IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.09.2025

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No. 36202 of 2025
and
W.M.P. Nos. 40461 & 40463 of 2025

M/s.OPG Power Generation Private Limited,
Represented by its Manager-Taxation,
R. Sathish Kumar ...Petitioner

Versus

The Assistant Commissioner of Income Tax,
Central Circle 1(1),
Room No.320, 3rd Floor,
Investigation building,
Old No. 108/ New No.46,
Mahatma Gandhi Road,
Chennai – 600 034. ...Respondent

Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari, to call for the records in ITBA/PNL/F/271(1)(c)/2025-26/1080182336 (1), on the file of the respondent and to quash the impugned order dated 29.08.2025 passed by the respondent imposing penalty under Section 271(1)(c) of the Act for the Assessment Year 2016-17 order dated 29.08.2025 and bearing number ITBA/PNL/F/271(1)(c)/2025-26/1080182336 (1) and thus render justice.

For Petitioner : Mr. B. Kumar, Senior Standing Counsel for Mr. S. Ramachandran

For Respondent : Mr. A.P. Srinivas,
Senior Standing Counsel

ORDER

In this Writ Petition, the Petitioner has challenged the impugned penalty order dated 29.08.2025 passed under Section 271(1)(c) of the Income Tax Act, 1961 for the Assessment Year 2016-2017.

2. The Petitioner has already suffered adverse orders in both in the hands of the Original Authority, the First Appellate Authority and the Tribunal and the matter is now subject matter of T.C.A.Nos. 117 and 118 of 2025. The Division Bench of this Court has already admitted the appeals vide its order dated 28.07.2025 and has framed the following substantial questions of law to be answered: -

> *"(1) Whether freight charges received abroad by non-residents for goods shipped outside India but delivered in India is chargeable to tax in India?*
>
> *(2) Whether the Tribunal erred in holding that tax was deductible under Section 195 of the Income Tax Act, 1961 on freight paid to non-resident shipowners when such income is not chargeable to income-tax in India under Section 44B of the Act?*
>
> *(3) Whether Section 44B of the Act, being a special provision with a non-obstante clause, overrides Sections 40(a)(i), 195 and 9 of the Act with respect to non-resident*

shipping income?

(4) Whether the Tribunal erred in not applying CBDT Instruction No.1934, which exempts payments outside India for ocean freight on import of cargo from TDS and is binding under Section 119 of the Act?

(5) Whether the Tribunal erred in holding that CBDT Instruction No.1934, applies for time charter of ships and not for payment for ocean freight when the annexed Office Memorandum specifically applies to ocean freight for import of cargo?

(6) Whether the Tribunal erred in holding that CBDT Instruction No.1934 applied only to public sector undertakings, when a Co-ordinate Bench of the Tribunal had held that it applies to private companies as well?"

They pertain to the Assessment Year 2014-2015 and 2016-2017. As mentioned above, the impugned order passed under Section 271(1)(c) of the Income Tax Act, 1961 also pertains to the said Assessment year 2016-2017.

3. The principle issue that falls for consideration before the Division Bench in T.C.A. Nos.117 and 118 of 2025 is whether on the telegraphic transfers made to non-residents residing outside India for the freight charges, the Petitioner was required to pay tax or not. The authorities have held that as per Section 195 of the Income Tax Act, 1961, Petitioner was indeed required to pay tax.

4. Learned Senior Counsel for the Petitioner would endeavour to place

reliance on the decision of the Punjab and Haryana High Court in the case of ***Commissioner of Income Tax, IT vs. Gurudaspur Cooperative Sugar Mills (P.) Ltd.,*** rendered on 21.01.2024, wherein the Tribunal had set aside the penalty imposed on the said assessee under Section 271(1)(c) of the Act.

5. Learned Senior Counsel would also submit that appeal against the aforesaid order was dismissed, as the Government conceded taking note of the legal position and therefore, the pending applications, if any shall stand disposed of vide order dated 22.01.2024 in the case of ***Commissioner of Income Tax, IT vs. Gurudaspur Cooperative Sugar Mills (P.) Ltd.,*** referred supra.

6. Learned Senior Counsel would also endeavour to place reliance on other decisions, as detailed below: -

i) 2017 (85) TAXMANN.COM 351 (Madras)

ii) 2013 (35) TAXMANN.COM 395 (Punjab and Haryana)

iii) 2024 (159) TAXMANN.COM 7 (SC)

iv) 2017 (84) TAXMANN.COM 25 (Madras)

v) 2017 (79) TAXMANN.COM 376 (Karnataka)

vi) 2018 (97) TAXMANN.COM 297 (Madras)

vii) 2010 (189) TAXMNN.COM 322 (SC)

viii) 2021 (431) ITR 118 (Del)

ix) 2015 (377) ITR 215

7. Learned counsel for the Respondent on the other hand would submit that the Petitioner has an alternate remedy under Section 246A of the Income Tax Act, 1961 before the appellate commissioner. It is submitted that the impugned order does not suffer from any infirmity and therefore, the writ petition is liable to be dismissed.

8. That apart it is submitted that as against the order of the CIT (Appeals), the Petitioner had preferred an appeal before the ITAT and pending disposal of the appeal. The penalty proceedings initiated pursuant to a notice issued under Section 271(1)(c) of the Income Tax Act, was disposed of vide impugned order dated 29.08.2025 and hence, prays for dismissal of the writ petition.

9. Having considered the submissions made by the learned counsel for

the Petitioner and the learned counsel for the Respondent, I am of the view that since the petitioner's appeal has been admitted in T.C.A.Nos.117 and 118 of 2025, either this proceeding can be kept in abeyance or in the alternative, the Petitioner can be relegated to work out an appellate remedy and all further recovery proceedings can be kept in abeyance pending disposal of the appeal in T.C.A.Nos. 117 and 118 of 2025.

10. In my view, the Petitioner should be asked to work out the remedy before the Appellate Commissioner. However, the recovery proceedings pursuant to the impugned order shall be kept in abeyance in view of the pendency of the appeal in T.C.A.Nos.117 and 118 of 2025 before this Court. At that stage, subject to final outcome of the aforesaid Tax Case Appeals, it is open for the Petitioner to argue the case as to whether the benefit of the decision of the Punjab and Haryana High Court in ***Commissioner of Income Tax, IT vs. Gurudaspur Cooperative Sugar Mills (P.) Ltd.,*** referred to supra would apply to the case of the Petitioner.

11. Since the time limit for filing the appeal has already been expired, the Petitioner is permitted to file such an appeal within a period of 30 days from the date of receipt of copy of this order. It is made clear that in case, such an appal is filed, the appeal shall be kept in abeyance and all further recovery proceedings pursuant to the impugned order shall be kept in abeyance pending disposal of T.C.A.Nos.117 and 118 of 2025.

12. The Writ Petition is disposed of with the above observations. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

19.09.2025

Index : Yes/No
Neutral Citation :Yes/No
AT

To
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C.SARAVANAN, J.

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