(2009) 06 MAD CK 0246

In the Madras High Court

Case No : Writ Petition (MD) No. 254 of 2007 and M.P. (MD) No. 1 of 2007

Sivakasi Electrochemicals Ltd. APPELLANT

Vs

The Superintending Engineer RESPONDENT

Date of Decision : 18-06-2009

Acts Referred:

Tamil Nadu Electricity (Taxation on Consumption) Act, 1962 — Section 2, 3(1), 5, 5(1), 5(2)
Tamil Nadu Electricity Supply Code, 2004 — Rule 4, 5(4)

Citation : (2009) 06 MAD CK 0246

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : M. Md. Ibrahim, for the Appellant; Suresh Kumar, for the Respondent

Final Decision : Allowed

Judgement

R.S. Ramanathan, J.—Heard the learned Counsel appearing for the petitioner and for the respondent.

2. The case of the petitioner is that the petitioner is a High Tension Consumer and having Service Connection No. 71. The Government of Tamil Nadu levied Electricity Tax on the consumption of electricity as per Tamil Nadu Electricity (Taxation on Consumption) Act 1962. Therefore, the petitioner challenged the levy of the Electricity Tax and the writ petition filed by the petitioner was dismissed and confirmed in appeal. Thereafter, the bill was sent by the respondent for the month of September including the arrears of Electricity Tax claiming a sum of Rs. 23,02,065/-. The petitioner made a request to pay the same in instalments and that was also granted by the respondent, directing the petitioner to pay the arrears in 12 equal monthly instalments commencing from 26.10.2006 and the petitioner has paid the said amount.

3. Nevertheless, the respondent has raised the bill including the belated payment of surcharge (B.P.S.C.) for Rs. 2,34,308/- on the payment of Electricity Tax for the period from June 2002 to August 2004 at the rate of 18%. The petitioner

challenged the levy of belated payment of surcharge on the E-Tax stating that as per Rule 4(xi) of the Tamil Nadu Electricity Supply Code 2004, B.P.S.C. cannot be levied on the Electricity Tax. Therefore, the levy of B.P.S.C at Rs. 2,34,308/- is unlawful and is liable to be set aside. Hence, the petitioner filed the writ of Certiorari, for quashing the payment of Rs. 2,34,308/- due to B.P.S.C on the belated payment of Electricity Tax.

4. The respondent filed the counter and submitted that if the consumer fails to pay the dues on time , the Electricity Board is entitled to collect the belated payment of surcharge from the Consumer. He further contended that the Tamil Nadu Electricity Supply Code relied upon by the petitioner came into force only from 01.09.2004 and prior to 01.09.2004, there was no bar on levying B.P.S.C. on the E-Tax and the demand of B.P.S.C. on the non-payment of E-Tax was for a period from June 2002 to August 2004, which is earlier to the coming into force of Tamil Nadu Electricity Supply Code and therefore, the demand of the respondent is justified. He further contended that the petitioner has enjoyed the benefit of non-payment of E-Tax from 06/2002 to 08.2004 and that was only due to the interim order obtained by him, while challenging the levy of imposition of E-Tax and hence, when the writ appeal and writ petition filed by the petitioner were dismissed, they are bound to pay the tax with the belated surcharge and therefore, the writ petition is liable to dismissed.

5. The learned Counsel appearing for the petitioner relied upon the judgement of this Court in W.P. No. 1199 of 2006 dated 08.02.2006 in the case of Sivakasi Electro Chemicals Ltd., Rep by its Chairman and Managing Director C.A. Jairaj v. The State of Tamil Nadu, Rep. by Secretary to Government, Energy Department, Fort St. George, Chennai-9 and Ors. and submitted that the respondent is not entitled to collect the belated payment of surcharge as the amount was not paid due to the pendency of the writ petition and the writ appeal challenging the levy of E-Tax and in the aforesaid case, the belated payment of surcharge was set aside on the ground that the matter was pending before the Court and therefore, the belated payment of surcharge can not be levied for that period.

6. On the other-hand, Mr. M.Suresh Kumar, learned Counsel appearing for the respondent, relied upon the judgment reported in 2006 W L.R. 959 in the case of Siva Cotton Mills (India) Pvt. Ltd., Usilampatti, Madurai District, Rep. by its Managing Director, Mr. P.Nagarajan v. The Superintending Engineer, Madurai Electricity Distribution Circle, K.Pudur, Madurai, and submitted that the petitioner cannot take advantage of the pendency of the writ petition and the writ appeal for the non payment of electricity charges.

7. According to me, the petitioner is liable to pay the surcharge on the belated payment once he fails to make the payment on due dates and he cannot take advantage of the pendency of the writ petition or interim order passed thereon.

8. In the judgment reported in 2006 W L.R. 959, the learned single Judge relied upon the judgment reported in Om Prakash Vs. State of Haryana, and the

decision reported in Kanoria Chemicals and Industries Ltd. and Others Vs. U.P. State Electricity Board and Others, , for coming to the conclusion that the respondent is well within its right to make the demand of B.P.S.C.

9. The learned Counsel appearing for the petitioner would submit that the judgment reported in 2006 WL.R.959 is not applicable to the facts of the case, as it dealt with Rule 5(4) of the Tamil Nadu Electricity Supply Code 2004 and that was not applicable to the present case. Though the judgment was rendered with reference to the Tamil Nadu Electricity Supply Code 2004, the learned Judge relied upon the principles set out by the Honourable Supreme Court in the two decisions reported in Om Prakash Vs. State of Haryana, and 1997(5) S.C.C. 722. Therefore, in my opinion, the learned Counsel appearing for the petitioner is not entitled to take the stand that by reason of the pendency of the writ petition and the writ appeal and the interim orders made thereon, he did not make the payment and therefore, he is not liable to pay the surcharge and the belated payment.

10. The learned Counsel appearing for the petitioner further contended that the respondent has permitted to pay the Electricity Tax in 12 equal monthly instalments and therefore, they have accepted the payment in 12 instalments and hence, there is no belated payment and therefore, the respondent is not entitled to levy the surcharge on the belated payment in respect of Electricity Tax.

11. I have carefully considered the rival contentions of both parties. No-doubt in the judgment reported in 2006 Writ L.R.959, principles have been laid down that when a payment was deferred by reason of interim order, the obligation of the consumer to pay the surcharge was not suspended, though the Electricity Board was prevented from realising the arrears. After the dismissal of the suit or the writ petition, the Board is at liberty to claim the amount and it is not open to the consumer to contend that due to the stay order, they did not make the payment and therefore, the Electricity Board cannot claim the surcharge on the belated payment. In this case, the position is entirely different. The respondent claimed the Electricity Tax and that was not paid on time along with the consumption charges and therefore, the respondent demanded surcharge on the belated payment of consumption charges and as well as Electricity Tax.

12. So far as the consumption charges are concerned, the respondent is well within its power to demand surcharge on the belated payment and it is covered by Clause 20.01 of the Terms and Conditions of Supply of Electricity of Tamil Electricity Board. Admittedly, the petitioner is a High Tension Consumer and Clause 20.01 permits the collection of belated payment surcharge on any outstanding amount from the date following the last due date for payment of any bill. Therefore, the respondent is justified in collecting the belated payment in respect of the consumption of electricity charges. But the position is different in respect of Electricity Tax. The Electricity Tax is levied under Tamil Nadu Electricity (Taxes on Consumer Act 1962) IV of 1962 and as per the of the said Act, save as otherwise provided in this Act, there shall be levied and paid to the Government

to every month, a tax on the consumption of energy (hereinafter referred to as the Electricity Tax). Section 3(1)(b) deals with the rates on the basis of price of energy consumed by the consumer in the matter of payment of Electricity Tax.

13. Section 5 deals with payment of Electricity Tax and as per Section 5(1), every licensee shall collect from the consumer and pay to the Government at the time and in the manner prescribed, the Electricity Tax payable under this Act, in respect of the energy supplied by him to the consumer.

Therefore, a reading of Section 5(1) makes it clear that a duty is cast upon the licensee to collect the Electricity Tax from the consumer and pay the same to the Government. As per Section 2(b), licensee is the respondent and the respondent is bound under law to collect the Electricity Tax from the consumer and pay the same to the Government.

14. Section 8 of the said Act deals with Recoveries and it reads as follows:

Any sum due on account of Electricity Tax, if not paid at the time and in the manner prescribed, shall be deemed to be in arrears and thereupon such interest not exceeding twelve per centum per annum which the Government may, by general or special order fix, shall be payable on such sum; and the sum together with any interest thereon, shall be recoverable either through a Civil Court or as an arrear of land revenue;

i. if the sum was payable under Sub-section (1) of Section 5, either from the consumer or from the licensee, at the option of the Government or of the prescribed officer;

ii. if the sum was payable under Sub-section (2) of Section 5:

a. in any case where any person other than a licensee consumes energy generated by himself, from such person ; or

b. in any case where the licensee consumes energy generated by himself or supplied to him, from such licensee or

c. in any case where any person supplies energy [free of charge or at a concessional rate] from the consumer or from the person supplying energy [free of charge or at a concessional rate] at the option of the Government or of the prescribed officer.

Therefore from the reading of Section 5 and 8, a duty is cast upon the licensee, the responder herein, to collect the tax from the consumer and pay the same to the Government and in case of default, in the payment of tax at the time and in the manner prescribed, the Government may general or special order fix interest on such payment, either not exceeding 12 % p.a. on the belated payment of levied tax. Therefore, from the above provisions, it is made clear that the Electricity Tax is levied by the Government and licensee is directed to collect the amount and pay the same to the Government and the Electricity Tax is not payable to the licensee and it is payable only to the Government.

15. In otherwords, the licensee acts as a collecting agent for the Government and ultimate recipient of tax is the Government and the Government alone can impose any interest on the belated payment of Electricity Tax and it is made clear u/s 8 of the said Act.

16. As per the Clause 20.01 of the Terms and Conditions of the Tamil Nadu Electricity Board, the licensee is entitled to collect belated payment only on the amount due and payable to the licensee namely consumption charges. As the Electricity Tax is not the amount due and payable to the licensee and it is payable only to the Government, the licensee, the respondent herein, has no right to collect the surcharge on the belated payment of Electricity Tax and therefore, the claim of the respondent of a sum of Rs. 2,34,308/- being the belated payment of surcharge for the non payment of E-Tax on time, cannot be sustained and the respondent is not entitled to levy any surcharge on the E-Tax.

17. Therefore, the writ petition is allowed and the demand of the respondent in collecting the B.P.S.C. on the belated payment of arrears on E-Tax of Rs. 2,34,308/- alone is set aside. Consequently, connected Miscellaneous Petition is closed. No costs

