

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CWP No. 3622 of 2012

Date of decision : October 25, 2017

M/s Garg Furnace Ltd.

..... Petitioner

Versus

Punjab State Transmission Corporation Ltd. and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. Aalok Jagga, Advocate
for the petitioner.

Ms. Madhu Dayal , Advocate
for the respondents.

RAKESH KUMAR JAIN, J (oral).

The petitioner a limited Company has prayed for the issuance of a writ in the nature of certiorari for setting aside the demand memo dated 20.10.2011 whereby they have been asked to pay Rs.7,23,06,370/- towards the high voltage surcharge for the period from 14.9.2004 to 18.6.2011 and for the issuance of a writ in the nature of mandamus directing the respondents to refund the amount already deposited by the petitioner on account of voltage surcharge along with interest @ 18%.

In brief, the petitioner set up a Induction Furnace Unit in Ludhiana and obtained an electricity connection bearing No. W11-EST1-00004 from Punjab State Electricity Board (for short 'the Board' as it was then as now it is called Punjab State Power Corporation Ltd.) The sanctioned load of the petitioner company was increased from time to time and the last extension was made in the year 1991 and the load was extended

respondent issued commercial circular No. 66/07 for the recovery of arrears on account of voltage surcharge @ 10% and 17.5.% with contract demand exceeding 2500 KVA and upto 4000 KVA respectively. On the basis of the said circular, the impugned demand notice was issued on 20.10.2011 asking the petitioner to pay an amount of Rs. 7,23,06,370/- by 3.11.2011.

Learned counsel for the petitioner has submitted that the issue regarding imposition of surcharge was dealt with by this Court in CWP No. 8451 of 2007 **M/s Antarctic Industries and others Vs. Punjab State Electricity Board and others** which was disposed of by a Single Bench on 27.4.2009 with certain directions. However, the amount of surcharge was not determined by the Punjab State Electricity Regulatory Commission (for short PSERC) as to what should be the rate of surcharge.

It is argued that after the remand, the PSERC vide its order dated 19.1.2011, determined the surcharge and revised it from 10% and 17.5.% to 7% and 10% respectively. There is no dispute that M/s Antarctic Industries Ltd. and others who had filed CWP No. 8451 of 2007, filed the intra court appeal bearing LPA No. 605 of 2009 to assail the validity of the order of the learned Single Judge. There were as many as 19 appeals as other 18 similar appeals were tagged up with the appeal of M/s Antarctic Industries and others (supra) and all the 19 appeals were disposed of by the Division Bench of this Court on 9.9.2011 holding thus:-

“Therefore, the appeals are allowed to the limited extent that the surcharge at the rate of 10% from units having sanctioned contract demand of 2500 KVA to 4000 KVA and at the rate of 17.5% from the units having contract demand of more than 4000 KVA shall be applicable from 1.10.2004.”

rest here as it was taken to the Supreme Court by way of multiple civil appeals by **M/s Shreyans Industries Ltd. Vs. Punjab State Electricity Board and others.** The present petition was adjourned sine die to await the decision of the Supreme Court. **M/s Shreyans Industries Ltd. (supra)** was decided on 1.3.2017 in which it was held that the levy of surcharge is justified and the respondents(PSPCL) should recover from the respondents as well. The only relief granted to the petitioner in that case was regarding the surcharge of the year 2004-05.

Learned counsel appearing on behalf of the petitioner has vehemently argued that the PSERC has decided to revise the rate of surcharge from 10% and 17.5% to 7% and 10% respectively and the said order passed by the PSERC on 19.1.2011 became final in appeal, therefore, the petitioner is not liable to pay the surcharge @ 17.5%. He has also submitted that though the circular, which has been upheld, says that the surcharge is leviable from 1.4.2004 but in appeal the Division Bench directed that it should be charged from 1.10.2004, therefore, the petitioner should not be charged before that date as the petitioner has been charged surcharge from 14.9.2004.

He has further submitted that learned Single Judge while deciding CWP No. 8451 of 2007 had also provided some kind of relief to sick industries to pay the amount of surcharge in monthly installment within a period of 10 months. It is submitted that though the petitioner-Company is also sick, therefore it may be allowed to pay the amount of surcharge in monthly installments without prejudice to its rights to challenge the order passed by this Court.

On the other hand, learned counsel appearing on behalf

of the respondents has submitted that the primary issue involved in this petition is as to whether the petitioner is liable to pay any surcharge or not. The learned Single Judge did not agree and held that the surcharge is leviable. The Division Bench also dismissed the appeals holding that the surcharge is leviable and while holding so ordered that the surcharge would be paid at the rate of 10% in respect of sanctioned electricity connection of 2500 KVA and upto 4000 KVA and @ 17.5 % for the units having contract demand of 4000 KVA.

It is also submitted that the decision in the case of PSERC came on 19.1.2011 and at that time the appeals were pending in this court which were decided on 9.9.2011. It was for the appellants in that case to bring it to the notice of the Division Bench of this Court about the decision of PSERC. Moreover, the said decision was not even brought to the notice of the Supreme Court when the Supreme Court had decided the *lis* between the similarly situated persons on 1.3.2017, therefore, the petitioner cannot be allowed to agitate about the decision of PSERC in his favour.

In respect of other two contentions of the petitioner, about the surcharge, as whether it has to be recovered from 1.4.2010 or 1.10.2010 and that too in installments, it is submitted that the decision will be taken appropriately by the respondents in this regard while issuing a notice of demand to the petitioner.

I have heard learned counsel for the parties and after examining the record, am of the opinion that there is no merit in the present petition insofar as the surcharge is concerned because it has already been settled by the Division Bench that the rate of surcharge would be 10% on

the sanctioned contract demand of 2500 KVA to 4000 KVA and at the rate of 17.5% from the units having contract demand of more than 4000 KVA and shall be applicable from 1.10.2004. Insofar as the order of PSERC dated 19.1.2011 is concerned it cannot be allowed to be used at this stage as much water has flown. The order of the Division Bench is dated 9.9.2011 whereas the said order is dated 19.1.2011 and the order of the Supreme Court is dated 1.3.2017 whereas the order of PSERC was not placed for consideration either before Division Bench of this Court or the Supreme Court in order to decide as to what should be the rate of surcharge, therefore, in my considered opinion, the decision dated 19.1.2011 is of no relevance now. The other two issues raised by the petitioner would be considered by the respondents at the time when they would issue a fresh demand notice in terms of the order passed by the Division Bench and the Supreme Court.

It is needless to mention that the petitioner may also file a representation in terms of the concluding paragraph of the order of the Division Bench dated 9.9.2011 and if such a representation is made then it shall also be considered by the respondents, specifically in terms of the order of the Division Bench.

Thus, with the aforesaid observations, the present petition is disposed of.

(RAKESH KUMAR JAIN)
JUDGE

October 25, 2017
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Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No