IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on : 20.02.2025

Orders pronounced on : **09.06.2025**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.Nos.4871, 4876, 6917, 6922, 6927, 6980, 7913, 7204, 7201, 7286, 7293, 7299, 8157, 8163, 8161, 8556, 8565, 8562, 8561, 9059, 9475, 9482, 9478, 9487, 10226, 10238, 10244, 10247, 10232, 10596, 10615, 10610, 10601, 10619, 14670, 14673, 15869, 15878, 15875, 16676, 16680, 16678, 16679, 16690, 16689, 16688, 16685, 16683, 17200, 17206, 17203, 18069, 18077, 18075, 18080, 21898, 21904, 21902, 22504, 22520, 22515, 22509, 22731, 22736, 22744, 22739, 24524, 24527, 24532, 25953, 25960, 25958, 25956, 26094, 26105, 26100, 27426, 27440, 27436, 27433, 27453, 27455, 27458, 27457, 27845, 27851, 27848, 29175, 29182, 29179, 29178, 29744, 29754, 29752, 29783, 29787, 31989, 31997, 31994, 32437, 32447, 32456 & 32460 of 2022;

7440, 7445, 7694, 7697, 7698, 7849, 7861, 8630, 8636, 8640, 8651, 8653, 8655, 9696, 9703, 10446, 10451, 13268, 13317, 13297, 13327, 13341, 18832, 18841, 18840, 19073, 19077, 19075, 19079, 27903, 27906, 27914, 27917, 27924, 27966, 27959, 27921, 27970, 27946, 27951, 27955, 32632, 32638, 32636, 32671, 32681, 32679, 32676, 32674, 34395, 34407, 34403, 34412, 34409, 34622, 34644, 34633, 34629, 34637, 34783, 35055, 35070, 35063, 35085, 35076, 35081, 35863, 35870 & 35867 of 2023;

1565, 1578, 1573, 2057, 2062, 2061, 2059, 2058, 2366, 2663, 2661, 2658, 2655, 2371, 2370, 3308, 3310, 4030, 5390, 5397, 5401, 5404, 5392, 5396, 6224, 6230, 6236, 6797, 6803, 6800, 6798, 8136, 8148, 8152, 8146, 14888, 14893, 14897, 14896, 15793, 15796, 15794, 16337, 16350, 16353, 16348, 16349, 16344, 16345, 16346, 18638, 20895, 20908, 22090, 22094, 22099, 27572, 27577, 29689, 29702, 29696, 29706, 32192, 32197, 32195, 35704, 35710, 38058, 38067 & 38064 of 2024;

571, 578, 574, 674, 682, 679, 714, 719, 730, 722, 8172, 8181, 8177, 8495, 8502, 8499, 13051, 13067, 13061, 13058, 14829, 14835 and 14839 of 2025

and W.M.P.Nos.4989, 4988, 4987, 4996, 4995, 4994, 6955, 6958, 6959, 6964, 6965, 6966, 6967, 7010, 7011, 7012, 6969, 6970, 7223, 7219, 7216, 7230, 7229, 7228, 7225, 7217, 7226, 7333, 7322, 7321, 7332, 7331, 7337, 7318, 7340, 7338, 8165, 8164, 8163, 8161, 8156, 8153, 8150, 8159, 8160, 8478, 8474, 8472, 8471, 8469, 8462, 8468, 8466, 8461, 8460, 8480, 8479, 8863, 8860, 8864, 9223, 9221, 9220, 9219, 9217, 9216, 9236, 9225, 9224, 9235, 9234, 9215, 9948, 9957, 9965, 9934, 9942, 9943, 9949, 9958, 9959, 9964, 9941, 9950, 9963, 9937, 9939, 10258, 10259, 10273, 10270, 10269,10268, 10267, 10266, 10261, 10275, 10274, 10254, 10253, 10265, 10252, 13873, 13872, 13865, 13866, 15177, 15169, 15184, 15182, 15181, 15178, 15175, 15168, 15166, 15959, 15965, 15966, 15963, 15962, 15961, 15976, 15990, 15989, 15987, 15985, 15978, 15977, 15993, 15995, 15974, 15970, 15969, 16494, 16496, 16495, 16487, 16480, 16479, 16478, 16486, 16485, 17408, 17414, 17410, 17415, 17420, 17419, 17427, 17425, 20929, 20925, 20922, 20933, 20930, 20932, 21537, 21541, 21540, 21536, 21530, 21528, 21524, 21523, 21775, 21759, 21773, 21758, 21766, 21767, 21782, 21781, 23496, 23495, 23492, 23491, 23487, 23485, 25048, 25046, 25039, 25053, 25051, 25050, 25037, 25055, 25044, 25040, 25054, 25168, 25185, 25184, 25178, 25177, 25176, 25171, 25170, 25186, 26641, 26639, 26632, 26654, 26651, 26624, 26623, 26630, 26663, 26673, 26672, 26669, 26668, 26664, 26677, 26678, 27133, 27143, 27142, 27138, 27137, 27132, 28466, 28465, 28460, 28461, 28469, 28468, 28473, 28472, 29156, 29155, 29154, 29150, 29148, 29141, 29138, 29151, 29139, 29180, 29179, 29176, 29174, 29173, 31435, 31434, 31447, 31446, 31443, 31442, 31864, 31856, 31854, 31866, 31878, 31877, 31874 & 31872 of 2022;

7526, 7521, 7520, 7527, 7893, 7891, 7890, 7882, 78800, 7875, 7874, 7873, 7879, 8114, 8101, 8113, 8102, 8821, 8819, 8817, 8816, 8815, 8813, 8807, 8805, 8806, 8840, 8839, 8838, 8837, 8835, 8832, 8831, 8830, 8828, 9760, 9766, 9765, 9761, 10399, 10397, 10396, 10403, 10401, 10400, 13039, 13010, 13004, 13001, 13040, 13049, 13020, 13018, 13036, 13032, 13022, 12996, 12992, 13044, 13012, 18070, 18079, 18078, 18081, 18077, 18076, 18071, 18069, 18080, 18323, 18319, 18318, 18317, 18332, 18331, 18333, 18322, 18321, 18320, 18329, 18324, 27445, 27446, 27472, 27478, 27471, 27421, 27454, 27479, 27481, 27456, 27405, 27406, 27410, 27413, 27414, 27417, 27418, 27419, 27422, 27423, 27426, 27453, 27428, 27444, 27470, 27457, 27461, 27462, 27463, 27398, 27395, 27397, 27403, 27451, 27452, 27427, 32234, 32228, 32225, 32237, 32236, 32235, 32233, 32232, 32230, 32272, 32289, 32291, 32280, 32275, 32274, 32288, 32287, 32286, 32281, 32279, 32278, 32276, 32273, 32290, 34324, 34314, 34313, 34312, 34305, 34302, 34301, 34323, 34331, 34330, 34325, 34319, 34318, 34317, 34332, 34588, 34587, 34585, 34594, 34592, 34591, 34590, 34589, 34578, 34577, 34582, 34581, 34593, 34575, 34583, 34770, 34773, 35048, 35026, 35049, 35038, 35028, 35027, 35059, 35058, 35057, 35054, 35053, 35047, 35040, 35041, 35021, 35019, 35018, 35052, 35861, 35859, 35858, 35857, 35863, 35854, 35853 & 35852 of 2023;

1605, 1604, 1603, 1601, 1600, 1599, 1591, 1590, 1589, 2206, 2204, 2207, 2202, 2198, 2197, 2196, 2194, 2193, 2191, 2214, 2213, 2212, 2208, 2201, 2924, 2569, 2568, 2936, 2572, 2933, 2932, 2930, 2927, 2926, 2925, 2558, 2937, 2935, 2562, 2560, 2923, 2922, 2571, 2570, 2567, 3568, 3567, 3566, 3565, 3564, 3563, 4353, 4352, 4354, 6920, 5951, 5943, 5946, 5947, 5950, 5952, 6919, 5928, 5929, 5930, 5933, 5948, 5949, 5935, 5953, 6905, 6907, 6912, 5936, 5940, 5941, 5954, 6903, 6913, 6914, 6918, 7584, 7583, 7579, 7578, 7577, 7576, 7575, 7582, 7581, 7580, 7588, 7587, 9100, 9101, 9086, 9104, 41323, 9095, 9096, 9098, 9091, 9093, 9087, 9088, 9090, 16164, 16163, 16152, 16153, 16166, 16165, 16149, 16162, 16157, 16156, 16155, 16167, 17226, 17221, 17220, 17214, 17225, 17224, 17219, 17217, 17215, 17883, 17885, 17897, 17911, 17912, 17914, 17905, 17906, 17895, 17898, 17915, 17899, 17900, 17901, 17902, 17904, 17907, 17908, 17909, 17910, 17916, 17888, 17894, 17896, 20447, 20443, 20442, 22837, 22844, 22843, 22841, 22836, 22834, 24097, 24098, 24087, 24088, 24077, 24078, 24093, 24081, 24086, 30082, 30091, 30090, 30088, 30085, 30083, 32348, 32361, 32360, 32354, 32347, 32345, 32344, 32353, 34951, 34955, 34961, 34956, 34953, 34962, 38556, 38563, 38561, 38555, 41163, 41161, 41186, 41180, 41170 & 41169 of 2024; .

695, 694, 704, 703, 699, 698, 834, 833, 828, 838, 832, 825, 826, 841, 840, 896, 894, 888, 876, 878, 889, 872, 871, 9167, 9166, 9163, 9155, 9161, 9168, 9160, 9157, 9156, 9523, 12583, 9521, 9518, 9517, 9516, 9511, 9509, 9508, 9522, 16740, 16729, 16736, 16742, 16746, 16728, 16731, 16733 and 16734 of 2025

In W.P.No.4871 of 2022:-

ARS Steels and Alloy International Pvt. Ltd.,
Represented by its Authorised Signatory,
D-109, 2nd Floor, LBR Complex,
Anna Nagar East, Chennai - 600 102. .. Petitioner

Versus

1. State of Tamil Nadu,
   Rep by the Principal Secretary to Government,
   Energy Department,
   Secretariat, Fort St. George,
   Chennai - 600 009.

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

3. Tamil Nadu Generation and Distribution
   Corporation Limited (TANGEDCO),

Rep by its Chairman & Managing Director,
144, Anna Salai,
Chennai - 600 002. .. Respondents

Prayer in W.P.No.4871 of 2022 : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarifed Mandamus calling for the records of the 1st respondent comprised in G.O.(Ms).No.55 Energy (D2) Department, dated 20.10.2021 and quash the same as arbitrary, illegal and is violative of the provisions of the Tamil Nadu Tax on Consumption or Sale of Electricity Tax, 2003 and consequently forbear the respondents, their officers, employees, subordinates, agents, men or any other persons claiming and/or acting under them from in any manner.

W.P.No.4871 of 2022:-

For Petitioner(s) : Mr.Rahul Balaji

For Respondent(s) : Mr.Haja Nazirudeen,
Additional Advocate General,
Asstd. by Mr.T.N.C.Kaushik,
Additional Government Pleader (Taxes)
and Mr.L.Jai Venkatesh,
Standing Counsel for TANGEDCO

W.P.Nos.4876, 6917, 6922, 6927, 6980, 7193, 7204, 7201, 7286, 7293, 7299, 8157, 8163, 8161, 8556, 8565, 8562, 8561, 9475, 9482, 9478, 9487, 10266, 10238, 10244, 10247, 10232, 10596, 10615, 10610, 10601, 10619, 14670, 14673, 15869, 15878, 15875, 16676, 16680, 16678, 16679, 16690, 16689, 16688, 16685, 16683, 17200, 17206, 17203, 18069, 18077, 18075, 18080, 21898, 21904, 21902, 22504, 22520, 22515, 22509, 22731, 22736, 22744, 22739, 24524, 24527, 24532, 25953, 25960, 25958, 25956, 26094, 26105, 26100, 27426, 27440, 27436, 27433, 27453, 27455, 27458, 27457, 27845, 27851, 27848, 29175, 29182, 29179, 29178, 29744, 29754, 29752, 29783, 29787, 31989, 31997, 31994 of 2022;

7440, 7445, 7694, 7697, 7698, 7849, 7861, 8630, 8636, 8640, 8651, 8653, 8655, 9696, 9703, 10446, 10451, 13268, 13317, 13297, 13327, 13341, 18832, 18841, 18840, 19073, 19077, 19075, 19079, 27903, 27906, 27914, 27917, 27924, 27966, 27959, 27921, 27970, 27946, 27951, 27955, 32632, 32638, 32636, 32671, 32681, 32679, 32676, 32674, 34395, 34407, 34403, 34412, 34409, 34622, 34644, 34633, 34629, 34637, 35055, 35070, 35063, 35085, 35076, 35081, 35863, 35870 & 35867 of 2023;

1565, 1578, 1573, 2057, 2062, 2061, 2059, 2058, 2366, 2663, 2661, 2658, 2655, 2371, 2370, 3308, 3310, 4030, 5390, 5397, 5401, 5404, 5392, 5396, 6224, 6230, 6236, 6797, 6803, 6800, 6798, 8136, 8148, 8152, 8146, 14888, 14893, 14897, 14896, 15793, 15796, 15794, 16337, 16350, 16353, 16348, 16349, 16344, 16345, 16436, 18638, 20895, 20908, 22090, 22094, 22099, 27572, 27577, 29689, 29702, 29696, 29706, 32192, 32197, 32195, 35704, 35710, 38058, 38067 & 38064 of 2024;

571, 578, 574, 674, 682, 679, 714, 719, 930, 722, 8172, 8181, 8177, 8495, 8502, 8499, 13051, 13067, 13061, 13058, 14829, 14835 and 14839 of 2025

:-

For Petitioner(s) : Mr.R.V.Easwar, Senior Counsel
Mr.Joseph Prabhakar,
for Mr.S.P.Parthasarathy

For Respondent(s) : Mr.Haja Nazirudeen,
Additional Advocate General,
Asstd. by Mr.T.N.C.Kaushik,
Additional Government Pleader (Taxes)
and Mr.L.Jai Venkatesh,
Standing Counsel for TANGEDCO

W.P.No.9059 of 2022:-

For Petitioner(s) : Mr.D.G.Hariprasath

For Respondent(s) : Mr.Haja Nazirudeen,
Additional Advocate General,
Asstd. by Mr.T.N.C.Kaushik,
Additional Government Pleader (Taxes)
and Mr.L.Jai Venkatesh,
Standing Counsel for TANGEDCO

W.P.Nos.32437 and 32447 of 2022:-

For Petitioner(s) : Mr.L.P.Maurya

For Respondent(s) : Mr.Haja Nazirudeen,
Additional Advocate General,
Asstd. by Mr.T.N.C.Kaushik,
Additional Government Pleader (Taxes)

W.P.Nos.32456 and 32460 of 2022:-

For Petitioner(s) : Mr.S.Lakshmipathy

For Respondent(s) : Mr.Haja Nazirudeen,
Additional Advocate General,
Asstd. by Mr.T.N.C.Kaushik,
Additional Government Pleader (Taxes)
and Mr.L.Jai Venkatesh,
Standing Counsel for TANGEDCO

W.P.No.34783 of 2023:-

For Petitioner(s) : Mr.M.Kamalanathan

For Respondent(s) : Mr.Haja Nazirudeen,
Additional Advocate General,
Asstd. by Mr.T.N.C.Kaushik,
Additional Government Pleader (Taxes)
and Mr.L.Jai Venkatesh,
Standing Counsel for TANGEDCO

COMMON ORDER

A. Prelude:

The State, The Power, The Duty - thinking of these by switching on the concept of electricity is the subject matter. All these Writ Petitions seek identical relief and are therefore considered and disposed of by this common order.

B. The Petitions:

2. The petitioners in this batch of Writ Petitions are industrial concerns that consume electricity from their own captive generating plants and/or procure power through open access from Indian Energy Exchange Limited (IEX) or Power Exchange India Limited (PXIL).

3. In these Writ Petitions, there are two sets of prayers. First, the petitioners challenge G.O.Ms.No.55, Energy (D2) Department, dated 20.10.2021. They pray to quash the same and, consequently, to restrain the respondents, namely the State of Tamil Nadu, through the Secretary, Energy Department, the Chief Electrical Inspector to the Government, and the Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO), or their officers, employees, or subordinates, from collecting the tax under the Tamil Nadu Tax on Consumption or Sale and Electricity Tax Act, 2003 (hereinafter referred to as the Act 12/2003).

4. By the said Government Order, it is stated that, vide G.O.Ms.No.121, Energy (B1) Department, dated 23.12.2010, the tax on the consumption of electricity is levied and collected through the monthly current consumption charge bills, effective from 01.04.2011. By the letter dated 13.08.2020, the Chief Electrical Inspector stated that tax must be levied in accordance with Section 3(1)(c) of Act 12/2003 on electricity consumption purchased through open access from IEX or PXIL as well. However, the process of levying and collecting this tax on such transactions by the department would be cumbersome, and he suggested that TANGEDCO also levy and collect the tax since they already possess the relevant data and revenue particulars. The Chief Electrical Inspector also brought to the Government's attention that TANGEDCO already collected tax on the consumption of electricity from captive generating plants, yet it has omitted to collect in some distribution circles, and he sought direction in this regard. The Government examined the Chief Electrical Inspector’s request and entrusted TANGEDCO with the collection of tax and

consumption of electricity purchased through open access from IEX or PXIL, in addition to the collection tasks already assigned via the Government Order dated 23.12.2010. The Chief Electrical Inspector is instructed to monitor revenue realization and is authorized to remit the same to the account mentioned therein. Additionally, the Chief Electrical Inspector has been designated as the remitting, reconciling, and controlling authority for revenue receipts under the specified head of account.

5. The second limb of the prayer challenges G.O.Ms.No.121, Energy (B1) Department, dated 23.12.2010. The said Government Order was notified in the Tamil Nadu Government Gazette No.III Part II-Section 2, dated 26.11.2011. By the said Government Order, in exercise of power under Section 12(1) of the Act 12/2023, the Government appointed the officers mentioned therein for the collection of Electricity Tax. The Assessors, Junior Engineers, Assistant Engineers, and Assistant Executive Engineers are designated as the authorities for the collection of electricity

tax. The Executive Engineer of the respective division was appointed as the Inspection Officer. The Superintending Engineer of the respective circle was designated as the Chairman/appellate authority.

C. The Arguments:

6. Heard the learned Counsel on either side. *Mr.Rahul Balaji*, *Mr.S.P.Parthasarathy*, *Mr.D.G.Hariprasath*, *Mr.L.P.Maurya*, *Mr.S.Lakshmipathy*, *Mr.M.Kamalanathan*, learned Counsels argued in detail for the petitioners. *Mr.Haja Nazirudeen*, the Additional Advocate General, defended the state. The factual and legal submissions made by the learned Counsel for the petitioners and the learned Counsel for the respondents were detailed and overlapped with each other. Therefore, they are mentioned in common and dealt with.

7. The learned Counsel for the petitioners would first guide this Court

through certain dates and events. On 10.06.2023, the Electricity Act, 2003 (Central Act 36/2003) came into force, replacing the Indian Electricity Act, 1910, the Electric Supply Act, 1948, and the Electricity Regulatory Commissions Act, 1998. At the same time, without reference to the aforementioned developments, the State of Tamil Nadu enacted The Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003 (Tamil Nadu Act 12 of 2003), which came into force on 16.06.2003. The drafting and passage of the bill took place prior to the enactment of the Electricity Act, 2003. It is pointed out that the State of Tamil Nadu had no opportunity to consider the salient features of the Electricity Act, 2003, which not only consolidates the laws relating to energy, generation, distribution, procurement, and consumption but also aims to chart the future of various fields and activities relating to electricity. The State of Tamil Nadu also notified the rules under Tamil Nadu Act 12/2003, namely, the Tamil Nadu Tax on Consumption or Sale of Electricity Rules, 2003, which also came into effect on the same date, i.e., 16.06.2003.

8. On 13.06.2003, vide G.O.Ms.No.51, Energy (B1) Department, the Government of Tamil Nadu notified the tax rate at Rs.10 paise per unit for electricity consumed for personal use, applicable to both licensees that are captive generating plants and individuals who are not licensees. The learned Counsel would submit that it is evident the tax rate encompasses electricity sold by licensees who are not captive generating plants under Section 3(1)(a), electricity sold by captive generating plant licensees under Section 3(1)(b), and electricity consumed for personal use by captive generating plants that are licensees, as well as individuals who are not licensees in accordance with Section 3(1)(c) of the Act.

9. On the same date, by G.O.Ms.No.53 Energy (B1) Department, the Chief Electrical Inspector of the Government is appointed as the Director of Electricity Tax according to Section 2(3) of the Act. Furthermore, by G.O.Ms.No.54 Energy (B1) Department, the categories of officials

mentioned therein were appointed as the Inspecting Officers of Electricity Tax in exercise of powers under Section 12(1) of the Act 12/2003. By G.O.Ms.No.55 Energy (B1) Department, the Officers designated as Electrical Inspectors were also made registration officers under Section 5(1) of the Act. By G.O.Ms.No.56 Energy (B1) Department, the Government authorized the then Tamil Nadu Electricity Board to recover Electricity Tax from any person to whom electricity is sold by it under Section 6(1) of the Act.

10. Thereafter, on 14.08.2014, vide G.O.Ms.No.59 Energy (D2) Department, the various designations mentioned therein were designated as Electrical Inspectors, etc., in respect of the various functions under the said Act and other regulations. Subsequently, in a letter dated 10.08.2021, the Chief Financial Controller, Revenue of TANGEDCO, clarified that the energy purchased from IEX shall not be treated as captive consumption; therefore, the self-generation tax is not applicable for such transactions, and

the Superintending Engineer of Cuddalore EDC was requested to address the audit objection accordingly. Against this backdrop, the first impugned Government Order was issued on 23.01.2010, appointing the officers of the erstwhile Tamil Nadu Electricity Board for the collection of Electricity Tax directly through current consumption bills. The second impugned order in G.O.Ms.No.55 was issued on 20.10.2021, vesting additional powers in the officers for the collection of e-tax on power purchases through IEX and other platforms directly by levying them in the current consumption bills.

11. In this context, the petitioners submit that following the introduction of the Electricity Act, 2003, the subject of electricity was liberalized, and the requirement to obtain a license for electricity generation was removed. Captive generation of electricity for personal consumption is permitted freely. Furthermore, a statutory framework for open access is outlined, allowing consumers complete freedom to select open access to electricity generated through captive sources, group captive arrangements,

third-party power purchases, or inter-State and intra-State power purchases via IEX, among other options. Given the substantial gap between demand and supply, private participation in the electricity sector is increasingly encouraged. Consequently, several private entities have established captive generating plants and commenced electricity consumption by utilizing the infrastructure provided by the State/TANGEDCO, paying the necessary wheeling and transmission charges, which are determined by the State Electricity Commission periodically. Thus, the position of receiving electricity solely through the State-owned Electricity Board has been liberalized, and the open access system has further strengthened and facilitated this liberalization.

12. The Indian Energy Exchange, among others, is facilitated by the Central Regulatory Electricity Commission. Indian Energy Exchange Limited (IEX) is India's premier energy trading platform that provides an automated platform for the physical delivery of electricity. The platform

enables efficient price discovery and allows participants to trade in a variety of energy products. It is neither a generator of energy nor a trader of energy; rather, it serves as a platform facilitating consumers needing energy to purchase and generators willing to supply energy to engage in trade. It is also not a licensee. Actual users of electricity submit bids for purchase using the platform after paying the applicable charges, including cross-subsidy charges and other open access fees. The energy consumed is always treated as an inter-State purchase, and the necessary charges are paid accordingly.

13. The learned Counsel would then submit that electricity is placed in List-III of the Seventh Schedule of the Constitution of India. At the same time, the imposition of taxes on the consumption or sale of electricity was specifically designated as a State subject under Entry-53 of List-II of the Seventh Schedule of the Constitution of India. Originally, under the Government of India Act, 1935, the State of Madras had enacted the Tamil

Nadu Electricity Duty Act, 1939, under Entry-48(b) of the Seventh Schedule of the said Act, levying a duty on certain sales and consumption of electrical energy by the licensees in the State of Tamil Nadu. In 1962, the Government of Tamil Nadu enacted the Tamil Nadu Electricity (Tax on Consumption) Act, 1962 (Act IV of 1962), which provided for the levy of tax on the consumption of electrical energy in the State. At that time, the State of Tamil Nadu formed a Commission on Tax Reforms and Revenue Augmentation under the Chairmanship of Dr.Raja J. Chellayya, and the Commission suggested that the Tamil Nadu Electricity Duty Act, 1939, and the Tamil Nadu Electricity Tax on Consumption Act, 1962, could be rationalized and a single legislation introduced for this purpose. The Commission also recommended the rationalization of the tax rate payable by the buyers and consumers of electricity. The Government of Tamil Nadu accepted the recommendations of the Commission with certain modifications. Accordingly, this was incorporated into the budget speech for the year 2003-2024, and it was announced that a new bill would be introduced in the Assembly to enact new legislation on the Electricity Tax, which would provide for a minimum tax rate of 5% and a maximum tax rate of 10% on the net charge for the energy sold by all licensees.

14. It would also state that the bill would provide for a tax levy of a minimum of Rs.10 ps and a maximum of Rs.20 ps for each unit of energy consumed for personal use, and no tax will be levied on the sale of electricity for agricultural purposes or for hut service connections, as these would be exempt. Accordingly, the Act was passed and came into effect on 16.06.2003. Section 15 of Act 12/2003 empowers the Government to create rules to implement the purposes of the Act; thus, Act 12/2003 was also framed and it took effect on the same day, i.e., 16.06.2003.

15. Turning their attention to G.O.Ms.No.121 Energy (B1) Department, dated 23.12.2010, the learned Counsel for the petitioners submits that the State Act was enacted with the objective of consolidating

and rationalizing the taxation on the sale and consumption of electricity in the State. While Section 3 is the charging provision, Sections 5 to 9 provide for the levy, assessment, and recovery of the tax. Rules 3 to 21 of the Rules, 2003 outline the registration, maintenance of books of accounts, assessments, and the time and manner of tax collection/payment, etc. The Act and Rules provide a comprehensive mechanism for assessing the Electricity Tax. Rule 6 specifies the manner of payment of Electricity Tax to the Government for the sale of electricity by the licensee, TANGEDCO, as per Section 3(1)(a) and (b) of the Act 12/2003. TANGEDCO must credit the tax at a rate of 5% of the net charge for the supply of electricity to the consumer into the Government treasury under the designated head.

16. The learned Counsel would take this Court through the Rules. Attention is drawn to Rules 8 and 9. It is stated that Section 6 of the Act provides that the licensee may, with the previous sanction of the Act and subject to such conditions as may be imposed, recover from any person or

class of persons to whom the electricity is sold, the Electricity Tax which must be paid by the licensee in respect of the electricity so sold or any part of it, as may be determined by the Government.

17. Rule 8 of the Rules, 2003 states the time and manner of reimbursement of the Electricity Tax for the sale of electricity to consumers by licensees. It specifies that the licensee must include the tax leviable under Act 12/2003 as a separate item in the bill of charges for the sale of electricity and recover it from the consumer along with the consumption charges. Rule 9 states that the licensee, regarding the sale of electricity, should take all reasonable steps to install and maintain the meter on the consumer's premises, registering the type of electricity sale attracting taxation, ideally on the same date each month, but no less than 25 days and no more than 35 days after the previous meter reading date.

18. The Government had issued G.O.Ms.No.56, Energy (B1) on

13.06.2003, granting sanction to TANGEDCO to recover the Electricity Tax from any person or class of persons to whom the electricity is sold by the licensee or TANGEDCO. Thus, it can be seen that the entire machinery is provided for TANGEDCO to reimburse itself from consumers concerning the 5% tax payable by it relating to electricity sales. Upon such collection, it must remit the amount under the head mentioned therein. The learned Counsel would also draw attention to the bills produced along with the typed set of papers to demonstrate the above. Thus, it is their contention that TANGEDCO is enabled under the Acts and Rules to do only the aforementioned.

19. Regarding the other persons, the learned Counsel would draw the attention of this Court to Section 5, which states that every person, other than a licensee or the State Government, who has installed or proposes to install a generating plant for the generation of electricity for his own consumption, must register his name with such officer as the Government

may appoint for this purpose. It provides that the application for registration of such captive generating plants shall be made in such manner and form, and on payment of such fees as may be prescribed. The officer appointed for this purpose may, upon receipt of the application and after conducting such inquiry in that regard, grant a certificate of registration. Rule 5 of the Rules also provides the application form for registration in Form A-1, and a fee of Rs.200/- is prescribed. The certificate of registration shall be in Form A-2 and will be valid for a period of three years. It requires the maintaining of a register of all registered generating plants in Form A-3 by the registering authority. Rule 10 stipulates that every captive generating plant shall install meters to measure the quantity of electricity for its own consumption as well as for the sale of surplus electricity to others. It also provides that the said meter shall be installed to ascertain the amount of tax payable under Section 3 of the Act.

20. The learned Counsel would further submit that the registered

captive generating plants shall be required to pay the tax at the rate of Rs.10 ps per unit within 30 days under the head mentioned therein. Furthermore, vide G.O.Ms.No.55, Energy (B1) Department, dated 13.06.2003, the Government had appointed the Electricity Tax Inspecting Officers holding the post of Electrical Inspectors as the Registration Officers. Section 8 provides for the procedure. It mandates that every licensee or a person other than the licensee shall keep books of accounts in the prescribed form and submit returns showing the units of electricity supplied and the amount of electricity payable in spite thereof.

21. Rule 14(1) of the Rules enumerates how the books of accounts shall be maintained by the licensee under Section 8 of the Act in Form B-1. The sales must be shown separately to consumers under Sections 4 and 14, along with any other electricity charges under Section 3. Rule 14(2) outlines how the books of accounts should be kept by captive generating plants. Section 8 also stipulates the requirements for the books of accounts

maintained by captive generating plants engaged in the sale of surplus electricity after their own consumption, which shall be in Form B-3 as annexed to the Rules. Furthermore, Rule 15 specifies the submission of returns: Form C-1 for the sale of electricity, Form C-2 for own consumption, and Form C-3 for the sale of surplus.

22. The best judgment procedure is prescribed under Section 9 of the Act 12/2003 if no returns are filed under Section 8 of the Act 12/2003. The best judgment assessment shall be made according to the procedure prescribed under Rule 16. Rule 20 makes the procedure applicable to captive generating plants and non-licensees. Rule 21 makes the rules *mutatis mutandis* applicable concerning the sale of surplus energy by captive generating plants. An appeal is also provided for under Section 10 of the Act 12/2003. Section 12 enables the Government to appoint Inspecting Officers to conduct inspections as per the books of accounts, etc. Section 7 states that if any Electricity Tax due under the Act 12/2003 remains unpaid,

it shall be deemed in arrears, and interest at the rate prescribed by the Government from time to time shall be payable on such Electricity Tax. This amount, together with the interest payable, shall be recoverable either as arrears of land revenue or by deduction from any amount payable by the Government to the licensee. Additionally, Rule 7 prescribes an interest rate of 12% per annum. Thus, the contention of the learned Counsel is that, in complete violation of the entire existing mechanism for levying, assessing, and collecting tax, the impugned Government Order in G.O.Ms.No.121, Energy (B1) Department, dated 23.12.2010, disregards this and issues a directive to the distribution licensee, relying solely on Section 12 of the Act 12/2003.

23. Regarding the captive generating plants, it can be observed that the distribution licensee does not supply energy in any way. Based on the challenged Government Order, TANGEDCO is directly imposing e-tax on the energy consumed by the petitioners from their wind and solar power

plants. The learned Counsel will direct the attention of this Court to some of the actions taken by TANGEDCO by referencing the bills in that regard. They will further argue that exemptions are periodically granted by the Government under Section 14(2) for various categories. As a result, due to the circumvention of procedure even for exempted units, TANGEDCO continues to collect tax, compelling the concerned units to ultimately approach this Court for a refund of the taxes levied. Despite the Court's orders, TANGEDCO fails to issue refunds. Thus, the learned Counsel submits that on its face, G.O.Ms.No.121, dated 23.12.2010, directly contradicts the provisions of the Acts and the Rules framed thereunder and is therefore liable to be set aside.

24. Thereafter, turning their attention to the other impugned G.O.Ms.No.55, Energy (D2) Department, dated 20.10.2021, it can be seen that the subject matter of the imposition of tax can only relate to Section 3(1)(c) of Act 12/2003. The contention of the learned Counsel for the

petitioner is that the levy is wholly unlawful, as the purchases through IEX, etc., are inter-State transactions. The State cannot artificially fix the situs of the sale by considering consumption alone as within its territory to bring the transaction within its taxing fold. The learned Counsel would rely upon the judgment of the Hon'ble Supreme Court of India in ***State of A.P. Vs. National Thermal Power Corpn. Ltd.***[1] in support of the said proposition.

25. Alternatively, the learned Counsel would submit that Section 3(1)(c) does not even contemplate the taxation of such transactions. When the statute does not expressly prescribe taxing, such IEX transaction G.O.Ms.No.55, dated 20.10.2021, would be a colourable exercise of power to arrogate the source of taxing power itself. The imposition of tax should be specific, and a statutory machinery, including assessment and filing of returns, is not prescriber in the Act. Therefore, in the absence of a clearly defined taxable event, identified taxable person, notified rate, and statutory machinery, the levy cannot constitute a valid tax. In this regard, the learned

1 (2002) 5 SCC 203

Counsel would rely upon the judgment of the Hon'ble Supreme Court of India in ***Commissioner of Central Excise and Customs, Kerala Vs. Larsen & Toubro Ltd.***[2].

26. Referring to the framework of the IEX, it is stated that it is India's premier energy exchange, providing an automatic electronic trading platform for the physical delivery of electricity. The petitioners are all consumers of electricity who purchase it from IEX. IEX is neither a generator nor a trader of energy. Electricity is made available through a bidding process on the platform. Successful bidders are permitted to consume the energy after all applicable charges are settled. The energy consumed is always treated as an inter-State purchase, and the necessary charges are paid accordingly. IEX has more than 6600 participants from 29 states and 5 union territories who can purchase electricity.

27. The learned Counsel would then take this Court through an

2 (2016) 1 SCC 170

overview of how transactions are typically conducted on the IEX platform. They would submit that to participate in trading, Power Generators, Distribution Companies, Traders, and consumers must first register with the exchange. The trading mechanism operates through an electronic trading platform. This mechanism includes the Day-ahead Market (DAM), Term-ahead Market (TAM), and Renewable Energy Certificate (REC) trading. DAM allows participants to buy or sell electricity for delivery the next day. TAM enables buying or selling electricity over a term period such as a week, month, or quarter. REC refers to a Tradable Certificate that represents the environmental attributes of renewable energy generation. Consumers willing to procure engage in procurement through the segments DAM or TAM by placing bids based on their consumption requirements and price preferences.

28. The next requirement is grid connectivity. To utilize the energy procured, consumers use the grid facilities provided by the local distribution

company or through other means, such as open access arrangements. Depending on the type and scale of energy consumed, various approvals and regulatory compliances must also be secured to consume energy from the IEX. Firstly, large consumers wishing to procure energy directly from the generators through the grid, without going through their local DISCOM, must obtain open access approval from the regulatory authorities. Consumers may also need to install special meters to accurately measure energy consumption in cases of open access arrangements. Regarding tariffs, regulatory approvals are also required. Additionally, there is a payment and settlement mechanism provided on the IEX platform that ensures timely settlement between buyers and sellers.

29. The DAM involves a trading session that occurs a day before the actual delivery of electricity. Once the bids are received, the IEX system clears the market by matching the bids based on price and quantity. The system determines the Marking Clearing Price (MCP) at which total demand

equals total supply. After determining the MCP, the system allocates the clearing prices to all successful bids. Buyers pay the MCP while sellers receive it, and the results of the trading session are declared. Based on these results, the IEX generates bills and invoices for buyers and sellers. Payments are settled through the same platform, with the necessary transaction fees and other charges deducted. A dispute resolution mechanism is also provided by the platform in case of any disputes. Additionally, IEX provides detailed reports including statements of transactions, statement details, and other relevant information.

30. The learned counsel would rely on paragraph Nos.23 to 32 of the judgment of the Hon'ble Supreme Court of India in ***State of A.P. Vs. National Thermal Power Corpn. Ltd.*** (cited *supra*) and submit that the Hon'ble Supreme Court of India clarified how to read the List-II Entries 53 and 54, the meaning of an inter-State sale, and the effect of Entry 53 of List-II, as well as Entry 53 and its consequences on the free flow of trade. They

submit that the State attempted to introduce a new item that was previously not taxable under the guise of issuing an authorization, which is absolutely unconstitutional and ultra vires.

31. The second contention of the learned Counsel for the petitioners is based on Section 3(1)(c) of the Act. They would submit that a careful reading of Section 3 in general and Section 3(1)(c) in particular indicates that the consumers, such as the petitioners, who consume electricity from these platforms, are not covered under Section 3. Section 3 deals with two kinds of supply. In respect of licensed suppliers, it contains two categories besides captive generating plants, and only Section 3(1)(c) pertains to non-licensed suppliers, including captive generating plants. However, Section 3(1)(c) specifically uses the phrase 'consumption for its own use' and does not mention the word 'consumer'. In this regard, the definition of 'consumer' under Section 2(5) is referenced. It is submitted that while interpreting the provision, the Court must consider that a term, despite being defined in the

statute, is not included in the charging provision. If the legislature intended to cover the petitioners, it would have used the phrases 'actual user of power' or ‘any person who is supplied with the electricity on payment of charges or free of cost or otherwise’. Since the phrase is not used, Section 3(1)(c) does not encompass the petitioners.

32. The learned Counsel would also rely on the definition of the term 'licensee' under Section 2(10) and the clarification provided under Section 2(16), stating that the words and expressions used but not defined under the Act shall have the same meaning as those under the Indian Electricity Act, 1910, the Electricity Supply Act, 1948, and the Electricity Regulatory Commission Act, 1998, all of which were incidentally repealed even before coming into force of the Act 12/2003. The learned Counsel would also rely on the definition of the consumer under the Act, 1910. Furthermore, the contention is that the phrase 'for own use' is used only in the context of captive generating plants, with Section 2(2) being relied on in this regard.

33. Similarly, the definition of 'captive generating plant' under Section 2(8) is also relied upon. By guiding this Court through the statement of objects and reasons made pursuant to the recommendation of Dr.Raja J. Chellayya's Commission and including the statement of objects and reasons of the Amendment, 2008, the learned Counsel would submit that purely and simply, the object of the State enactment was to levy a minimum rate of tax of 5% and a maximum rate of tax of 10% on the net charge of all the energy sold by the licensees, as well as to levy a minimum of Rs.10 paise and a maximum of Rs.20 paise per unit of energy consumed by the captive generating plant for their own use. For the proposition that reference to the statement of objects and reasons can be made to understand the background of the Act, the judgment of the Hon'ble Supreme Court of India in ***Commissioner of Customs (Import), Mumbai Vs. M/s. Dilip Kumar and Company and Ors.***[3] is relied upon. The judgment of the Hon'ble Supreme Court of India in ***Sri Ram Saha Vs. State of West Bengal and***

3 (2018) 7 SCR 1191

Ors.[4] is cited for the proposition that if two interpretations are possible, the one that promotes or favors the object of the Act and the purposes it serves must be preferred. It is further submitted that the objective was as above.

34. If one considers the chronology of events, namely the Act of 1910, the Act of 1948, and finally the Electricity Act, it can be seen that the Act of 1910 created the basic framework for the electricity supply industry in India. It envisaged the growth of the electricity industry through private licensees. It provided for licensees who could supply electricity in a specific area and established a legal framework for laying down wires and other works related to the supply of electricity. Post-independence, the Act of 1948 mandated the creation of State Electricity Boards. However, over time, recognizing the necessity to involve private players again, the general policy shifted towards encouraging private sector participation in various aspects. Accordingly, the Electricity Act of 2003 was introduced, and the earlier Acts were repealed. Thus, in 2003, non-licensed captive power

4 (2004) 11 SCC 497

plants were recognized and permitted by the Central Government. The State Act, enacted after the Electricity Act of 2003, levies a tax on electricity consumed by such non-licensed captive generating plants. Therefore, the taxable event came into existence on 10.06.2023, and immediately, the present Act came into force on 16.06.2003. Thus, the plain intention should be understood as solely to tax the captive generating plants and nothing else.

35. The next contention is that when the Act of 2003 was enacted, it was founded solely on the Electricity Act of 1910. Therefore, the framework of open access or the procurement exchanges was not contemplated at all, and the imposition of tax is thus legally flawed. The learned Counsel, considering the effective dates of both Acts, will further guide this Court through Sections 2(10), 2(16), etc., of Act 12 of 2003, pointing out that all the provisions refer only to the repealed Act of 1910. The provisions of the repealed Act, including Section 2(h) and the term 'consumer' and Section 28, are relied upon. Accordingly, it was argued that

the entire legislative framework, at the time of the Act's enactment in 2003, was based on a licensing-centric model. Open access was a key feature of the Central Act of 2003, which was entirely absent in the 1910 regime. Thus, the State Act, conceived and enacted with the earlier regime in mind, could never have envisioned open access consumers, power exchanges, or non-licensee third party suppliers. The definitions of the terms 'persons other than licensee' and 'consumer' demonstrate that these transactions were never contemplated. In view of this, it follows that, by interpreting the provisions, tax cannot be imposed on the power procured through these exchanges.

36. The next submission is that there is no prescribed statutory provision or a prescribed statutory procedure for the imposition, assessment, and collection of the tax on energy procured through exchanges. If these exchanges are absent, or even if there is any ambiguity regarding them, it must be considered that there is no tax in law. The judgment of the Hon'ble

Supreme Court of India in ***Commissioner of Central Excise and Customs, Kerala*** (cited *supra*) is relied upon, with specific reference to Paragraph Nos.20 and 21. By reading the said judgment, the learned Counsel would first submit that Act 12/2003 does not identify such a taxable event. The phrase 'consumption of own use' employed therein, as demonstrated in the preceding Sections of the Act, is contextually confined only to captive generating plants. Similarly, the definition of consumer also does not include these kinds of users. The applicable rate of tax is also unclear, as the levy of not less than Rs.10 ps and not more than Rs.20 ps is again not expressly made applicable. Even assuming that the definition should be interpreted to apply to new transactions, the rate of tax should have first been notified specifically for these transactions. The judgment of the Hon'ble Supreme Court of India in ***Commissioner of Customs (Import), Mumbai*** (cited *supra*) is relied upon for the proposition that the interpretation of the charging provision of a taxation statute, as opposed to the interpretation of an exemption notification, should favor the assessee in any case of ambiguity. Thus, in the absence of a clear provision under Act 12/2003, the entire attempt to collect tax through the impugned Government Order is illegal.

37. The next ground of attack is that the impugned Government Order in G.O.Ms.No.55 constitutes a colourable exercise of power. When the State lacks the authority to tax inter-State transactions, and when the charging section itself is inapplicable, the aim that cannot be accomplished directly is sought to be achieved indirectly under the pretense of enabling TANGEDCO to collect the tax. Thus, the Government Order is not an innocuous exercise of power; rather, it is one issued to arrogate a power that is non-existent. Finally, regarding Section 16 of the Act, the learned Counsel submits that the removal of difficulties should first be consistent with the objectives and cannot contradict the express provisions of the Act. The judgment of the Hon'ble Supreme Court of India in ***Straw Products Ltd. Vs. Income Tax Officer, Bhopal and Ors.***[5] is relied upon. The

5 (1968) 68 ITR 227

attention of this Court is drawn to Sections 7 and 9 of the Act, contending that under the guise of exercising power per Section 16, Sections 7 and 9 cannot be nullified. The Division Bench judgment of this Court in ***Anglo-French Textiles Ltd. Vs. Income-Tax Officer, Circle I[1}, Pondicherry and Anr.***[6] is also relied upon. Additionally, the judgment of the Hon'ble Supreme Court of India in ***Madeva Upendra Sinai Vs. Union of India***[7] is cited. It is contended that the impugned Government Order cannot be justified on the pretext of being issued to remove difficulties, and Section 16 cannot assist the respondents. Therefore, both impugned orders must be quashed.

38. Per *contra*, the learned Additional Advocate General for the respondents would submit that the Tamil Nadu Act 12/2003 falls under Entry 53 of List - II of the Seventh Schedule of the Constitution of India. It is enacted to consolidate and rationalize the laws relating to the levy of tax

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6 (1976) 103 ITR 282

7 (1975) 98 ITR 209

on the 'consumption' or 'sale' of electricity in the State of Tamil Nadu. The Electricity Act, 2003 (Central Act 36/2003) falls under Entry 38 of List - III of the Seventh Schedule, which relates to consolidating the laws concerning 'generation, transmission, distribution, trading, and use of electricity,' and generally aims to take measures conducive to the development of the electricity industry, promote competition therein, protect the interests of consumers, supply electricity to all areas, rationalize electricity tariffs, ensure transparent policies regarding subsidies, and promote efficient and environmentally sound policies, along with the constitution of a central electricity authority, regulatory commissions, and the establishment of an Appellate Tribunal for matters connected therewith or incidental thereto. Thus, it can be seen that they operate in divergent fields.

39. The learned Additional Advocate General would first take this Court through the relevant provisions of the Tamil Nadu Act 12/2003. He would refer to Section 2(1) regarding the definition of 'actual user of power',

Section 2(2) concerning 'captive generating plant', and Section 2(10) defining 'licensee'. He would submit that Section 3 is the charging provision that provides for tax on the consumption and sale of electricity. He would argue that the relevant provision applicable in the instant case is Section 3(1)(c). According to him, the writ petitioners are not effecting the sale of electricity; instead, they are procuring electricity from the Indian Energy Exchange for their own consumption. Therefore, when the tax is levied on consumption, and when such consumption is confined within the territory of the State, the jurisdiction under Entry 53 of List - II is very much available. In fact, to source power through inter-State open access, the petitioners are permitted to use the transmission lines or associated facilities on the inter-State transmission system in accordance with the regulations. Imposing tax on electricity is one of the major sources of revenue for the State Government. The levy applies to consumption within the State that is procured from IEX. Thus, there is no necessity even to amend the Act.

40. As a matter of fact, during the year 2019, assessment notices in the Form E-1 were issued to all consumers who procured power from IEX. Only some appeared for personal hearings, while others did not take advantage of the opportunity. Therefore, to proceed further, the Inspector of Electricity obtained procurement details from the State Load Dispatch Centre of the Tamil Nadu Transmission Corporation Limited and issued notices regarding tax on consumption to all consumers for the power procured through IEX during the period from April 2015 to January 2020. In response to this notice, very few have paid tax on consumption, and others repudiated it by citing the judgment of the Hon'ble Supreme Court of India in ***State of A.P. Vs. National Thermal Power Corpn. Ltd.*** (cited *supra*). It is submitted that in terms of Section 3(1)(c), the Government is vested with the power to levy electricity charges at Rs.10 ps per unit on customers for their own use of power procured from the IEX. The Director of Electricity Tax serves as the monitoring head for tax collection throughout the State.

41. The process of levying and collecting tax at such a massive scale by the Department would be cumbersome and delayed, as data must be collected from the State Load Dispatch Centre of TANTRANSCO, and subsequent demands must be raised on an individual consumer basis. To avoid delays, and considering the enormity of the process and potential revenue loss to the State Exchequer, the Government issued G.O.Ms.No.55, dated 20.10.2021, which solely anticipates additional tasks assigned to officials already responsible for certain duties under G.O.Ms.No.121, dated 23.12.2010. The aforementioned G.O.Ms.No.121 was issued by the Government to assign the task of tax collection from captive generating plants based on the recommendations of the tax reforms and revenue augmentation commission. These recommendations aimed to enable the Tamil Nadu Electricity Board to collect the Electricity Tax alongside the consumption charges, with the Chief Electoral Inspector overseeing the revenue realization. Subsequently, the rate was fixed, effective from

01.04.2011, referencing self-generation tax at Rs.10 ps per unit for High Tension consumers in their monthly consumption bills. This will apply to power consumed through DG sets and power consumed through open access, such as wind power, solar power, and group captive power. The tax collection duties assigned to TANGEDCO as per G.O.Ms.No.55 regarding power consumption through IEX are merely an additional obligation to be executed in accordance with G.O.Ms.No.121.

42. The learned Additional Advocate General would reiterate that the effect of Entry 53 of List - II of the Seventh Schedule continues to remain in force. Even the Constitution (One Hundred and First Amendment) Act did not affect Entry 53 of List - II of the Seventh Schedule of the Constitution of India in any manner. Regarding the sale of electricity, even if such a sale occurs in the course of inter-State trade or commerce, the State can impose a tax on such a sale following consumption. If consumption has occurred as a taxable event within the territory of the State, there exists an adequate

territorial nexus to levy tax on consumption under Section 3(1)(c) of the Tamil Nadu Act 12/2003 based on consumption inside the State. The state legislature is fully competent to collect tax based on the available data, as this is not illegal. When data regarding the consumption of electricity is available, it can be utilized for the collection of tax. Although the inter-State movement of electricity occurs pursuant to a contract of sale that qualifies as inter-State sale, the consumption of electricity, being a distinct incidence of the levy of tax under the provisions of Section 3(1)(c), is taxable. A beneficial comparison can be made with Entry 38 of List - II, under which the Electricity Act, 2003 came into force. Moreover, it can be observed that even though electricity can be defined as goods, its taxability is not covered under the Goods and Services Tax Act, 2017. Additionally, the Central Sales Tax Act, 1956, which was subsumed under the G.S.T Act, 2017, specifically exempted electricity under Section 6.

43. The learned Additional Advocate General would submit that

Notification No. 12/2017 - Central Tax (Rate), dated 28.06.2017, which was issued in exercise of powers conferred by sub-section 1 of Section 11 of the Central Goods and Services Tax Act, 2017 (Act 12/2017), grants exemption relating to the 'inter-State supply of service' alone in S.No.25 under the heading 9699 in relation to the transmission or distribution of electricity by an electricity transmission or distribution utility. Therefore, it can be understood that the taxing power under Entry 53 of List - II remains intact even after the completion of the Constitution (One Hundred and Eighth Amendment) Act, 2016. The objective achieved by the Government Orders is to facilitate the collection and ascertainment of taxes and cannot be construed as an absolute delegation of power or transfer of authority to TANGEDCO. The entire process does not represent an abdication or abrogation of power; the authority remains with the Chief Inspector of Electricity. The Department retains the right to proceed with the issuance of assessment notices, etc., in accordance with Section 9 of the Act.

44. The learned Additional Advocate General would rely on the judgment of the High Court of Gujarat in ***Nathalal Maganlal Chauhan Vs. State of Gujarat***[8] specifically on paragraph No.31, to argue that the Government has the power to delegate. The learned Additional Advocate General would further reference the judgment of the Hon'ble Supreme Court of India in ***Central Bank of India Vs. State of Kerala***[9] concerning the interpretation of the non-obstante clause found in Section 174 of the Electricity Act, 2003, to assert that this provision does not override the law enacted under a different legislative field as specified in Entry 53 of List - II of the Seventh Schedule regarding the consumption of electricity within the State.

45. The learned Additional Advocate General would then rely upon the judgment of the Hon'ble Supreme Court of India in ***State of Maharashtra Vs. Bharat Shanti Lal Shah***[10] to contend that the Electricity

8 2020 SCC OnLine Guj 1811
9 (2009) 4 SCC 94
10 (2008) 13 SCC 5

Act, 2003, which falls under Entry 38 of List - III, does not in any manner take away the right of the State legislature falling under Entry 53 of List - II. The learned Additional Advocate General would rely upon the judgment of the Hon'ble Supreme Court of India, relied upon by the petitioners, in ***State of A.P. Vs. National Thermal Power Corpn. Ltd.*** (cited *supra*) to point out that the said judgment is not applicable to consumption by a person other than a licensee, and in the said case, the parties are the Government and a Central Government undertaking. He would submit that Article 287 of the Constitution of India provides for exemption from taxes on electricity consumed by the Government of India or sold by the Government of India. The learned Additional Advocate General would then rely upon the judgment of the High Court of Karnataka in ***ACC Limited, Mumbai Vs. State of Karnataka and Ors.***[11], wherein the High Court of Karnataka considered the judgment of the Hon'ble Supreme Court of India in ***National Thermal Power Corpn. Ltd.*** (cited *supra*) and held that the exemption cannot be claimed as a matter of right, and the right of the State in respect of

11 2019 SCC OnLine Kar 3962

sale within the State was upheld. The learned Additional Advocate General would then rely upon the judgment of the Hon'ble Supreme Court of India in ***Swaroop Vegetables Products Industries Vs. State of U.P.***[12], more specifically, relying upon paragraphs 4, 5, and 7 to contend that the taxable event is the consumption of energy and therefore is well within the powers of the State of Tamil Nadu to impose such a tax. Therefore, he would submit that the contentions on behalf of the learned Counsel for the petitioners are liable to be rejected by this Court and that the Government Orders are to be upheld.

D. The Questions:

46. I have reviewed the competing submissions from both sides and examined the material records. Substantial and procedural questions arise regarding the validity of the impugned Government Orders.

Substantial questions:-

(i) Will the State of Tamil Nadu have the power to collect tax on the

12 (1983) 4 SCC 24

electricity supplied and consumed through the inter-state open access systems/purchases through exchanges?

(ii) When the Tamil Nadu Tax on Consumption or Sale and Electricity Tax Act, 2003 was enacted without reference to the very concept of open access purchase and purchasers through IEX, can the Government of Tamil Nadu still levy and collect tax in the absence of any subsequent amendment? Can the Government of Tamil Nadu now collect tax on intra-State consumption of power procured through the open access system?

(iii) Is the tax leviable on captive generation and consumption?

Procedural:-

(iv) Whether the impugned Government Order in G.O.Ms.No.121, dated 23.12.2010 is liable to be quashed?

(v) Is the collection of tax through the licensee illegal due to the absence of a mechanism for assessing and collecting tax?

<u>E.Question No.(i):-</u>

47. The Tamil Nadu Tax on Consumption or Sale and Electricity Tax Act, 2003 (Act 12 of 2003) was enacted with the power of the State of Tamil Nadu traceable to Entry 53 of List - II of the Seventh Schedule. It is the contention on behalf of the State of Tamil Nadu that as per the said Entry, the State is entitled to levy tax both for the consumption or sale of the electricity. The charging provision Section 3(1)(c) of the Act is extracted as hereunder:-

> "**Sec.3.Tax on the consumption or sale of electricity.**--
> (1)
> .
> .
> .**(c).** In the case of a person other than a licensee, the rate shall be not less than 10 paise and not more than 20 paise per unit of electricity on the consumption for own use as may be notified by the Government."

48. In this regard, it is contended that the consumption is within the State of Tamil Nadu and consumption being the incidence of tax, the State of Tamil Nadu will be well within its power. In this regard, the judgment of the Hon'ble Supreme Court of India in ***Swaroop Vegetables Products Industries*** (cited *supra*) is relied upon by the State. It is true that the

Hon'ble Supreme Court of India was considering a similar provision with reference to entities which partially generating energy from their own source and partially purchased electricity. The relevant portion of paragraph No.4 reads as hereunder:-

> "**4.**...The fact that the user of electricity from his own source of generation purchases electricity from some other source as well, is an altogether irrelevant factor from the stand point of the liability imposed by the said provisions. Be it realized that duty is levied on the consumption of energy. <u>The taxing event is the consumption of energy. The source from which the electricity is acquired is altogether irrelevant.</u>"
>
> (Emphasis supplied)

49. Again, the relevant portion in the paragraph No.5 of the said judgment also reads as follows:-

> "**5.** How would this object be promoted or served by adopting such an irrational course? The taxing event being the consumption of energy, the source from which the electricity is acquired would become altogether irrelevant...."

50. However, subsequently, the Constitution Bench of the Hon'ble Supreme Court of India in ***National Thermal Power Corpn. Ltd.*** (cited *supra*) laid down the manner in which Entry 53 have to be read and it is essential to quote paragraph Nos.20, 21 and 22 which read as follows:-

> "***Electricity, what it is***
>
> **20.** Before we deal with the constitutional aspects, let us first state what electricity is, as understood in law, and what are its relevant characteristics. It is settled with the pronouncement of this Court in ***CST v. M.P. Electricity Board, Jabalpur*** [***(1969) 1 SCC 200 : (1969) 2 SCR 939***] that electricity is goods. The definition of goods as given in Article 366(12) of the Constitution was considered by this Court and it was held that the definition in terms is very wide according to which "goods" means all kinds of movable property. The term "movable property" when considered with reference to "goods" as defined for the purpose of sales tax cannot be taken in a narrow sense and merely because electrical energy is not tangible or cannot be moved or touched like, for instance, a piece of wood or a book, it cannot cease to be movable property when it has all the attributes of such property. It is capable of abstraction, consumption and use which if done dishonestly, is punishable under Section 39 of the Indian Electricity Act, 1910. If there can be sale and purchase of electrical energy like any other movable object, this Court held that there was no difficulty in holding that electric energy was intended to be covered by the definition of "goods". However, A.N. Grover, J. speaking for the three-Judge Bench of this Court went on to observe (at SCC p. 205, para 9) that electric energy "can be transmitted, transferred, delivered, stored, possessed etc. in the same way as any other movable

property". In this observation we agree with Grover, J. on all other characteristics of electric energy except that it can be "stored" and to the extent that electric energy can be "stored", the observation must be held to be erroneous or by oversight. Science and technology till this day have not been able to evolve any methodology by which electric energy can be preserved or stored. [Ed. : This is largely true for the scale of operation under discussion in this case. A very small amount of electrical energy, however, can be stored in accumulators which can be retrieved and used by inverters, as commonly called.]

21. Another significant characteristic of electric energy is that its generation or production coincides almost instantaneously with its consumption. To quote from *Aiyar's Law Lexicon* (2nd Edn., 2000)—

> "Electricity in physics is 'the name given to the cause of a series of phenomena exhibited by various substances, and also to the phenomena themselves'. Its true nature is not understood. Imperial Dictionary (quoted in ***Spensley v. Lancashire Ins. Co.*** [***54 Wis 433, 442, 11 NW 894***] where the court, quoting from the same authority, said, 'we are totally ignorant of the nature of this cause whether it be a material agent or merely a property of matter. But as some hypothesis is necessary for explaining the phenomena observed, it has been assumed to be a highly subtle, imponderable fluid, identical with lightning, which pervades the pores of all bodies, and is capable of motion from one body to another'."

This characteristic quality of electric energy was judicially noticed in ***Indian Aluminium Co. v. State of Kerala*** [***(1996) 7 SCC 637***] . Vide para 25 this Court has noted : (SCC p. 650)

> "Continuity of supply and consumption starts from the moment the electrical energy passes

> through the meters and sale simultaneously takes place as soon as meter reading is recorded. All the three steps or phases (i.e. sale, supply and consumption) take place without any hiatus. It is true that from the place of generating electricity, the electricity is supplied to the substation installed at the units of the consumers through electrical high-tension transformers and from there electricity is supplied to the meter. But the moment electricity is supplied through the meter, consumption and sale simultaneously take place … as soon as the electrical energy is supplied to the consumers and is transmitted through the meter, consumption takes place simultaneously with the supply. There is no hiatus in its operation. Simultaneously sale also takes place."

These properties of electricity as goods are of immense relevance as we would state hereafter.

22. We now come to the question on the interpretation of Entry 53 in List II of the Seventh Schedule. It provides for taxes on the consumption or sale of electricity. The word "sale" as occurring in Entry 52 came up for the consideration of this Court in ***Burmah Shell Oil Storage & Distributing Co. of India Ltd.*** **v.** ***Belgaum Borough Municipality*** [***AIR 1963 SC 906 : 1963 Supp (2) SCR 216***] . It was held that the act of sale is merely the means for putting the goods in the way of use or consumption. It is an earlier stage, the ultimate destination of the goods being "use or consumption". We feel that the same meaning should be assigned to the word "sale" in Entry 53. This is for a fortiori reason in the context of electricity as there can be no sale of electricity excepting by its consumption, for it can neither be preserved nor stored. It is this property of electricity which persuaded this Court in ***Indian Aluminium Co.*** *case*

> [***(1996) 7 SCC 637***] to hold that in the context of electricity, the word "supply" should be interpreted to include sale or consumption of electricity. Entry 53 should therefore be read as "taxes on the consumption or sale for consumption of electricity"."
>
> (Emphasis supplied)

51. Thus, it can be seen that the Constitution Bench agreed on the earlier judgment based on the principle that electrical energy can neither be preserved nor stored, and that generation, sale, supply, and consumption occur simultaneously without any hiatus. Therefore, the consumption and sale of electrical energy cannot be separated, meaning that in the case of an inter-State sale, the State Government cannot impose tax by separating the incidence of consumption from sale. It should be a straightforward case of either consumption alone or a sale with consumption within the State. However, there have been subsequent developments following the aforementioned judgments of the Hon'ble Supreme Court of India. Notably, the Constitution Bench did not consider the consumption of power through an open access system. Additionally, the Indian Electricity Act, 2003 came

into force, which, effective from 02.06.2003, introduced the open access system for the first time.

52. Section 2(47) of the Indian Electricity Act, 2003 defines open access and the same is extracted hereunder for ready reference:-

> "**Section 2. (Definitions)**:-
> .
> .
> .
> (47). "open access" means the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with the regulations specified by the Appropriate Commission;"

53. Open access is a regulatory framework that empowers eligible consumers to purchase open access electricity directly from the open market. This system breaks away from the traditional model where consumers are tied exclusively to local distribution companies like TANGEDCO. The objective is to make the market more competitive and to acquire energy at a lower cost with greater efficiency. The system is supervised by the Central

Electricity Regulatory Commission (CERC) and the State Electricity Regulatory Commissions with reference to the grid, supply through the grid, and its stability. Open access power can be obtained through short-term, medium-term, and long-term contracts with suppliers.

54. The platform, Indian Energy Exchange Limited, is one of the premier energy exchange platforms for trading electricity. Under the short-term or medium-term plans, the energy to be provided is traded, and depending on the market—referencing demand—the prices are fixed and the trades are closed. Invoices are raised, and the bills are settled through the exchange. Both the purchaser and the seller must have open access approval, meet necessary arrangements, and obtain tariff approvals. By purchasing, consumers acquire the volume of electricity for a specified duration, with a fixed price. Additionally, when authorities permit access through local distribution companies via the Central or State grid, transmission and wheeling charges apply. Furthermore, a gross subsidy

surcharge is levied to offset the revenue loss of the local distribution company. Scheduling and system operation charges also apply to cover administrative costs related to scheduling, dispatching, and overall system management to maintain grid stability. Therefore, in an open-access transmission or purchase through these exchanges, it is important to consider whether the same dictum of the Constitution Bench—where sale, supply, and consumption occur simultaneously—holds true. In reality, trading—the sale and purchase—takes place on platforms like IEX, where bidding occurs, invoices are raised, and payment is made. The supply is facilitated through the grid, and consumption occurs where the purchaser has grid connectivity. Central and state authorities manage grid stability, ensuring supplies to purchasers upon payment of wheeling and other charges. Consequently, this course of transactions complicates the notion that electrical energy, being a constant flow of electrons within a conductor, is generated, sold, supplied, and consumed instantaneously, though conceptually, the dictum of the Hon'ble Constitution Bench that there cannot be any storage of electricity (except for minimal quantities etc.,) and therefore, the supply and consumption can never be separated.

55. Be that as it may, there is one more supervening factor. The Constitution (One Hundred and First Amendment) Act, 2016, by which, Section 269A is added to the Constitution of India. The same is extracted hereunder for ready reference:-

> "**269A. Levy and collection of goods and services tax in course of inter-State trade or commerce.**— (1) Goods and services tax on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.
>
> *Explanation*.—For the purposes of this clause, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter- State trade or commerce.
>
> (2) The amount apportioned to a State under clause (1) shall not form part of the Consolidated Fund of India.
>
> (3) Where an amount collected as tax levied under clause (1) has been used for payment of the tax levied by a State under article 246A, such amount shall not form part of the Consolidated Fund of India.
>
> (4) Where an amount collected as tax levied by a State under article 246A has been used for payment of the

tax levied under clause (1), such amount shall not form part of the Consolidated Fund of the State.

(5) Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.]"

56. As opposed to the words 'sale' or 'purchase', as contained in other articles, the phrase that is used in Article 269A is 'Goods and Services Tax on supplies in the course of inter-State trade or commerce'. Electricity is consistently held to be goods. There can be no iota of doubt that if person/concern buys power through these exchanges/open access system from another state, then whether purchase, supply or consumption, all happen in the ‘course of inter-state trade or commerce’. Thus, when the power of the State of Tamil Nadu to impose tax is circumscribed by the Article 269A, then, Section 3(1)(c) of the Act cannot be interpreted to empower the power of the State to impose tax on the ground that the consumption happens within the State of Tamil Nadu.

57. Further, the Article 286 of the Constitution of India underwent change with the One Hundred and First Amendment Act and it reads as follows:-

> "**286. Restrictions as to imposition of tax on the sale or purchase of goods.—**
> (1) No law of a State shall impose, or authorise the imposition of, a tax on the supply of goods or of services or both, where such supply takes place—
> (a) outside the State; or
> (b) in the course of the import of the goods or services or both into, or export of the goods or services or both out of, the territory of India.
> 3[* * * *]
> (2) Parliament may by law formulate principles for determining when a supply of goods or of services or both in any of the ways mentioned in clause (1).
> [(3) * * * *]"

58. Even if one were to interpret the open access system through the grids of the Central and State authorities acting as a buffer and considering that the sale and supply ends at the grid connectivity of the suppliers' place and after payment of the wheeling charges, the purchasers consume inside the State, even then, by virtue of the Article 286 of the Constitution of India, if the supply is outside the State, no law of the State shall authorise

imposition of such a tax. As a matter of fact, a perusal of the provisions of the Central Goods and Services Tax, 2024 enacted by the Government of India in exercise of its power under Article 269A, covers electricity also and in exercise of powers under Section 11, the Central Government has issued a notification in Notification No.2/2017 exempting electrical energy under S.No.104, Chapter/Heading/Sub-heading/Tariff Item No.27160000 under the said Act. It is true that the Karnataka High Court in ***Vijaya Steels Ltd Vs. Bangalore Electricity Supply Company***[13] upheld the action of the state. But the effect of the above Articles of the Constitution of India was not considered in the said Judgment and therefore, I am unable to subscribe to the view taken. In view thereof, I answer the question that with reference to consumption of electricity through open access system if it is through inter-State open access system which is in the course of inter-State trade or commerce, there is no power vested with the State of Tamil Nadu to impose tax and Section 3(1)(c) of the Act cannot be read to include those transactions and though 'consumption' can be an incidence if it happens in

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the course of an intra-state transaction.

F. Question No.(ii):-

59. Section 3(1)(c) was extracted *supra*. It may be true that both the State of Tamil Nadu and the Union of India engaged in the exercise of enacting the relevant Acts, namely, the Electricity Act, 2003, and the Tamil Nadu Tax on Consumption or Sale and Electricity Tax Act, 2003, almost simultaneously. While it is true that there was no occasion for this State to consider the open access regime and the free regime introduced by the Indian Electricity Act, when referencing a taxing statute, a plain literal reading may cover a particular transaction or item within its ambit. Merely because such a transaction or type of goods was not contemplated on the day it was enacted, does not mean that new transactions arising subsequent to the legislation, or new types of goods that emerged afterward, should be excluded from the taxing statute. A straightforward and clear reading of the provision relating to the incidence of tax encompasses new kinds of

transactions, such as open access purchases or trades, which may occur subsequently. When the literal or general words of a tax statute include a new form of transaction or technology, tax may be imposed even if such a transaction did not exist when the law was enacted. This follows the doctrine of the strict/literal rule of tax interpretation, qualified by technological neutrality. Courts will not read in or stretch words; however, if the words fit, the law applies. A useful reference in this regard can be made to (i) ***Commissioner of Customs v. Dilip Kumar & Co.***[14]; (ii) ***State of W.B. Vs. Kesoram Industries***[15]. Tax law is ordinarily technology-neutral and would encompass new or novel forms of transactions or technologies developed after its enactment, provided they fall within the literal meaning, do not contradict the purposes of the act, and there is no ambiguity.

60. As already held in question No.(i), the legislative power resides firmly with the State of Tamil Nadu if the procurement occurs through an

14 (2018) 9 SCC 1 paragraph Nos.21-25
15 (2004) 10 SCC 201 paragraph No.106

intra-State open access system, as it does not constitute inter-State trade, nor is the supply outside the State. However, as of now, the charging Section 3 of the Act does not encompass this. In fact, Section 3(1) serves as the enabling provision for the State of Tamil Nadu to impose tax. Section 3(1)(a) addresses the situation of licensees other than captive generating plants, namely those individuals, such as the petitioners, who procure power through the open access system. Section 3(1)(b) pertains to licensees who are captive generating plants, which will also not apply to the aforementioned transactions. The State asserts authority under Section 3(1)(c), which is extracted *supra*. It is evident that Section 3(1)(c) does not employ the term 'consumers' in relation to the incidence of tax. Although individuals procuring power through the open access system fall within the definition of consumer, the incidence of tax pertains to the electricity consumed during the previous month 'for own use'. It is not the electricity consumed, but the phrase 'for own use' is specifically reiterated in Section 3(1)(c). If the interpretation suggested by the learned Additional Advocate

General is accepted, then the phrase 'for own use' would become redundant.

61. The Act specifically uses terminologies such as 'actual user of power,' which is defined under Section 2(1) to mean a user who is not a consumer but uses power from a captive generating plant. Therefore, when these individuals purchase power through the open access system, they fall within the definition of consumer. However, when Section 3(1)(c) abandons the word 'consumer,' it contradicts itself by designating the incidence of tax as consumption ‘for own use,’ which only applies to captive generating plants and not to those who purchase power through the intra-State open access system. In light of this, G.O.(Ms).No.55 Energy (D2) Department, dated 20.10.2021, which aims to assign the collection of tax to the licensee, namely TANGEDCO, concerning the consumption of electricity purchased through open access from Indian Energy Exchange Limited or Power Exchange India Limited, cannot be upheld as leviable under Section 3(1)(c) of the Act and is therefore quashed. However, it remains open for the State

of Tamil Nadu to introduce a suitable amendment to the charging provision if it chooses to levy tax on intra-state Open Access Purchase transactions.

G. Question No.(iii):-

62. Section 2(2) of the Act defines captive generating plant as follows:-

> "**Section 2. Definitions.--**
> (1)...
> (2) "captive generating plant" means a power plant set up by any person or association of persons or any co-operative society to generate electricity primarily for his own use or for the use of members and includes the power plants that are permitted to sell the surplus power so generated."

63. The definition of 'consumer' that is contained under Section 2(5) of the Act reads as follows:-

> "**Section 2.Definitions.--**
> (1)..
> .
> .
> .
> (5) - "consumer", with its grammatical variations and cognate expression means any person who is supplied with electricity on payment of charges, or free of cost or

otherwise by a licensee or by the Government or by any other person engaged in the business of supplying electricity to the public under the Indian Electricity Act, 1910 (Central Act X of 1910) or any other law for the time being in force and includes---

(i) a licensee who consumes electricity whether generated by himself or supplied to him by any other licensee; and

(ii) actual user of power or any other person who consumes electricity generated by himself.

Explanation I.-- Where a licensee consumes electricity, whether generated by himself or supplied to him, such licensee shall be deemed to be a consumer only in respect of the electricity so consumed.

Explanation II.-- Where a licensee or other person consumes energy for purposes connected with the construction, maintenance and operation of the generating, transmitting and distributing system, such licensee or person shall not be deemed to be a consumer in respect of the energy so consumed;

64. Therefore, it can be seen that, by virtue of Section 3(1)(c), the captive generating plants are those that consume power for their own use and are thus covered under Section 3(1)(c). Accordingly, the Government of Tamil Nadu is entitled to collect tax at the rate of Rs. 10 ps per unit, and not more than Rs. 20 ps per unit as may be notified. I answer the question accordingly.

H. Question Nos.(iv) and (v):-

65. Regarding G.O.Ms.No.121, it has already been established that the State of Tamil Nadu has the authority to impose a tax on captive generating plants. It has also been clarified that, by virtue of Section 3(1)(c), the tax is already levied. G.O.Ms.No.121 merely designates the officers mentioned therein to collect the tax imposed under the Act. The only argument presented is that this action contradicts the provisions of the Act and the rules framed thereunder. Since the complete data, in terms of metering, is readily available with TANGEDCO, the distribution company, TANGEDCO and its officers, who collect the monthly consumption bills, are ideally positioned to collect the tax. Section 5 of the Act requires the registration of captive generating plants. Section 7 states that the Electricity Tax due is recoverable as arrears of land revenue. Section 8 mandates that licensees maintain books of accounts and submit returns. Section 9 outlines the procedure for assessment in the absence of filed returns. Section 10

provides for an appeal. Section 12 empowers the Government to appoint Electricity Tax Inspecting Officers to inspect the prescribed books.

66. Section 13 outlines the powers of Electricity Tax Inspecting Officers, and the following is extracted hereunder:

> "**13. Powers of Electricity Tax Inspecting Officers.**--(1) Subject to the provisions of any rules made by the State Government in this behalf, an Inspector may,--
>
> (i) require production for inspection of such books and records as may be necessary for ascertaining or verifying the amount of electricity tax leviable under the Act;
>
> (ii) enter and search any premises where electricity is, or is believed to be supplied, for the purpose of--
>
> (a) verifying the statements made in the books of account kept, and returns submitted, under section 5,
>
> (b) testing the reading of meters,
>
> (c) verifying the particulars required in connection with the levy of electricity tax;
>
> (iii) exercise such powers and perform such other functions as may be necessary for carrying out the purposes of this Act or the rules made thereunder.
>
> (2) All searches made under sub-section (1) shall be made in accordance with the provisions of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974)."

67. Therefore, when the government has the power to appoint

Electricity Tax Inspecting Officers to inspect the petitioners regarding their returns that show the units of electricity supplied and the amount of electricity tax payable to the Director in the prescribed form and manner, and when the Managing Director of TANGEDCO is appointed as the Director, and when, under Section 13, the Electricity Tax Inspecting Officer exercises necessary powers to carry out the purpose of the Act and the Rules, it cannot be said that the impugned government order is in any way contrary to the provisions of the Act. The mechanism for filing returns, including claiming any exemptions, is available in the Act. Since electricity is supplied through a metering mechanism and only TANGEDCO officials visit every location to levy and collect electricity charges and inspect all other facilities, the government order does not violate the provisions of the Act.

68. As far as the Rules are concerned, under Rule 6, every licensee or every person, other than a licensee, is supposed to credit such tax to the

Government's treasury under the accounts mentioned therein. Rule 8 also enables the licensee to include the tax leviable under the Act as a separate item in the bill for the charges for the sale of electricity by him and shall recover the same from the consumer along with his charges for the sale of such electricity. In this regard, the definition of 'consumer' under the Act, which was extracted *supra*, includes the actual user of power or any other person who consumes the electricity generated by him. Therefore, the provision also exists for including the Electricity Tax in the bill. In view thereof, I do not find the G.O.Ms.No.121 to be violative of the Rules.

69. Furthermore, for the same reasons, it cannot be said that the Act does not provide a proper mechanism. A proper reading of the Act and the Rules will make it clear that, concerning consumers, the licensee, namely TANGEDCO, can include the tax in the bill and collect it as well. In fact, the licensees can also file returns; therefore, any refunds can be claimed as per the Act. A provision for appeal is also established. Therefore, I reject the

procedural arguments concerning G.O.Ms.No.121 that it violates certain provisions of the Act and the Rules, or the further argument that the collection of tax is flawed for not providing a valid mechanism for the collection and realisation of the tax amount. Accordingly, questions Nos. (iv) and (v) are answered.

I. The Result:

70. In the result, these Writ Petitions are ordered on the following terms:

(i) The impugned Government Orders in G.O.(Ms).No.55 Energy (D2) Department, dated 20.10.2021 shall stand quashed;

(ii) The G.O.Ms.No.121 Energy (B1) Department, dated 23.12.2010 shall stand upheld;

(iii) There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

09.06.2025

Neutral Citation: yes
grs

To

1. The Principal Secretary to Government,
   Energy Department, Secretariat, Fort St. George,
   Chennai - 600 009.

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

3. The Chairman & Managing Director,
   Tamil Nadu Generation and Distribution
   Corporation Limited (TANGEDCO),
   144, Anna Salai,
   Chennai - 600 002.

D.BHARATHA CHAKRAVARTHY, J.

grs

W.P.No.4871 of 2022 etc., (batch cases)

09.06.2025