THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.5737 OF 2007

ORDER:

Heard the learned counsel for petitioner, the learned Government Pleader for Energy (TS) for first respondent, the learned Standing Counsel for second respondent and the learned Government Pleader for Industries & Commerce (TS) for third respondent.

2. The petitioner is a food processing industry engaged in manufacture of maize products such as maize starch, liquid glucose, modified starches, dextrines and other by-products. It was established in the year 1985. It entered into an agreement for supply of HT power with the second respondent on 21.07.2000 which provided supply of 1395 KVA with connected load of 4009.125 HP. While so, the first respondent issued G.O.Ms.No.333, Industries & Commerce (C&EP) Department, dated 14.11.2003, laying down the State policy for food processing industries with a view to encourage the development and modernization of such industries, create rural jobs, etc. As per the said GO, certain operational guidelines were also approved in G.O.Ms.No.55, Industries & Commerce (C&EP) Department, dated 05.03.2004. The issue of power tariff and marketing cess was considered in paras 7.6 and 7.7 of the said guidelines. The relevant portion of the guidelines read as follows:

"**7.6 POWER TARIFF:**

7.6.1 The eligible food processing industries having industrial power service connection will be issued an eligibility certificates for availing power tariff at concessional rate at Rs.1.75 ps. per unit for a period of 5 years. The differential tariff between actual cost as decided by the APERC and the concessional rate fixed by the Government shall be paid to the concerned DISCOMS directly.

7.6.2 The Government direct the APTRANSCO/DISCOMS to collect concessional power tariff at Rs.1.75 ps. per unit and the difference amount between the tariff fixed by the APERC and the concessional tariff be claimed from the Industries Department on quarterly basis in respect of eligible food processing industries for which eligibility certificates have been issued by the Industries Department for availing concessional power tariff for a period of 5 years.

7.6.3 The concerned DISCOMS shall claim reimbursement of the differential amount from the Commissioner of Industries in the prescribed proforma at Annexure-III on quarterly basis.

7.6.4 After receipt of the claims from concerned DISCOMS the Convenor of the SLC will place these claims before the SLC for release of amounts to DISCOMS.

7.6.5 All eligible food processing industries shall apply to the concerned General Manager, DIC for obtaining eligibility certificate for availing concessional power tariff in the prescribed proforma as at Annexure-IV.

7.6.6 After receipt of the applications the General Manager, DIC & Convenor, District Level Committee will place these applications before DLC for issue of Eligibility Certificate. After approval of the DLC, the GM, DIC will issue the Eligibility Certificate in the prescribed proforma at Annexure-V.

7.6.7 After issue of Eligibility Certificate the unit holder will give a half yearly self-certification in the form given in Annexure-VI.

7.6.7 The concerned General Manager, DIC or an accredited agency will do a quarterly/half-yearly post verification to confirm that the power concession is being used for the purpose for which the concession claimed by the unit and concession is not obtained by the unit by misrepresentation of fact and the units have not furnished false information. In such cases, the General Manager, with the approval of the District Level Committee, shall recover the power concession with interest."

7.7 <u>MARKETING CESS:</u>

7.7.1 The market cess will be exempted for all food processing units except rice mills.

7.7.2 All eligible food processing industries should apply to the concerned General Manager, District Industries Centre for obtaining eligibility certificate for exemption from payment of market cess in the prescribed proforma as at Annexure-VII.

7.7.3 After receipt of the applications for exemption of the market cess, the General Manager, District Industries & Convener, District Level Committee will place these applications before DLC for issue of Eligibility Certificate. After approval of the DLC, the GM, District Industries Centre will issue the Eligibility Certificate in the prescribed proforma at Annexure-VIII.

7.7.4 The Secretary, Market Committee will permit all the eligible food processing units for exemption from payment of market cess on the purchased raw material as mentioned in the eligibility certificate (EC).

7.7.5 The marketing department or an accredited agency or any other agency nominated by Government will do a quarterly/half-yearly post verification to confirm that the exemption is being used for the purpose of which it was given incentives are not obtained by the units by misrepresentation and the units have not furnished false information. In such cases the market cess may be recovered with interest by the Marketing Department subject to approval of the District Level Committee."

3. As per the said guidelines, the petitioner applied to the District Level Committee on 01.04.2004 and the said Committee sanctioned concessional power tariff on 09.05.2005. In spite of the same, when the application of the petitioner was rejected by order of the third respondent dated 06.07.2005 on the ground that the petitioner is not entitled for concessional power subsidy in view of G.O.Ms.No.179, dated 22.06.2005, the present writ petition is filed.

4. The learned counsel for the petitioner submits that G.O.Ms.No.179 dated 22.05.2005 was issued by the first respondent superseding G.O.Ms.No.333 dated 14.11.2003 and it is confined to the food processing industries which have gone into commercial production after 14.11.2003, but the petitioner is covered by G.O.Ms.No.333 dated 14.11.2003.

5. The learned Government Pleader for Industries & Commerce

submits that since the case of the petitioner was not approved by the third respondent, which passed an order rejecting the request of the petitioner, the power subsidy cannot be granted to the petitioner.

6. The relevant portion of the impugned order reads as follows:

> "i. The Government in supersession of the orders issued in G.O.Ms.No.333 Inds. & Com. (C&EP) Department dated 14/11/2003 and consequent operation guidelines issued in G.O.Ms.No.55 Inds. & Com. (C&EP) Department dated 05/03/2004, approved the fresh State Policy on "Food Processing Industries" as detailed in the G.O. cited. The Incentives and Concessions offered under the fresh State Policy on "Food Processing Industries" is as follows:
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> > "Reimbursement of cost of power for all eligible units shall be allowed @ 1.00 per unit as against Re.0.75 per unit as provided for the other eligible industries under IIPP."
>
> ii. The Fresh Food Processing Policy will come into effect from 01/04/2005. The reimbursement of cost of power shall be extended for a period of five years from the date 01/04/2005. The Food Processing unit those, which have gone into commercial production after 14/11/2003, shall be eligible for reimbursement of cost of power.
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> iii. Since M/s.Sukhjit Starch Mills, Mubaraknagar, Nizamabad is an existing unit which commenced production before 14/11/2003, hence not entitled for any incentives under the fresh State Policy on "Food Processing Industries" enunciated in G.O.Ms.No.179 Inds. & Com. (FP) Department dated 22/06/2005."

7. It is also pertinent to note that the District Level Committee, in its meeting held on 09.05.2005, took a decision to sanction concessional power tariff as well as market cess exemption to the petitioner unit. In spite of the same, when the Agricultural Market Committee, Nizamabad did not implement the orders of sanction and demanded market fee, the petitioner filed W.P.No.1954 of 2005 and the same was allowed by this Court by order dated 30.06.2006. The said order of the learned Single Judge was confirmed by a Division Bench of this Court in W.A.No.102 of 2007 by order dated 01.02.2007. In the said writ appeal, the issue with regard to eligibility of the petitioner herein was considered and it was

recorded that the District Level Committee had issued the eligibility certificate entitling respondent No.1 therein (petitioner herein) to claim exemption of payment of electricity tariff as well as concession in the payment of market fee.

8. In view of the finding recorded by the Division Bench, it cannot be held that the petitioner is not entitled for concessional power tariff. Hence, the impugned letter of the third respondent dated 06.07.2005 is set aside and the respondents are directed to extend the concessional power tariff as per G.O.Ms.No.333, Industries & Commerce (C&EP) Department, dated 14.11.2003 to the petitioner unit.

9. The writ petition is accordingly allowed. Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

A.RAMALINGESWARA RAO, J

Date: 15.03.2016
TJMR