

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.02.2017

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THE HONOURABLE MR.JUSTICE **T.RAJA**

W.P. No.4136 of 2017

M/s.Pharmazell (India) Pvt. Ltd.,
Plot No.B5 and B6, Phase II,
Third Main Road, MEPZ,
Tambaram, Chennai-600 045
rep. by its Director

.. Petitioner

-VS-

1.The Tamil Nadu Generation and
Distribution Corporation Ltd.,
rep. by its Chairman,
700, Anna Salai,
Chennai-600 002.

2.The Superintending Engineer,
The Tamil Nadu Generation and
Distribution Corporation Ltd.,
CEDC/South-II,
110 KV, KKSS Complex,
K.K.Nagar, Chennai-600 078.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus calling for the records relating to the second respondent herein in letter No.SE/CEDC/S-II/AEE/GI./AE/GL/F. Pharmazell-369D 261/16 dated 08.02.2017 and quash the same and direct the second respondent herein to forthwith grant reduction of demand for the petitioner's service connection from 2000 KVA to 1600 KVA.

For Petitioner : Mr.AR.L.Sundaresan,
Senior Counsel for
Mrs.AL.Ganthimathi

For Respondents : Mr.S.K.Raameshuwar

ORDER

The present writ petition is directed against the impugned order dated 08.02.2017 passed by the Superintending Engineer, Tamil Nadu Generation and Distribution Corporation Ltd. in and by which the request of the petitioner to surrender 400 KVA out of 2000 KVA has been rejected.

2.Assailing the impugned order, Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the petitioner would submit that when the petitioner is carrying on business in the manufacture of Pharma Products, he has got High Tension Service Connection with sanctioned demand of 2000 KVA bearing HTSC No.369 under Tariff I-A for the same. While he was consuming the electrical energy for the purpose of business activities strictly in accordance with rules and regulations, an inspection was carried out by the Enforcement Wing on 19.02.2015 and it was found that Plot Nos.A1 and A2 were unauthorizedly using the electricity. Thereafter, the Assistant Executive Engineer (Operation and Maintenance, TANGEDCO South issued proceedings dated 19.02.2015, provisionally assessing a sum

of Rs.1,01,41,205/- as approximate loss caused to the respondents. Aggrieved by the same, the petitioner preferred an Appeal before the Appellate Authority under Section 127(1) of the Electricity Act 2003. As a condition precedent for filing the appeal, petitioner had deposited 50% of the assessment amount namely Rs.50,70,602/- vide demand draft bearing No.591328 dated 13.04.2015. After conducting enquiry in the said appeal on 10.06.2015, the Appellate Authority by order dated 11.06.2015, partly allowed the same and waived the balance 50% of the assessed amount, taking note of the fact that petitioner had remitted 50% of the said assessment amount. However, the request of the petitioner to surrender 400 KVA out of the 2000 KVA has been completely rejected.

3.Learned Senior Counsel further added that when unauthorised use is pending for consideration, the question of accepting the request of the petitioner to surrender 400 KVAQ cannot be unnecessarily mis-construed by the respondent for the reason that when there are large number of consumers awaiting additional loan from the respondents Electricity Board, they should have happily accepted the request of the petitioner for surrendering 400 KVA so that it can be given. However, without appreciating the genuine request of the petitioner and also practical reality, the respondent has passed the impugned order which is wholly untenable and same is

liable to be set aside.

4.Learned Standing Counsel appearing for the respondents, by relying on the counter, would submit that when an assessment order was issued to the petitioner for having indulged in an un-authorized usage of electricity at their premises as per Section 126 of Electricity Act 2003 demanding a sum of Rs.1,01,41,205/-, after paying 50% of the assessed amount, the petitioner preferred an appeal before the Appellate Authority. He would further submit that the Appellate Authority in its order waived the balance 50% of the assessed amount of Rs.50,70,602/- and it has reduced the assessed amount by deducting the tariff charges already paid based on the units recorded in the meter. When it is the case of the respondents, the Appellate Authority should not have reduced the penalty prescribed under Section 126 of the Electricity Act 2003 and now steps are being taken to file writ petition challenging the correctness of the said order. Therefore, the request of the petitioner to surrender 400 KVA was not accepted.

5.But this Court is not able to find any justification on the part of the respondents, who refused to accept the request of the petitioner to surrender 400 KVA. The reason is that when the petitioner was sanctioned with the demand of 2000 KVA under Tariff I-A, while consuming the electrical energy for the purpose of

manufacturing pharma products, they thought it fit to surrender 400 KVA. In the meanwhile, on 19.02.2015, an Enforcement Wing of the respondents inspected the premises of the petitioner and found that Plot Nos.A1 and A2 were given un-authorized use of electricity connection. Therefore, the respondents have issued proceedings dated 19.02.2015 provisionally assessing a sum of Rs.1,01,41,205/- towards loss caused to them. However, aggrieved over the same, the petitioner preferred an appeal under Section 127(1) of the Electricity Act 2003. The petitioner had deposited 50% of the assessment amount as a condition precedent for filing the appeal. The Appellate Authority considering the case of the petitioner, by order dated 11.06.2015, has partly allowed the appeal waiving the balance 50% of the assessed amount.

6.Considering all the above aspects, this Court is of the view that there is no justification on the part of the respondents in not accepting the genuine request of the petitioner. Therefore, the impugned order is set aside and the second respondent is directed to accept the surrender of 400 KAV and do the needful within a period of two weeks from the date of receipt of a copy of this order. With the above direction, this writ petition is allowed. No costs. Consequently, connected W.M.P. is closed.

28.02.2017

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T.RAJA,J.

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To

1.The Tamil Nadu Generation and
Distribution Corporation Ltd.,
rep. by its Chairman,
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Chennai-600 002.

2.The Superintending Engineer,
The Tamil Nadu Generation and
Distribution Corporation Ltd.,
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