



W.A.No.2374 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2024

CORAM :

**THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

Writ Appeal No.2374 of 2023
and C.M.P.No.20014 of 2013

M/s Rasipuram Textiles (P) Ltd

Renamed as:

M/s Sakthi Aiswarya Spinning Mills Ltd.,
Pachal (PO), Puduchatram, Namakkal.

... Appellant

Versus

1. The Superintending Engineer
Tamil Nadu Electricity Board
Namakkal Electricity Distribution Circle
Namakkal.

2.The Chief Engineer (Distribution)
Tamil Nadu Electricity Board
Erode Region, Erode.

.. Respondents

Prayer : Writ Appeal filed under Clause 15 of Letters Patent, against the order dated 30.06.2023 passed in W.P.No.7585 of 2020.

For the Appellant : Mr.V.Vignesh

For the Respondents: Mr.P.Wilson, Senior Counsel
Assisted by Mr.S.Kalaiselvan



W.A.No.2374 of 2023

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JUDGMENT

(Judgment made by the Hon'ble Mr.Justice D.Bharatha Chakravarthy)

A. The Writ Appeal:

This Writ Appeal is filed aggrieved by the order of the learned Single Judge dated 30.06.2023 in W.P.No.7585 of 2020. By the said order, the learned Single Judge dismissed the Writ Petition filed by the appellant.

B.The Writ Petition:

2.The appellant filed the above Writ Petition challenging the order of the 2nd respondent, viz., the Chief Engineer (Distribution), Tamil Nadu Electricity Board (now TANGEDCO), Erode Region, Erode, dated 20.03.2020, whereby, the appeal filed by the appellant was dismissed by upholding the period of assessment as 12 months, as adopted in the assessment order, in respect of the theft of energy and directed issuance of assessment order afresh by adopting the multiplying factor as '4' and the consequential assessment order issued on 08.04.2020, directing the appellant to pay a total sum of Rs.22,10,27,400/-.



W.A.No.2374 of 2023

C. Facts in Brief:

3.The brief facts leading to filing of the present appeal are as follows:-

On 11.05.1995, an inspection was carried in the premises belonging to the appellant, in respect of High Tension Power Line No.89 TF 1, which was standing in the name of the predecessor of the appellant, viz., M/s Rasipuram Textiles (P) Ltd.,. The inspection team found that there was electricity theft. Therefore, by the communication dated 11.05.1995, the Assistant Engineer, MRT Wing, requested action be taken in respect of the said theft. The relevant findings of the inspection report, translated in english is as follows:-

“At the time of inspection, the mill was functioning at full flow but the Kwh disc on the meter was not running but the RKVAh disc was functioning slowly. Therefore, intensive test was carried out and found that the electrical seals fitted in the metering set and the meter box were found to be correct. Then the following reading was in the meter.

Kwh =11638.3, KVAH = 12543.7, KVAH = 04398.4
KWMD = 0.31, KVAMD = 0.36.

Further, In the 1" GI pipe, which was bringing wires from the metering set to the meter box, had all its joints spot welded. However, from the "L" bend below the meter box, piece of approximately 3 inches long GI pipe was stripped and pushed about 1 inch up into the box. As a result, the six wires coming from the metering set to the meter box were exposed, comprising three thick wires and three slim wires. In that, the thick red, yellow, and light orange wires from the



WEB COPY



W.A.No.2374 of 2023

current circuit were connected using a pin, resulting in a dead short. This disruption interrupted the required flow of current to operate the meter. This is electricity theft as per Indian electricity laws. Due to this, the electricity board has lost revenue.”

3.1 Thereafter, a show cause notice was issued on 23.05.1995, calling upon the predecessor of the appellant to show cause as to why extra levy in respect of theft of energy should not be collected from them, in accordance with the Terms and Conditions of Supply of Electricity. Explanation was submitted on 26.05.1995 and after consideration of the said explanation, an order was passed on 01.06.1995 imposing extra levy of Rs.4,62,64,027. The order as such is extracted hereunder for ready reference:-

“1. On examination of your representation with reference to the information available, it is found that the following has been committed in your service connection:-

"The Secondary side cables from metering set to the meter was short circuited before the meter using a needle there by arresting the meter from recording the energy used for the factory"

2. The extra levy payable by you for the energy stolen is worked out as Rs.4,62,64,027/- (Rupees four crores sixty two lakhs sixty four thousand and twenty seven only) the working sheet is enclosed.

3. You are hereby called upon to pay the extra levy in one lump sum. The extra levy should be paid on or



WEB COPY



W.A.No.2374 of 2023

before 17.6.1995. If you fail to pay the above amount before 17.6.95 the service connection will be disconnected.

4. If you choose to prefer an appeal against this order, you may appeal to the appellate authority (viz. Chief Engineer/Distribution/Salem Region at Erode) within 60k days from the date of receipt of this notice after paying the extra levy.

5. You are requested to acknowledge receipt of this notice immediately.”

(emphasis supplied)

3.2 The predecessor of the appellant challenged the said order of levy before this Court in W.P.No.7971 of 1995. By order dated 29.08.2001, the learned Single Judge found that even though there is an appeal remedy as against the said order, the procedure for making levy stood changed from 14.02.1997. As per the new procedure, it is the original Assessing Authority which should conduct the enquiry after giving opportunity to the parties concerned and not the Appellate Authority. In that view of the matter, the learned Single Judge set aside the assessment order and remitted the matter back to the Assessing Authority by directing the appellant to deposit a sum of Rs.15 Lakhs.

3.3 Pursuant thereto, once again a notice of hearing / enquiry was issued by the Executive Engineer, Namakkal on 24.05.2002, fixing the date of enquiry as 12.06.2002. In the meanwhile, the appellant took over the said M/s



W.A.No.2374 of 2023

Rasipuram Textiles (P) Ltd, with effect from 21.07.1999. Thereafter, by a communication dated 17.06.2002 documents required by the appellant were furnished. Once again, considering the explanation submitted by the appellant and the materials on record, extra levy of Rs.4,62,64,027/- was imposed and the appellant was also permitted to pay the same in 15 equal monthly installments. The working sheet in respect of the calculation was also furnished.

3.4 The appellant once again challenged the same by way of W.P.No.21113 of 2004. In the meanwhile, a criminal case was also registered in Crime No.175 of 1995 on the file of the Puduchatram Police Station, prosecuting the Directors of the predecessors of the appellant, for the offences under Sections 39 (1) and 44 (1) of the Indian Electricity Act, 1910 (hereinafter referred to as 'the Act'). Upon finding that the complainant failed to prove that the Directors were responsible for the day-today conduct of the business of the Company, the learned Additional Sessions Judge acquitted the accused which was confirmed by the High Court and thereafter, by the Hon'ble Supreme Court of India in CrI.A.No.1962 of 2008 vide Order dated 25.11.2008.



W.A.No.2374 of 2023

WEB COPY

3.5 By a Judgment dated 08.09.2014, on the ground that the criminal case has ended in acquittal, the learned Single Judge of this Court allowed the W.P.No.21113 of 2004 filed by the appellant thereby quashing the order of levy. Aggrieved thereby, the TANGEDCO filed W.A.No.1705 of 2014 and by a Judgment dated 05.08.2009, a co-ordinate Bench of this Court set aside the order of the learned Single Judge, however, gave an opportunity to the appellant, to file an appeal as against the assessment order. Pursuant thereof, an appeal was preferred before the 2nd respondent, the Appellate Authority viz., The Chief Engineer (Distribution), Erode Region. The Appellate Authority by an order dated 20.03.2020 found that the case on hand does not involve a permanent design to be evidenced during the routine inspection but however, it is an exercise which would require a few minutes to execute and few minutes to stop without any trace. It held that, going by the nature of theft, the period of 12 months being one of the choice under the rules can be followed. The Appellate Authority rejected the plea of the appellant to restrict the assessment from the date of previous inspection to the date of detection. Pursuant to the said order, extra levy was worked out by an order dated 08.04.2020 at



W.A.No.2374 of 2023

Rs.3,97,64,027/-. The appellant was directed to pay the said sum along with the belated payment surcharge amounting to Rs.18,12,63,374/-, in all totaling to Rs.22,10,27,400/-. The detailed working sheet in respect thereof is also annexed to the assessment order.

3.6 Challenging the said order of the Appellate Authority and the consequential order of assessment, the present Writ Petition is filed.

3.7 Apart from denying the theft of energy, it is the case of the appellant that the demand charges were erroneously computed, in any event, as per Clause 8.02, four options are stipulated for computing, with a rider that whichever of the four computation is less. Therefore, without choosing the lesser option, the option of 12 months period has been wrongly chosen. The very same authority in respect of the M/s Triveni Alloys, M/s Srinivasa Smelters Ltd., and M/s Sri Rama Machineries computed the levy only from the last inspection and not before that. The Writ Petition was resisted by the respondents- TANGEDCO by oral arguments.



W.A.No.2374 of 2023

D. The Order & Findings in the Writ Petition:

4. The learned Single Judge considered the case of the appellant and by an order dated 30.06.2023, found that on the facts of the case, levy cannot be limited from the date of previous inspection and the respondents have correctly adopted 12 months period. As far as the contention of following any one of the four methods of calculation whichever is less is concerned, the learned Single Judge in paragraph No.31 of the Judgment concluded that only in respect of the cases falling under the second limb viz., for other cases of theft of energy, the option is given and it is not for theft of energy by tampering of meter / meter seals. The learned Single Judge further held that as per Section 126 of the Act of 2003, the period of theft has to be termed as one year, if the actual period of theft cannot be ascertained. The learned Single Judge also rejected the other contentions relating to multiplier and the submissions based on the other Judgments and confirmed the levy. Aggrieved by which, the present Appeal is filed.

E. The Submissions:



W.A.No.2374 of 2023

WEB COPY

5. We have heard *Mr.V.Vignesh*, learned counsel for the appellant and *Mr.P.Wilson*, learned Senior Counsel appearing on behalf of the respondents/TANGEDCO.

5.1. *Mr.Vignesh*, learned counsel for the appellant would submit that the theft of energy is alleged against the previous management. The learned Single Judge while correctly extracting the Clause - 8 of the terms of supply, omitted to note that the condition 'whichever of the above is less' is applicable in respect of both kinds of theft, i.e., in respect of theft of energy by tampering of meter / meter seals or by any other means. He would further submit that the learned Single Judge omitted to note in the instant case that the Electricity Act, 2003 cannot be applied as the theft of energy was alleged in the year 1995. The Terms of Supply has to be read strictly and when it envisages the charge of levy under any one of the four clauses, whichever is less, it cannot be given any other interpretation. There is no discretion vested on the respondent authorities except to charge on any one of the four heads, whichever is less. The authorities have adopted the 12 months period which was the highest. Therefore, the assessment is unsustainable.



W.A.No.2374 of 2023

WEB COPY

5.2 The Learned Counsel would further contend that on a perusal of the original inspection note, the evidence adduced in the criminal case, and the original assessment order as well as the appellate order, it would be clear that the respondents all along proceeded only on the basis as if theft of energy by tampering the meter alone. As such they placed reliance only on the first limb of Clause 8. Therefore, the lesser choice among A, B, C and D has to be applied. By placing reliance on the record of the respondents, the learned counsel would submit that when the previous inspection date is very much on record, only the lesser option can be charged.

5.3 In support of his submissions, the learned counsel relied upon the following Judgments:-

1.***Prakashchandra Chandrakant Aariwala Vs. Chief Engineer, Dakshin Gujarat Vij Co. Ltd.*** - 2013 SCC Online Guj 213

2.***Piyush Salt & Chem Works Vs. Dakshin Gujarat Vij Co. Ltd.*** passed in SCA No. 8524/2004 dated 12.12.2013

3.***Gujarat Microwax Ltd. Vs. Uttar Gujarat Vij Co. Ltd.*** passed in SCA No.6164/2004 dated 31.01.2013

4.***Uttar Gujarat Vij Vs. Gujarat Microwax Ltd.*** - AIR 2021 Guj 144



W.A.No.2374 of 2023

5. *Jayashree Talkies Vs. Paschim Gujarat Vij Co. Ltd.* (Full bench) -
MANU/GJ/0558/2018

6. *Sharda Oil Industries Pvt. Ltd., Nunaihi Vs. Authority/Superintending Engineer, U.P State Electricity Board* -
MANU/UP/0065/1994

7. *M/s. Jai Mahavir Atta Mill Vs. Jharkhand State Electricity Board*
- 2009 SCC Online Jhar 1826

8. *Commissioner of Customs of Vs. Dilip Kumar* - AIR 2018 SC
3606”

5.4 Per contra, *Mr.P.Wilson*, learned Senior Counsel appearing on behalf of the respondents would strenuously contend that after committing theft of electricity in the year 1995, so far the appellant had avoided the payment of levy. The learned Senior Counsel would submit that on a perusal of the diagram, which was enclosed along with the inspection report, it would be clear that the appellant had committed theft of electricity by-passing the meter. By using pins, the meter has been by-passed. In the criminal case, the Inspecting Official was examined as P.W.1, who deposed in detail about the same. Therefore, this case would not fall within the ambit of theft of energy by tampering with the meter / meter seals, but would fall under the head 'any other means'. In that case, it would fall within the mischief of the second limb of



W.A.No.2374 of 2023

Clause 8 and the four options mentioned in the first limb, including from the date of previous inspection is not applicable in the instant case. As far as the two options which are available in the second limb, 12 months period would only be the lesser option. Therefore, no exception whatsoever can be taken in respect of the assessment. The appeal has to be dismissed as without any merits even if the finding of the learned Single Judge in respect of the Clause 8 cannot be sustained.

5.5 In reply thereof, *Mr.V. Vignesh*, learned counsel appearing for the appellant would submit that in all the proceedings the respondents contended that this is theft of energy by tampering meter. The matter has been accordingly dealt with from the Inspecting Authority upto the Appellate Authority. Even before the learned Single Judge, the contention was that there was tampering of meter. Now the impugned orders cannot be sustained for the reason which is not contained in the impugned order. Reliance is made on the Judgment of the Hon'ble Supreme Court of India in *Opto Circuit India Ltd., Vs. Axis Bank and Ors.*¹, to contend that the impugned order cannot be supported by extraneous reasons. The learned counsel also relies on the Judgment of the Hon'ble

¹ MANU/SC/0049/2021



W.A.No.2374 of 2023

Supreme Court of India in *Union of India and Ors. Vs. Rajiv Kumar and Ors.*,² for the proposition that the Terms of Supply being a statutory provision cannot be re-written nor any additions can be read into the provisions.

F.The Points for Consideration:

6. We have considered the rival submissions made on either side and perused the material records of the case.

6.1 The questions that arise for consideration are that whether or not levy assessed for a period of 12 months proceeding from the date of detection of theft is sustainable and whether the appellant is liable to pay the same as determined in the impugned order?

G. The Discussion & Findings:

7. There is no quarrel over the proposition that inspite of acquittal in the criminal case, the TANGEDCO is entitled to make the levy for theft of energy. The appellant being the Company which had subsequently taken over the offending company, has no material whatsoever to dispute the inspection or

² MANU/SC/0473/2003



W.A.No.2374 of 2023

that the theft of energy did not take place as alleged by the TANGEDCO. As such, TANGEDCO is entitled to assess extra levy as per the Terms and Conditions of Supply of Electricity, which is applicable as on the relevant date, which was framed in BP Ms. (FB No.61) dated 24.12.1988 (as amended from time to time). The bone of contention is about the application of relevant limb of Clause 8.02 of the Terms of Supply of Electricity. Clause 8.01 defines theft of energy. Clause 8.02 makes extra levy for the theft of energy. The same are extracted hereunder for ready reference:

“8.02 Extra levy for theft of energy by tampering of meters / meter seals will be made, at the rates given below.

(a) for a period of 12 months (or)

(b) for a period from the date of prior inspection if any by the APTS or MRT wing to the date of detection.
(or)

(c) for a period from the date of replacement of meter to the date of detection. (or)

(d) for a period from the date of service connection to the date of detection whichever period of the above is less.

For other cases of theft of energy, the extra levy will be made for a period of 12 months or from the date of service connection to the date of detection whichever period is less at the same rates given below.

I. For energy

a. Low Tension service connections:-
Highest Low Tension tariff rate x 3.

The charge arrived at will be rounded off to the next higher rupee.



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W.A.No.2374 of 2023

b. High Tension service connections:-

Highest High Tension Tariff rate x 4.

The charge arrived at will be rounded off to the next higher rupee.

II. For maximum demand: (In High Tension Service connections)

Highest High Tension tariff rate for maximum demand x4

Extra levy for illegal restoration of supply to a disconnected service connection will be made for a period of twelve months immediately preceding the date of detection of the violation or for the period from the date of disconnection of the service connection to the date of detection of the illegal restoration, whichever period is less, at the rates given above.”

7.1 Thus, it can be seen that if the theft of energy is by tampering of meter / meter seals, levy can be calculated as follows:-

- (i) a. – for a period of 12 months, (or)
- (ii) b. – for a period from the date of prior inspection till the date of detection, (or)
- (iii) c. – for the period from the date of replacement of meter to the date of detection, and
- (iv) d. – for a period from the date of service connection to the date of detection, whichever period of the above is less.



W.A.No.2374 of 2023

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7.2 For other cases of theft of energy, A - levy will be made for a period of 12 months or B – from the date of connection to the date of detection whichever is less. The learned Single Judge considered the case of the appellant as theft of energy by tampering of meter / meter seals. However, overlooked the condition ‘whichever period of the above is less’ is also there for the said head and erroneously held that such a condition is there only in respect of other cases of theft and rejected the case of the appellant. Accordingly, a plain reading of the above Rule, the Judgment of the learned Single Judge cannot be sustained.

7.3 Now the submission of the learned Senior Counsel for TANGEDCO is that the case will not fall under the first category, but in the category of ‘other cases of theft of energy’. The submission of the learned Senior Counsel is that in this case, meter was not tampered. The meter seal was also intact. Therefore, this should fall under the ‘other cases of theft’. However, we are unable to agree with the same for two reasons. First, the inspection report which is extracted above states that the method adopted is by insertion of pin connecting the three thick red, yellow and orange wires from the current



W.A.No.2374 of 2023

circuit, resulting in 'dead short'. The diagram which is annexed also confirms the same. By the above method, the flow of current required to operate the meter is disrupted, pursuant to which the meter does not run. Therefore, it is a case of tampering with the meter by the 'dead short' method. The show cause notice also clearly states that by using a needle, meter was arrested from recording the energy used for the factory, which was also extracted supra.

7.4 A '*Dead Short*' is a kind of electrical circuit that allows current to flow down a route that was not intended for it, with no resistance (or) impedance being encountered along the way. This causes an excessive current to flow through the circuit, which has the potential to harm equipment or inflict electrical shocks to individuals who are in the vicinity. Electrical current always takes the path with the lowest amount of resistance. If it is flowing via a path that has no resistance at all, then none of the electricity will go where it is considered to go, and will receive 0 volts as a result. Thus, the necessary power required for the meter to run will not be there. Meter Tampering will include depleting the key functions of the Meter so as to reduce or completely eliminate the cost of energy consumption.¹ Thus, it is not a case

¹ Useful reference in this regard can be made to the Articles, (i) "What is Dead Short?" By [Robert T](#) in <https://forumelectrical.com/what-is-dead-short/>; (ii) "Tamper detection in processor-based energy meters"



W.A.No.2374 of 2023

of by-passing meter, but a case of tampering of meter and therefore, would fall under the first limb of Clause 8.02.

7.5 The Appellate Authority considered the case under the first limb, i.e., the four choices, however, upheld the 12 months assessment. The relevant portion of the order of the Appellate Authority is as follows:-

“However, there are four stipulations of four durations under this schedule to determine the period of assessment understandably so, to give logical choice to the assessment officer to apply mind, analyses the nature of theft and accordingly choose the period of assessment, depending upon whether the quantum of duration over which the theft of energy would have been indulged, so that the period of assessment can be reasonably and fairly estimated.

When such quantum of duration can not be reasonably estimated for some category of theft nature such as one under question, the period of 12 months being one of the choices as enabled by the law goes to the discretion of the assessment officer. One can not loose sight of the fact that in such cases the theft of energy could have taken for more than one year also. What is to be precisely understood is that every case of theft of energy has different parameters and needs different choices to exercise fair amount of discretion by the assessment officer. Otherwise the very aim of stipulating four choices in a rule looses its objective.

Thus the period of 12 months assessment chosen in this case going by the nature of theft is quite convincing to have done with proper application of mind and quite in consistence with which the logic of stipulation of four

by Kripasagar Venkat, in <https://www.electronicproducts.com/tamper-detection-in-processor-based-energy-meters/> .



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W.A.No.2374 of 2023

choices enacted by the terms and conditions of electricity in regard to determining the period of assessment.”

7.6 Therefore, it can be seen that all along the case of the appellant was dealt with only as a theft of energy by tampering the meter. If that be the case, the appellant is entitled to any one of the four modes mentioned in the first limb of 8.02 whichever is less.

7.7 Secondly, the argument of Mr.P.Wilson, the learned senior counsel that it should be considered under the second limb of 8.02 is not sustainable, as new reasons cannot be adduced at the appellate stage to sustain the impugned order. In this regard, it is essential to extract paragraph No.13 of the Judgment of the Hon'ble Supreme Court of India in ***Opto Circuit India Ltd. Case***, (cited supra)

“13. The action sought to be sustained should be with reference to the contents of the impugned order/communication and the same cannot be justified by improving the same through the contention raised in the objection statement or affidavit filed before the Court. This has been succinctly laid down by this Court in the case of Mohinder Singh Gill and Anr. v. The Chief Election Commissioner, New Delhi and Ors. MANU/SC/0209/1977: (1978) 1 SCC 405) as follows;



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W.A.No.2374 of 2023

8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji:

(1) Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to effect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older:

In fact, in the instant case such contention of having exercised power Under Section 102 Code of Criminal Procedure has not been put forth even in the counter affidavit, either in this appeal or before the High Court and has only been the attempted ingenuity of the learned Additional Solicitor General. Such contention, therefore, cannot be accepted. In fact, in the objection statement filed before the High Court much emphasis has been laid on the power available under PMLA and the same being exercised though without specifically referring to the power available Under Section 17 of PMLA.”



W.A.No.2374 of 2023

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7.8 Thus, principles laid down by the Constitution Bench of the Hon'ble Supreme Court of India in *Mohinder Singh Gill and Anr. v. The Chief Election Commissioner, New Delhi and Ors.*³ would govern the field.

7.9 According to the appellant, the calculation at 12 months period is higher side. There is lesser will be the extra levy if it is to be calculated from the date of previous inspection. We are not going into the exact date of previous inspection as there is a dispute with regard to the same also. However, we hold that the appellant will be entitled to the lesser calculation of any one of the four options. The same is neither considered by the Assessing authority or the Appellate Authority. Therefore, the matter has to be considered afresh by the authorities.

H. The Result:

8. Accordingly, we are constrained to interfere with the order of the learned Single Judge and the impugned order of the respondents and the Writ Appeal is allowed on the following terms:-

³ (1978) 1 SCC 405)



W.A.No.2374 of 2023

WEB COPY

(i) Order of the learned Single Judge dated 30.06.2023 passed in W.P.No.7585 of 2020 is set aside;

(ii) The impugned order of the 2nd respondent dated 20.03.2020 and the consequential levy imposed by the 1st respondent by order dated 08.04.2020 are set aside;

(iii) The matter is remitted back to the 1st respondent, viz., the original Assessing Authority to pass fresh assessment order in terms of the first limb of Clause 8.02 by making a calculation of all the four modes of a., b., c. and d., and adopting the computation whichever is less.

(iv) The appellant shall pay the resultant extra levy and the belated payment surcharge as may be determined by the respondents in accordance with law;

(v) The above exercise of re-determining the extra levy shall be done after affording due opportunity to the appellant and shall be completed within a period of three months from the date of receipt of a copy of this order.

(vi) No costs. Consequently connected miscellaneous petition is closed.



W.A.No.2374 of 2023

(S.V.G., C.J.,)

(D.B.C., J.,)

06.02.2024

WEB COPY

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Index : Yes

Speaking order

Neutral Citation : Yes

To

1. The Superintending Engineer
Tamil Nadu Electricity Board
Namakkal Electricity Distribution Circle
Namakkal.

2.The Chief Engineer (Distribution)
Tamil Nadu Electricity Board
Erode Region, Erode.



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W.A.No.2374 of 2023

**THE HON'BLE CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY, J.,**

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Judgment made in
Writ Appeal No.2374 of 2023

06.02.2024