IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:27.7.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.A.No.802 of 2015
and
M.P.Nos.1 and 2 of 2015

M/s.K.K.P.Spinning Mills (P) Ltd.
Reg Off No.88 Salem Road
Namakkal 637 001
Repd. by its Manager P.Ramar ... Appellant

Versus

1 State of Tamil Nadu
Rep. by the Secretary to Government
Energy Department Secretariat
Fort St. George Chennai-600 009.

2 The TANGEDCO
Rep. by its Chairman
No.800 Anna Salai
Chennai-600 002.

3 The Superintending Engineer
Tamil Nadu Electricity Board
Namakkal Electricity Distribution Circle
TANGEDCO Namakkal ... Respondents

Prayer: Writ Appeal filed filed under Clause 15 of the Letters Patent against the order dated 23.12.2014 passed in W.P.No.18652 of 2014 on the file of this court.

PRAYER IN WP.NO.18652/2014:-

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to Calling for the records of the 3rd Respondent in his impugned demand notice dated 4.7.2014 bearing Lr.No.SE/NEDC/DFC/HT/AS/Asst/F.TF Con/2014 and quash the same as illegal, arbitrary, without the authority of law, goes against the very spirit of the order of the Supreme Court dated 16.05.2008 and consequently direct the respondents to grant tariff concession to the petitioner HT A/C No.175 by following the procedure laid down by the Honourable Supreme Court in its

Judgment dated 16.5.2008 passed in Civil Appeal No.3940 of 2008.

For Appellant : Mr.AR.L.Sundaresan for Mr.R.S.Pandiyaraj

For R1 : Mrs.A.Srijayanthi, Special Govt. Pleader

For R2 and R3 : Mr.P.H.Arvind Pandian, Additional Advocate General for Mr.S.K.Raameshuwar

JUDGMENT

(Judgment of the court was made by HULUVADI G.RAMESH, J.)

Heard the learned counsel appearing for the parties.

2. This writ appeal is filed against the order of the learned Single Judge declining to grant the relief of tariff concession for the electricity service connection obtained by the appellant.

3. The case of the appellant is that they had sought for extension of electricity connection and the date fixed for claiming exemption by reporting readiness was 14.2.1997. Sofar as the case of the appellant is concerned, they sent a letter dated 20.5.1996 seeking extension of time by six months for reporting readiness and later, on 9.11.1996 they sent another letter seeking further extension of time by four months to report their readiness. Thereafter, on 20.1.1997, they sent another letter reporting their readiness to avail the power supply and a reminder thereon, by their letter dated 12.3.1997 and they had also paid the EMD on 22.1.1996. Despite that, on the ground that the appellant approached only during March 1997, expressing their willingness, the benefit of tariff concession was not extended.

4. With regard to tariff concession, the Apex Court has held in the case of TAMIL NADU ELECTRICITY BOARD v. STATUS SPINNING MILLS ((2008) 7 SCC 353), as under:-

> "52. We have noticed hereinbefore that some of the industries had even installed generators. They had to do it. They inevitably had to do it because the Board would not supply power. Would it not be too much to contend that even those industries have not been set up as they have not become consumers? We think that for the said purpose, the proviso has to be read down. It must be made applicable to them who not only had started commercial production before the said date, namely, 14.02.1997 but also had applied and were otherwise ready to take electrical connections having deposited the amount asked for."

5. The Honourable Supreme Court has held in the above decision that tariff concession would be applicable not only to those who had started commercial production before 14.02.1997, but also who had applied and were otherwise ready to take electrical connections having deposited the amount demanded by the electricity Board. Therefore, it is clear that even those who have applied for service connection and are ready to avail the service connection, but not started the commercial production are also eligible to get tariff concession.

6. Such being the view of the Apex Court, it is relevant to note that the Assistant Commissioner (CT) Namakkal Town has issued certificate dated 27.5.2014 to the effect that the appellant had registered with the Commercial Tax Department with R.C. TIN:33333121273 (Old TNGST 3121273) and started the commercial production on 23.1.1997 and such certificate was issued based on the scrutinization of the commercial production RG-1 records. So also, the Superintendent of Central Excise, Namakkal had issued a certificate dated 28.5.2014 to the effect that the appellant had registered with Central Excise Department with R.C.No.AAACK8959KXM002 and started the commercial production on 23.1.1997 and that certificate was issued based on the scrutinisation of the RG-1 records. Copies of such certificates are found at pages 146 and 147 of the typed set of papers. A perusal of the same would reveal that the appellant had started commercial production on 23.1.1997 itself.

7. The contention of the Electricity Board is that the appellant had reported their readiness only by letter dated 12.3.1997 and not on 20.1.1997 i.e., after the cut of date for availing the tariff concession viz., 14.2.1997.

8. In this regard, it is apt to consider that the third respondent has sent a communication on 17.5.2014, as found from page 140 of the typed set of papers, enclosing a detailed report on tariff concession sought for by the appellant wherein the third respondent has recorded that the appellant had reported their readiness on 20.1.1997 viz., before the cut off date i.e., prior to 14.2.1997. Such being the case, a conjoint reading of the certificates issued by the authorities to the effect that the appellant had started commercial production on 23.1.1997 itself and the report of the Superintending Engineer revealing that the appellant had reported their readiness on 20.1.1997 would establish that the formality of reporting readiness before the cut off date to claim the tariff concession is duly complied with by the appellant, in view of the ratio laid down by the Apex Court. This aspect has not been properly considered by the learned Single Judge.

9. In the circumstances, the order of the learned Single Judge is modified and held that there is due compliance of formalities by the appellant and it is for the respondent authorities to extend the tariff concession as per the ratio the Apex Court. The writ appeal is allowed.

10. The learned counsel for the appellant further submitted that 50% of the amount which was demanded is already deposited. Since it has been decided to extend tariff concession to the appellant, the amount that is said to have been deposited shall be adjusted towards the future payments. No costs. The connected miscellaneous petitions are closed.

ssk. Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

To:

1 The Secretary to Government
The State of Tamil Nadu
Energy Department Secretariat
Fort St. George Chennai-600 009.

2 The Chairman
The TANGEDCO
No.800 Anna Salai
Chennai-600 002.

3 The Superintending Engineer
Tamil Nadu Electricity Board
Namakkal Electricity Distribution Circle
TANGEDCO Namakkal

+ 1 cc to Mr.S.K.Raameshuwar, Advocate Sr 42717

+ 1 cc to Mr.R.S.Pandiyaraj, Advocate Sr 42856

KR/17/8/16

W.A.No.802 of 2015