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Court : Chennai

Decided On : Sep-25-2012

Judge : D. Hariparanthaman

Appeal No. : W.P.No.332 of 2012 and M.P.No.2 of 2012

Appellant : M.Kesavan

Respondent : The Superintending Engineer, Tneb, Cedc, Central and Others

Advocate for Pet/Ap. : For the Petitioner: T.P.Prabakaran, Advocate. For the Respondents: G.Vasudevan, Advocate.

Judgement :

(Petition filed under Article 226 of the Constitution of India for the issuance of writ of certiorari to call for the entire records in pursuant to the rejection order issued by the 1st respondent in Lr.No.SE/CEDC/C/AEE/GL/TT/F/DOC.D/2456, dated 20.12.2011 and the assessment order in Lr.No.EE/OandM/T.N/CEDC/C/AE/R.46/F.APTS/D.190/08 dated 24.01.2008 issued by the 2nd respondent and demand notice in Lr.No.AEE/OandM/TPT/FTOE/D.No.836/2008, dated 14.02.2008 issued by the 3rd respondent and quash all of them.)

The petitioner runs an Engineering Industry in the name and style of "M/s.Globe Industries" at Teynampet, Chennai. The Anti-power Theft Squad of the respondent Board inspected the premises of the petitioner's industry on 31.12.1983. In the

inspection, they found that the departmental seal on the Electric Meter was replaced with bogus seals. Based on the same, a criminal complaint was lodged against the petitioner. Ultimately, the criminal case ended in acquittal on 30.01.2006.

2. Thereafter, the petitioner was directed to appear for enquiry on various dates, in relation to theft of Electric energy, before the second respondent. The petitioner did not appear for the enquiry. In these circumstances, the second respondent passed an order dated 24.01.2008 assessing that there was a loss of Rs.3,00,990/- due to theft of electric energy. The Meter was installed on 11.05.1983 and the Inspection was made on 31.12.1983. The second respondent proceeded as if the petitioner operated the industry for two shifts for 16 hrs. every day for assessing the loss. The petitioner filed an appeal dated 26.03.2008 to the first respondent. The petitioner filed a writ petition in W.P.No.4778 of 2008 to quash the aforesaid order dated 24.01.2008 of the second respondent. Taking into account the filing of appeal before the first respondent, this Court disposed of the writ petition in W.P.No.4778 of 2008 on 11.08.2011, directing the first respondent to dispose of the appeal within a stipulated period.

3. Thereafter, the appeal was disposed of by the impugned order dated 20.12.2011.

4. At the time of filing the appeal, the petitioner paid a sum of Rs.1,00,330/-. Further, at the time of admission of this writ petition, this Court imposed a condition for granting interim order. The condition was to pay a sum of Rs.75,000/- and the same was complied with.

5. The respondents filed counter affidavit refuting the allegations.

6. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

7. The contention of the petitioner is that the impugned appellate order was passed without application of mind. It is the categorical case of the petitioner that when the petitioner stated in the grounds of appeal that there is no reason for the

department to presume that the petitioner operated the industry for two shifts for 16 hours for calculating the loss, the appellate order did not consider those objections.

8. During the course of arguments, the learned counsel for the petitioner, by relying on the Judgment of this Court in a case of M/s.Hindustan Engineering Industries, L-3, Industrial Estate, Ambattur, Madras 58, represented by its Proprietor, G.Venugopalan vs. The Assistant Divisional Engineer, O and M, Madras Electricity System, Distribution / North First Cross Road, Industrial Estate, Ambattur, Madras and others, reported in 1995 (2) MLJ 479, which is relied on by the respondent department in their counter has submitted that the judgment is in favour of the petitioner and also brought to my notice the following passage of the order:

"5. Further, the petitioner had disputed the number of shifts and the number of working hours in the factory. The respondents have not made any attempt to answer these objections raised in the writ petition. In the impugned order the respondents have simply adopted the working sheet dated 21.05.1983 which was attached to the provisional assessment order."

9. As rightly contended by the learned counsel for the petitioner, the objections raised by the petitioner were not considered by the first respondent. In the appeal, dated 26.03.2008, the petitioner has categorically made the following averments:

"The consumption was calculated on the basis 16 hours (2 shifts) per day considering the connected load of 87 HP + 3.08 KW for the period from 11.05.1983 to 31.12.1983 as 1,68,802 units. This is highly imaginary and unreasonable. The energy consumption should have been calculated on the average consumption for the period preceding 11-5-834 and that should have been taken to arrive at the consumption of energy. Assuming that the unit ran was running 16 hours every day non stop for more than 6 months and calculating consumption for 16 hours non stop running of the unit is unlawful and unsustainable both on law and on facts. Moreover, the loss of energy is not at all established and hence any amount claimed under the head of levy for the energy stolen is unsustainable."

But the aforesaid objections were not taken note of by the first respondent while disposing of the appeal. In a similar circumstance, this Court set aside the order and remanded the matter back to the authority to pass a fresh order after hearing the petitioner. The relevant passage is extracted above. By following the aforesaid Judgment, this Court is inclined to set aside the impugned order, dated 24.01.2008, of the first respondent and the same is set aside accordingly. The first respondent is given liberty to pass a fresh order after hearing the petitioner as to the loss and particularly about the two shifts for 16 hours during the period in question.

10. The writ petition is allowed in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

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