



WEB COPY



W.P. No.10188/2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
06.06.2023	13.06.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

**W.P. NO. 10188 OF 2020
AND
W.M.P. NO. 12389 OF 2020**

Tmt. K.Mahalakshmi

.. Petitioner

- Vs -

1. The Executive Engineer
O&M, TANGEDCO
Cuddalore.
2. The Assistant Executive Engineer
Town South TANGEDCO
Thirupapuliyur 607 002.
3. The Consumer Grievance Redressal Forum
rep. by its President
Cuddalore Electricity Distribution Circle.
4. The Tamil Nadu Electricity Ombudsman
No.19/A, Rukmani Lakshmipathi Salai
Egmore, Cjhennai 600 008.
5. The Assistant Executive Engineer (O&M)



W.P. No.10188/2020

WEB COPY

TANGEDCO, Thirupapuliur
Cuiddalore.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records on the file of the respondents in Appeal Petition No.55 of 2019 dated 12.6.2020 passed by the 3rd respondent, letter No.189, செபொ இப உ.கஅ வபி கட க.மே. கோ.வீ.மா 2017, dated 14.03.2018 passed by the 1st respondent, order dated 23.09.2018 passed in Electricity Consumer Complaint No.11/2018 by the 3rd respondent and order dated 6.7.2020 க.ண் உமபொ இப திரு.புலிகோ. தணிக்ை அ.ஏண் 44-2020 by the 5th respondent herein and quash the same and direct the respondents 1 and 2 to treat the petitioner's firm M/s.Sri Saravana Laser Colour Lab as a manufacturing Unit under tariff III A 1.

For Petitioner : Mr. M.Vijayakumar

For Respondents : Mr. V.Venkateseshaiya

ORDER

The order in and by which tariff III A-1 enjoyed by the manufacturing unit of the petitioner was changed to Tariff V is put in issue before this Court in the present writ petition.

2. It is the case of the petitioner that she is running a firm in the name of Sri Saravana Laser Colour Lab from the year 2011, which is involved in the



W.P. No.10188/2020

WEB COPY

manufacturing of photo frames and is classified under III A-1 by holding SC No.02-006-010-810 in the name of the owner of the building. It is the case of the petitioner that in the month of February, 2016, a demand notice was issued by the respondent, dated 25.1.2016, claiming a sum of Rs.56,631/= on the ground that the consumption exceeded 10 HP, as the service connection was classified under III-B to which the petitioner submitted her explanation with requisite materials to establish the fact that the connected load exceeded 10HB due to a defect in the air conditioner's compressor.

3. It is the further case of the petitioner that accepting the explanation of the petitioner, the demand dated 25.1.2016 was cancelled. However, curiously, another demand, dated 28.10.2016 was made by the respondent for a sum of Rs.2,13,166/- by converting the tariff of the petitioner from III-A1 to V for the very same reason that the petitioner had exceeded the 10 HP to which the petitioner submitted his explanation, which also resulted in the cancellation of the demand dated 28.10.2016. However, once again, a demand for a sum of Rs.1,78,214/- dated 14.3.2018 has been made which resulted in the petitioner approaching the 3rd respondent with his complaint



W.P. No.10188/2020

No.11/2018. However, the said complaint has been rejected against which the petitioner preferred appeal before the 4th respondent.

4. It is the further case of the petitioner that vide order dated 12.6.2020, the 4th respondent passed orders in Appeal Petition No.55 of 2019 of the petitioner and by relying upon the inspection report dated 31.8.2018, which inspection report has held that the petitioner's firm is not carrying out printing of magazines, periodicals, books, brochures, maps, etc. and that the firm is not carrying on the activities contemplated under the Udyog Aadhar memorandum. The 4th respondent has further held that the items manufactured by the firm mentioned in EM Part II differs from the manufacturing activities mentioned in the Udyog Aadhar Memorandum and therefore, came to the conclusion that the petitioner firm is carrying activities of non-industrial nature attracting tariff V and, therefore, held that the order passed by the 3rd respondent is just and proper. The 5th respondent, without granting the appeal time to the petitioner passed the impugned order, which is put in issue in the present writ petition.



W.P. No.10188/2020

WEB COPY

5. Learned counsel appearing for the petitioner submits that the petitioner is carrying out activities of printing of magazines, periodicals, books, brochures, maps, etc., as contemplated in Udyog Aadhar Memorandum. That being the case, the demand notice has been issued calling upon the petitioner to pay the demand in a sum of Rs.1,78,214/- without any basis as the inspection is alleged to have been conducted and report filed only after the issue of the impugned demand notice. Therefore, the inspection report cannot form the basis of the demand notice.

6. It is the further submission of the learned counsel that when the authorities have accepted the explanation of the petitioner that the faulty compressor of the air conditioner is the reason for the excessive consumption, the authorities cannot once again, on the same ground, issue demand notice claiming excessive consumption.

7. It is the further submission of the learned counsel that when the manufacturing unit of the petitioner has been accepted to be a small scale unit by issuance of certificate by the appropriate authority, the respondents



W.P. No.10188/2020

WEB COPY

having provided the petitioner firm with tariff III-A1, cannot now turn back and claim that the manufacturing unit of the petitioner would attract tariff V merely because there is increase in the consumption beyond 10 HP, which has been clearly explained by the petitioner. On the aforesaid contentions, learned counsel prays for allowing the writ petition.

8. Per contra, learned standing counsel appearing for the respondents/electricity board submitted that initially the petitioner's firm was classified under Tariff V, but based on the District Industries Certificate, the tariff was changed to Tariff III-A1 on 30.6.2011. It is the further submission of the learned standing counsel that the sanctioned load of the petitioner was only for 5.87 KW, but on and from 01/2014, the power consumption of the petitioner reached a demand of 9.32 KW and, therefore, based on the audit slip dated 25.1.2016, the tariff of the petitioner was reclassified from Tariff III-A1 to Tariff III-B, as the consumption was above 10 HP and, demand of Rs.56,631/- was made for the period between 03/2014 to 11/2015.



W.P. No.10188/2020

WEB COPY

9. It is the further submission of the learned standing counsel that the representation given by the petitioner was not accepted by the audit department, which was forwarded to them, and upon reworking of the consumption charges, an amount of Rs.2,13,166/- was claimed for the period from 03/2014 to 05/2016 under Tariff V. Once again the petitioner gave a representation, which was rejected and upon recalculation an amount of Rs.1,78,214/- was arrived at which was demanded vide issuance of demand notice.

10. It is the further submission of the learned standing counsel that the representation of the petitioner for cancellation of the audit shortfall demand and to continue the petitioner under Tariff III-A1 was placed before the Superintending Engineer, placing that in respect of similarly placed photo colour lab, electricity service connections were granted only under Tariff V, as they have not produced District Industries Certificate and only based on the District Industries Certificate produced by the petitioner, which was therefore sent to the Chief Financial Controller for clarification and it was clarified that the petitioner's firm should be classified under Tariff V as Photo Laser Colour



W.P. No.10188/2020

WEB COPY

Lab is not listed under First Schedule of the Industries Act and, therefore, the service connection could not be brought under Tariff III-A-1. Only on the basis of the aforesaid clarification, demand notice was sent to the writ petitioner on 14.3.2018 demanding a sum of Rs.1,78,214/-.

11. It is the further submission of the learned standing counsel that the representation and appeal of the petitioner all through were rejected and in fact, the appeal preferred before the Electricity Ombudsman was also rejected by upholding the order passed by the 3rd respondent, as there is a categorical finding that the nature of activity carried on by the petitioner is not found in the First Schedule to the Industries (Development & Regulations) Act, 1951. Therefore, it is the submission of the learned standing counsel that when the demand has been made as per the provisions of the Act and the tariff has been changed from Tariff III-A-1 to Tariff V, based on inspection and also on expert opinion during the inspection, this Court, in exercise of its inherent and extraordinary jurisdiction shall not interfere with the order passed by the respondent.



W.P. No.10188/2020

WEB COPY

12. It is the further submission of the learned standing counsel that the manufacturing items mentioned in the District Industries Certificate produced by the petitioner differs from the manufacturing activities in the Udhayog Aadhar Memorandum and, therefore, the petitioner's service connection cannot be classified under Tariff III-A-1 and it will squarely fall under Tariff V as per the provisions of the Act, 1951 and, therefore, the activity being non-industrial in nature, the electricity service has to be classified under Tariff V, which has been rightly done so by the respondents and, therefore, no interference is warranted with the orders passed by the respective respondents.

13. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

14. There is no dispute about the fact that the petitioner was initially classified under Tariff V and upon production of District Industries Certificate, the petitioner firm was reclassified under Tariff III-A-1.



W.P. No.10188/2020

WEB COPY

15. It is the contrite case of the respondent that based on the inspection, which was on the footsteps of the audit objection, twice the demand notice was kept on hold on the representation of the petitioner, which was forwarded to audit, which was later negative and which has resulted in the issuance of the impugned demand notice demanding a sum of Rs.1,78,214/- from the petitioner by reclassifying the tariff from III-A-1 to V.

16. The petitioner has raised a contention that based on the inspection report, which is posterior in point of time to the appeal, the said inspection report would have no relevance with regard to the demand notice and, therefore, it cannot form the basis of imposing the demand for reclassifying the tariff from Tariff III-A-1 to Tariff V.

17. Though such a contention, on the face of it looks attractive, however, it is to be pointed out that the whole exercise of reclassification of the tariff had emanated only on the basis of audit objection, which was on account of the over shooting of the consumption of 10 HP by the petitioner.



W.P. No.10188/2020

WEB COPY

The inspection report was not the basis of the demand. Therefore, the contention of the petitioner on the said score does not carry any weight. However, inspection has been conducted pursuant to the demand as well, which has thrown light on the fact that the manufacturing activities carried on in the premises of the petitioner is not in consonance with the activities mentioned in the District Industries Certificate. Such being the case, the manufacturing activity, according to the respondents, carried on by the petitioner, does not fall under the First Schedule of Act, 1951 and, therefore, tariff III-A-1 is not applicable to the petitioner cannot be said to be erroneous.

18. A careful perusal of the order passed by the 4th respondent reveals that the District Industries Certificate issued to the petitioner prescribes the manufacture of items to be only photos and frames with a prescribed capacity per annum. However, the manufacturing activity undertaken by the petitioner in the said premises related to printing of magazines and other periodicals, books and brochures, maps, atlases, posters, etc., and other printing activities like screen printing other than textiles. There is a marked difference in the manufacturing activity between the District Industries



W.P. No.10188/2020

Certificate and the Udyog Aadhar Memorandum and the inspection undertaken of the petitioner's firm also reveal the aforesaid fact.

19. Considering the aforesaid affirmative finding arrived at by the 4th respondent, it is to be pointed out that the aforesaid finding is on the basis of inspection carried out by experts, who have gone into the nature of manufacturing activity undertaken by the petitioner's firm and have tabled the inspection report accordingly. It is to be pointed out that it is not the case of the petitioner that the activities, which have been pointed out in the inspection report, are not carried on by the petitioner's firm. When the inspection team have categorically found out that the activities carried out are not in the nature of extending Tariff III-A-1, this Court cannot substitute its view to that of the experts, who have inspected the petitioner's firm to come to the conclusion that it is only Tariff V that would be applicable to the petitioner's firm. Such being the case, the contention of the petitioner that the inspection report is not sustainable and cannot be acted upon is lawfully flawed and the said contention deserves to be dismissed.



W.P. No.10188/2020

WEB COPY

20. In fact, in the grounds, it is the admitted case of the petitioner that it is carrying on the activities of printing of magazines, periodicals, books, brochures, maps, etc. Such being the case, when the 4th respondent has clearly spelt out that the activities carried on by the petitioner does not fall under the First Schedule of Act, 1951 so as to pass over the benefit of providing Tariff III-A-1 to the petitioner, this Court cannot substitute its view to give any relief to the petitioner.

21. This Court is not only in agreement with the findings recorded by the 4th respondent, but also is of the view that the said findings are based on solid and substantial materials and, therefore, there is no perversity or illegality with the order and the same does not call for any interference at the hands of this Court.

22. For the reasons aforesaid, this writ petition fails and the same is dismissed. Consequently, connected miscellaneous petition is also dismissed. There shall be no order as to costs.



WEB COPY

Index : Yes / No

GLN



W.P. No.10188/2020

13.06.2023



W.P. No.10188/2020

WEB COPY

To

1. The Executive Engineer
O&M, TANGEDCO
Cuddalore.
2. The Assistant Executive Engineer
Town South TANGEDCO
Thirupapuliyur 607 002.
3. The President
Consumer Grievance Redressal Forum
rep. by its President
Cuddalore Electricity Distribution Circle.
4. The Tamil Nadu Electricity Ombudsman
No.19/A, Rukmani Lakshmipathi Salai
Egmore, Cjhennai 600 008.
5. The Assistant Executive Engineer (O&M)
TANGEDCO, Thirupapuliyur
Cuddalore.



WEB COPY



W.P. No.10188/2020

M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
W.P. NO.10188 OF 2020**

**Pronounced on
13.06.2023**