judgement the order impugned in this writ petition cannot be sustained and liable to be quashed. Accordingly, the order passed passed by the 4th respondent dated 03.06.2013 is quashed. The 4th respondent is directed to whatever the excess payment made by the petitioner, to refund or adjust towards future electricity tax payable by the petitioner from the month of April 2011.

10. With the above direction, this writ petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

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Index: Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
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G.K. ILANTHIRAIYAN, J.

gvn

To

1. The State of Tamilnadu,
Rep. by the Secretary to Government,
Energy Department,
Secretariate, Fort St., George,
Chennai-600 009.

2. The Tamilnadu Generation and Distribution
Corporation Ltd.,
Rep. by its Managing Director,
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