(2011) 08 MAD CK 0076

In the Madras High Court

Case No : Writ Petition (MD) No. 447 of 2007

Sri Ganapathi Mills — APPELLANT

Vs

The Superintending Engineer Virudhunagar Electricity Distribution Circle and The Accounts Officer (Revenue) Tamil Nadu Electricity Board — RESPONDENT

Date of Decision : 11-08-2011

Acts Referred:

Citation : (2011) 08 MAD CK 0076

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : A. Veerasamy, for the Appellant;

Final Decision : Allowed

Judgement

Vinod K. Sharma, J.—The Petitioner has approached this Court with a prayer for issuance of a Writ in the nature of Certiorari, to quash the

impugned demand dated 06.01.2007 vide which the Petitioner has been directed to pay a sum of Rs. 5,96,188/- (Rupees five lakhs Ninety six

thousand one hundred and eighty eight only) on or before 20.01.2007, to avoid disconnection. The order impugned shows that the charges are on

account of belated payment surcharge on electricity tax. This is clear from the calculation sheets attached with the impugned demand, showing the

amount of Rs. 5,96,188/- (Rupees five lakhs Ninety six thousand one hundred and eighty eight only) to be due as Belated Payment Surcharge on

electricity tax.

2. The Respondents inspite of notice, have not chosen to file counter, to controvert the pleadings.

3. It is thus un-rebutted case of the Petitioner, that the Petitioner mill is having

HTSC connection 105 for running the mill. The Government of Tamil

Nadu levied electricity tax in two stages ie., 5% from consumption of electricity under the provisions of Act 32 of 1991 and under the amended

Act 4 of 1962, upto 15.06.2003.

4. The Government again levied a tax at the rate of 5% w.e.f.166.2003 under Electricity Act 12 of 2003 viz., the Tamil Nadu Tax on

Consumption or sale of Electricity Act, 2003.

5. The levy of tax was challenged by the Petitioner, wherein, interim injunction was granted, restraining the Respondents from demanding levying or

collecting electricity tax.

6. The writ Petition was thereafter dismissed by this Court.

7. The Writ Appeal also failed.

8. On rejection of challenge to the validity of electricity tax, the Respondent/ board demanded a sum of Rs. 58,24,939/-. It is not in dispute the

demanded amount after initial correspondence was again challenged by way of writ. The writ petition was disposed of by permitting the Petitioner

to pay the amount in instalments, which stands paid and there is No. outstanding amount on account of arrears.

9. Now the impugned demand made by the Petitioner is for the belated payment of surcharge on electricity tax.

10. The impugned order cannot be sustained in view of the provisions of Tamil Nadu Electricity Supply Code, 2004, which regulates the belated

payment of surcharge.

The provision reads as under:

(4)Belated payment surcharge(BPSC)

(i) All bills are to be paid in the case of HT consumers, within the due date specified in the bill and in the case of LT consumers, within the the due

date and notice period specified in the consumer meter card.

(ii) Where any HT consumer neglects to pay any bill by the due date, he shall be liable to pay belated payment surcharge from the day following

the due date for payment. Where any LT consumer neglects to pay any bill by the last day of the notice period, he shall be liable to pay belated

payment surcharge from the day following the last day of the notice period. The surcharge shall be for a minimum period of fifteen days and where the delay exceeds fifteen days but does not exceed one month, it shall be for one whole month and where the delay exceeds one month, it shall be

for the number of whole months and for any fraction of a month, it shall be proportionate to the number of days.

(iii) if the due date in the case of HT consumers and the last day of the notice period in the case of LT consumers falls on a holiday, the surcharge is

payable from the day following the next working day.

(iv) in the case of LT consumers, the surcharge shall be 1.5% per month for the sum outstanding towards the price of electricity supplied.

(v) In the case of HT Consumers, the surcharge shall be 1.5%per month for the notice period. However, for the consumers who are availing of

extension of time beyond the notice period, on an application to the licensee, the BPSC shall be at 3% per month from the expiry of the due date

allowed for payment for a full month irrespective of number of days delayed. Where No. extension of time is granted or the delay continues after

the expiry of extended time, the surcharge shall be at 1.5% per month.

(vi) In case of sums other than price of electricity supplied which are outstanding surcharge shall be leviable at the discretion of the licensee at a

rate not exceeding 1.5% per month.

(vii) In the case of short assessment included in a subsequent surcharge shall accrue in the case of HT consumers, after the due date for the

payment of the subsequent bill wherein the short assessment is included and in the case of LT consumers, it shall accrue from the day following the

last day of the notice period.

(viii) In the case of short assessment permitted to be payable in instalments, the surcharge shall accrue only when there is default in the payment

schedule and the surcharge shall be worked out from the day following the day on which the instalment fell due and shall be payable along with the

amount of instalment due.

(ix) Where the service connection stands terminated, the amount of security deposit and the interest accrued thereon shall first be adjusted against

belated payment surcharge and the remainder, if any, against other dues.

(x) The belated payment surcharge is payable only on any outstanding amount excluding belated payment surcharge component.

(xi) The belated payment surcharge shall not be levied on electricity tax and electricity tax shall not be levied on the belated payment surcharge.

11. A reading of the provisions of the code, shows that No. belated payment surcharge can be levied on electricity tax. The impugned demand is

purely on account of the belated payment surcharge, on delayed payment of arrears of electricity tax. The impugned demand, therefore is prima

facie contrary to Electricity Code.

12. The Electricity Code is binding on the Electricity Board, therefore, it cannot be permitted to go against the code, to demand payment which is

specifically barred.

13. Consequently, the Writ Petition is allowed, the impugned order is set aside.

14. No costs.

