

(2011) 12 MAD CK 0248
In the Madras High Court
Case No : W.A. (MD) No. 1590 of 2011

The Superintending Engineer Virudhunagar Electricity
Distribution Circle Virudhunagar

APPELLANT

Vs

Sivakasi Electrochemical Ltd.

RESPONDENT

Date of Decision : 22-12-2011

Acts Referred:

Electricity Act, 2003 — Section 5, 5(1), 8
Tamil Nadu Electricity Consumption Supply Code, 2004 — Rule 4, 5(4)

Citation : (2011) 12 MAD CK 0248

Hon'ble Judges : M. Venugopal, J;K.N. Basha, J

Bench : Division Bench

Advocate : G. Kasinathadurai, for the Appellant; Mohd. Ibrahim Ali for Mr. A.S. Mujibur Rahaman, for the Respondent

Final Decision : Dismissed

Judgement

M. Venugopal, J

1. The Appellant/Respondent has preferred this Appeal, as against the order dated 18/6/2009 in W.P.(MD) No.254 of 2007 passed by the learned Single Judge in allowing the writ petition and setting aside the demand of the Respondent in collecting BPSC on the belated payment of arrears on E-tax of Rs.2,34,308.
2. The Respondent/Petitioner has filed the Writ of Certiorari in calling for the records pertaining to the Bill raised including the Belated Payment of Surcharge of Rs.2,34,308/-for the period from 6/02 to 8/04 at the rate of 18% in the Bill dated 30/12/2006 of the Appellant/Respondent and to quash the same in so far as the demand of Belated Payment of Surcharges are concerned.
3. The Government of Tamil Nadu levied Electricity Tax in two stages viz. 5% tax on the consumption of Electricity under the provisions of Act 32/91 (former Act) viz., the Amended Act 4/1964 called the Tamil Nadu Tax on Electricity (Taxation of Consumption) Act, 1962 till 15/6/2003. Also, from 16/6/2003, the

Government levied Electricity Tax at the rate of 5% Tax on consumption of sale of Electricity under Act 12/03 viz., the Tamil Nadu Tax on consumption of sale of Electricity Act 2003.

4. Earlier, the Respondent/Petitioner filed writ petitions questioning the levy of Electricity Tax under both the Acts. An Interim Injunction restraining the Appellant/Respondent from demanding, levying and collecting Electricity Tax has been granted. Other High Tension Industries also filed writ petitions. The Writ Petitions have been dismissed by the Learned Single Judge as per Order dated 21/10/2003 and the Honourable Division Bench has also dismissed the Writ Appeal thereby, confirming the order passed by the Learned Single Judge in the writ petitions.

5. The Learned Single Judge, while allowing the writ petition on 18/6/2009 in the order has among other things observed that "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 the Electricity Tax."

6. The stand of the Respondent/Petitioner before the Writ Court is that the Respondent is a high tension consumer and bearing Service Connection No.71. The Government of Tamil Nadu levied Electricity Tax on the consumption of Electricity as per Tamil Nadu (Electricity of Consumption) Act, 1964. The Respondent/Petitioner, challenged the levy of Electricity Tax and the petition filed by the Respondent/Petitioner was dismissed and confirmed in Appeal. Subsequently, an Appeal has been sent by the Appellant/Respondent in regard to the September month, including the arrears of Electricity Tax, claiming an amount of Rs.23,02,065/-. The Respondent/Petitioner made a request to pay the said amount in instalments and that has also been granted by the Appellant/Respondent, directing the Respondent/Petitioner to pay the aforesaid arrears in twelve equal monthly instalments beginning from 28/10/2006 and the fact remains whether the Respondent/Petitioner has remitted the said amount.

7. However, the Appellant/Respondent raised the bill including the belated payment of surcharge for a sum of Rs. 2,34,308/- on the payment of Electricity Tax in respect of the period from June 2002 to August 2004 at the rate of 18%. The Respondent/Petitioner challenged the levy of belated payment of surcharge on the E-tax on the ground that as per Rule 4 (xi) of the Tamil Nadu Electricity Consumption Supply Code, 2004, belated payment of surcharge cannot be levied on the Electricity Tax.

8. The sum and substance of the plea of the Respondent/Petitioner is that the levy of BPSC is at Rs. 2,34,208/- is unsustainable in law and therefore, the same is liable to be set aside. Therefore, the Respondent/Petitioner filed the writ petition before the writ Court for quashing the payment of Rs.2,34,308/- due as belated payment of surcharge on the belated payment of Electricity Tax.

9. Before the Writ Court, the Appellant/Respondent filed a counter. On perusal of

the counter, it is quite evident that if the consumer fails to pay the dues in time the Board is entitled to collect belated payment surcharge from the consumer. Also the Tamil Nadu Electricity Supply Code is very much relied on the side of the Respondent/Petitioner to the effect that the said Code has come into force on and from 1/9/2004 and prior to 1/9/2004, there is no bar for levying the belated payment of surcharge on the Electricity Tax and the demand of BPSC on the non-payment of Electricity Tax for a period from June 2002 to August 2004, which is earlier to the coming into force of the Electricity Code and as such the demand by the Appellant/Respondent is quite justified in law.

10. According to the Appellant/Electricity Board, the writ petitioner has enjoyed the benefit of non-payment of tax from 06/2002 to 08/2004 in view of the interim orders passed. When the Writ Appeal and the writ petition filed by the Respondent/Petitioner have been dismissed, the Respondent is bound to pay the Tax with the belated surcharge. Therefore, the writ petition is liable to be dismissed.

11. Before the Writ Court, it is the contention of the Respondent/Petitioner that an order passed in W.P.No.1199 of 2006 dated 8/2/2006 in the decision *Sivakasi Electro Chemicals Ltd., rep., by Its Chairman and Managing director C.A. Jairaj Vs. The State of Tamil Nadu, rep., by Secretary to Government, Energy Department, Fort St. George, Chennai 9 and Others* and therefore, the Appellant is not entitled to collect the belated payment of surcharge in as much as the said amount has not been paid due to the pendency of the writ Petition and writ Appeal. While challenging the levy of Electricity Tax and when the matter has been pending before the Court, the belated payment of surcharge cannot be levied for that period because, the matter is sub-judiced before the Court.

12. Before the Writ Court, the Learned counsel for the Appellant/Electricity Board relied on the decision *Siva cotton Mills (India) Pvt. Ltd., Usilampatti, Madurai district, rep., by Its Managing Director, Mr. P. Nagarajan vs. the Superintending Engineer, Madurai Electricity Distribution Circle, K. Pudur, Madurai* reported in 2006 WLR 959 and that the Respondent/Petitioner cannot take advantage of the pendency of either the Writ Petition or the Writ Appeal for non-payment of Electricity Charges.

13. On going through the order passed by the Learned Single Judge, we are of the considered view that the Learned Single Judge while passing the order in the writ petition, has clearly opined that the Respondent/Petitioner is liable to pay the charge on the belated payment. Once it fails to make the payments on due dates, it cannot take advantage of the pendency of the Writ Petition or the interim order passed therein.

14. Before the Learned Single Judge, the Respondent/Petitioner has submitted that the decision in 2006 WLR 959 has not been made applicable to the facts of the case since the same deals with Rule 5 (4) of the Tamil Nadu Electricity Supply Code, 2004. Further, the facts of that case are not applicable to the facts

of the present case. It is to be pointed out that though the said decision rendered with reference to the Tamil Nadu Supply Code, the Learned Single Judge relied upon the principles set out by the Honourable Supreme Court in two Judgments viz., reported in Om Prakash Vs. State of Haryana, .

15. The Learned Single Judge, in para 9 of the order in the writ petition has clearly opined that the Respondent/Petitioner cannot take a stand that by the reason of the pendency of the writ petition and the Writ Appeal and the interim orders passed by the Court is not entitled to make the payment and therefore, he is not liable to pay the surcharge on the belated payment.

16. However, the Appellant/Respondent has been permitted to pay the Electricity Tax in twelve equal monthly instalments and as such the Electricity Board has accepted the payment in twelve equal monthly instalments. Therefore, it is the plea of the Respondent/Petitioner that there is no belated payment and hence the Appellant/Respondent is not entitled to levy the surcharge on the belated payment in respect of the Electricity Tax.

17. The Learned Single Judge, after giving anxious consideration to the rival contentions put forward on respective sides and also extracting Section 5 of the Electricity Tax and also as per Section 5 (1) of the Electricity Tax and further mentioning about Section 8 of the said Act which pertains to recoveries, etc., has clearly come to the definite conclusion that as per 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 viz., the consumption charges. Moreover, the Electricity Tax is not the amount due and payable to the Appellant/Respondent. Therefore, the Appellant/Respondent has no right to collect the surcharge and belated payment of electricity tax as such the claim of the Appellant/Respondent for a sum of Rs. 2,34,308/- which refers to the belated payment of surcharge for the non-payment of Electricity Tax in time cannot be sustained and viewed in that perspective, allowed the Writ Petition.

18. Further, the Learned Single Judge, while allowing the Writ Petition has set aside the demand made by the Appellant/Respondent in collecting BPSC on the belated payment of arrears of Electricity Tax of Rs.2,34,205.

19. Be that as it may, at this stage, the Learned counsel for the Appellant/Respondent strenuously submits that as per 20.01 of the Terms and Conditions of the Tamil Nadu Electricity Code, the belated payment surcharge is payable on any outstanding amount excluding surcharge component, if any. Belated payment surcharge is payable from the date following the last date for payment of any bill and no surcharge will be levied on surcharge and contends that based on the aforesaid condition, the Appellant/Respondent is entitled to collect the belated payment of surcharge on the belated payment of arrears on electricity tax.

20. On this submission made by the learned counsel for the Appellant/

Respondent, this Court is of the considered view that the said submission is unacceptable for this Court on the simple ground that as per Clause of the Terms and Conditions of the Electricity Code, the licensee is entitled to collect the belated amount on the amount due and payable to the licensee viz, the consumption charges. As the Electricity tax is not the amount due and payable to the Appellant/Respondent herein, it has no right to collect the surcharge on the belated payment of electricity and hence the claim of the Appellant/Respondent and hence the claim of the Appellant/Respondent for a sum of Rs.2,34,308/- being the belated payment of surcharge for the non-payment of Electricity Tax in time is unsustainable in law.

21. In short, on a consideration of the entire facts and circumstances of the present case in an integral fashion, this Court comes to an inescapable conclusion that the Appellant/Respondent is not entitled to levy any surcharge on the Belated Payment of Electricity Tax (based on the facts and circumstances which float on the surface, in the case before Court). Therefore, this Court holds that the Learned Single Judge has rightly allowed the writ petition and further, set aside the demand of the respondent in collecting the Belated payment of Surcharge on the payment of arrears of Rs. 2,34,308/- alone which are perfectly valid in the eye of law.

22. In short, the order of the learned Single Judge while allowing the writ petition as referred to supra, doesn't suffer from any material irregularity or patent illegality. As such, the said order does not require any interference in the hands of this Court.

23. Resultantly, the Writ Appeal is devoid of merits. Accordingly, the same is dismissed, leaving the parties to bear their own costs. Consequently, the connected Miscellaneous Petition is also dismissed.

24. Appellant has come forward with this appeal, challenging the order of the writ Court dated 5/8/2011 made in W.P. (MD) No. 8772 of 2011, dismissing the writ petition filed by the appellant seeking for the relief of direction to the respondent to consider the petitioner's representation dated 19/3/2011.

25. The learned counsel for the appellant would submit that he is confining his submission only in imposing costs (by the learned Single Judge in the writ petition) of Rs.2,000/- to be paid to the Chairman, Tuticorin Port Trust within a period of three weeks from the date of receipt of a copy of the above said order.

26. The learned counsel appearing for the respondent would submit that he is leaving it to the decision of this Court in respect of the cost's portion imposed by the writ Court.

27. We have carefully considered the submissions made by either side and perused the order passed by the writ Court.

28. At the outset, it is to be stated that the writ Court went into the merits of the representation of the petitioner dated 19/3/2011 held that the said

representation cannot be considered by the respondent herein by assigning certain reasons. However, the only grievance of the appellant is to the effect that imposition of costs.

29. Considering the facts and circumstances of the case, we are of the view that deleting the said portion of the order passed by the writ Court by imposing a cost of Rs.2,000/- would meet the ends of justice. Accordingly, we set aside the particular portion of the order passed by the writ Court, on the basis of the facts and circumstances. In other respects, the order of the writ Court is hereby confirmed.

30. In the result, the writ appeal is disposed of. Consequently, the connected Miscellaneous Petition is closed.