BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.04.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

W.A.(MD)No.1781 of 2021

Pudukottai Green Power Private Ltd.,
Rep. by its Director,
No.34, Swathi Complex, 1st Floor,
Venkatanarayana Road,
Nandanam, Chennai - 600 035. ... Appellant

Vs.

1.NHPC Limited,
Branch Office at:
No.13 Sowbakya Nagar,
Madurai Road, Batlagundu,
Dindigul District - 624 202,
Registered Office at:
NHPC Office Complex, Sector-33,
Faridabad – 121 003 (Haryana).

2.Principal Commissioner of GST and
Central Excise (Chennai North),
Office of the Principal Commissioner of GST
and Central Excise,
26/1 Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

3.State Tax Officer,
T.Nagar Assessment Circle,
No.46 Greenways Road,
Chennai - 600 028. ... Respondents

Prayer : Writ Appeal filed under Clause XV of Letters Patent, to allow the writ appeal by setting aside the order dated 02-08-2021 passed in W.P.(MD)No.13220 of 2021 on the file of this Court.

For Appellant : Mr.Joseph Prabakar

For Respondents : Mr.S.Karthikeyan for R1.
Mr.R.Nandhakumar,
Central Govt. Standing Counsel for R2.
Mr.R.Suresh Kumar,
Additional Government Pleader for R3.

JUDGMENT

Heard both sides.

2.The appellant herein entered into an agreement on 26.05.2017 with the first respondent herein. Clause 14 of the said agreement reads as follows:-

> *"14.The payment of all taxes, rates, cess and other levy including penalties, if any, charged thereon in respect of the said premises, such as Corporation/ Municipal/ Panchayat Tax, Urban Land Tax etc., due to the State Government, Central Government or other Local or other civic authorities, including enhancements and new introductions shall be to the account of the First Party. The Second Party shall be at liberty to pay the above tax, rate or cess or other levy including penalties, if any, charges thereon in case of default or delay by the First Party and consequential demand or distress being mised on the Second Party after giving notice of the said demand to the First Party and adjust the amounts so paid from out of rents in respect of the said premises due immediately after the said payment."*

2.The case of the appellant is that when the agreement was entered into, the GST regime had not yet been introduced. Lease transactions till then were never subjected to tax. On account of introduction of GST, lease transactions also began to suffer tax at 18%. Since this was not in the contemplation of the contracting parties, according to the appellant, this GST component should be borne only by the first respondent. In order to avoid the prosecution, the appellant had paid GST also. He, therefore, filed W.P.(MD)No.13220 of 2021 for directing the first respondent to refund the GST amount of Rs.43,73,269/- paid by the appellant for the period July 2017 to June 2021 along with interest. The Writ Court was called upon to direct the first respondent to pay the future GST also.

3.The learned Single Judge vide order dated 02.08.2021 disposed of the writ petition by relegating the appellant to avail the arbitral remedy. Challenging the dismissal order, this writ appeal came to be filed.

4.The learned Single Judge had observed that when there is an arbitration clause in writing, the contracting parties cannot be permitted to invoke the writ jurisdiction. This observation as a proposition of law may not hold good any further. As rightly pointed out by the learned counsel for the appellant, the Hon'ble Supreme Court in the decision reported in ***2021 SCC Online SC 99 [Unitech Limited Vs. Telangana State Industrial Infrastructure Corporation (TSIIC)]*** had held that when the matter involves State or State Instrumentalities, writ petition under Article 226 of the Constitution of India is very much maintainable notwithstanding the incorporation of arbitral clause in the agreement.

5.No doubt, the writ petition filed by the appellant herein is maintainable. But the question is one of Court's discretion. We are of the view that a consideration of the contentions advanced by the learned counsel for the appellant may even lead to re-writing of the terms of the contract between the parties. That is why, the learned Single Judge rightly relegated the appellant to go before the Arbitrator. Though we may not agree with some of the reasons or even the observations made by the learned Single Judge, the eventual conclusion arrived at by the learned Single Judge does not deserve to be interfered with. The writ appeal is dismissed. No costs.

(G.R.S. J.,) & (M.J.R. J.,)
16.04.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
ias

To:

State Tax Officer,
T.Nagar Assessment Circle,
No.46 Greenways Road,
Chennai - 600 028.

G.R.SWAMINATHAN, J.
and
M.JOTHIRAMAN, J.

ias

W.A.(MD)No.1781 of 2021

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