

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

W.P.NO.21662 OF 2005

ORDER:

This writ petition is filed to declare the proceedings of the 3rd respondent in Memo No.SE/O/RJY/SAO/AO (R)/LT/A4/D.No.877/05, dated 6/8.7.2005 cancelling the 25% power rebate allowed to the petitioner as illegal, unjust, arbitrary, violative of principles of natural justice, contrary to the Industrial Policy of the State Government and set aside the consequential demands by declaring that the petitioner is entitled to 25% rebate on electricity charges for a period of three years from 18.10.2000 to 17.10.2003.

2. It is the case of the petitioner that the 5th respondent has introduced Liberalised State Incentive Schemes pursuant to its industrial policy for encouraging setting up of new industrial units in the State of Andhra Pradesh. After taking into consideration all the relevant factors, in modification of the earlier orders, the government have introduced a new industrial policy called "Target 2000" in order to accelerate the industrial development of the State and issued orders vide G.O.Ms.No.108, Industrial & Commerce (I.P) Department, dated 20.05.1996. As per para 6.04 of the said G.O., all new industries will be eligible for 25% rebate in power bills both on demand and energy for a period of 3 years from the date of commencement of the commercial production subject to a maximum rebate of Rs.50 lakhs in respect of large and medium scale industries and Rs.30 lakhs in respect of small scale industries.

3. It is further stated that the 5th respondent issued order vide G.O.Ms.No.11, Industries and Commerce (I.P) Department, dated 16.1.1997, amending the earlier G.O.Ms.No.108, dated 20.05.1996 to the effect that 25% concessional power tariff shall be allowed to the new industrial units for a period of three years from the date of release of power or going into commercial production, whichever is later. The erstwhile AP State Electricity Board issued orders vide B.P.(OPN.Comml.) Ms.No.88, dated 29.11.1997, in tune with the State policy, notifying the rebate of 25% in power tariffs for the new industries. As per the said Board proceedings, the new industries are eligible for 25% rebate in power tariff, both on demand and energy charges including fuel cost adjustment charges and that the said rebate is available for a period of 3 years from the date of going into commercial production or date of release of power supply which ever is earlier.

4. It is further stated that the 1st respondent issued order vide T.O.O.(Comml.) No.36, dated 8.3.1999, amending para (1) (b) of B.P.Ms.No.88 dated 29.11.1997 to the effect that rebate of 25% on power charges will be allowed for a period of 3 years from the date of release of power supply and that the said orders are applicable in cases of industries which commenced production of captive generation during the currency of the "Target 2000" scheme. Believing the promise made by the Government, the petitioner set up a Small Scale Industrial Unit and the power supply to the petitioner's unit was released on 18.10.2000 vide S.C.No.2406. The 6th respondent after due verification, issued eligibility certificate dated 27.01.2001 certifying that the petitioner is eligible

for 25% rebate on power tariff as per G.O.Ms.No.108, dated 20.05.1995 with effect from 18.10.2000 for a period of three years, subject to a maximum rebate of Rs.20 lakhs. Thereafter, the 3rd respondent vide proceedings dated 16.05.2001 accorded sanction of 25% rebate on energy charges.

5. It is further stated that just before the expiry of 3 years of incentive period, respondent No.4 addressed a letter to the petitioner dated 14.8.2003, stating that the incentive of 25% rebate on power tariff would be allowed only upto March, 2003 and requested the petitioner to pay a sum of Rs.51,443/- towards the 25% rebate for the period from April, 2003 to August, 2003. The petitioner made a representation dated 13.9.2003, stating that the rebate of 25% on power tariff was extended pursuant to the industrial policy of the State Government under Target 2000 and in terms of G.O.Ms.no.108, dated 20.05.1995 for a period of three years with effect from 18.10.2000 and therefore, he is entitled to the said benefit up to October, 2003 and requested to withdraw the demand. As no orders are passed, the petitioner made another representation dated 10.11.2003. The petitioner while paying the undisputed bill amount requested the 4th respondent to delete the alleged arrears in the monthly bills as requested in its earlier representation dated 13.9.2003 as the petitioner is entitled to rebate of 25% in power bills up to October, 2003, but no action has been taken on its representation.

6. It is further stated that the 3rd respondent issued letter No. SE/O/RJY/SAO/AO (R)/LT/A2/D.No.878/05, dated 6.7.2005, stating that the 25% rebate allowed to the petitioner was cancelled

on 6.7.2005 and directed the petitioner to pay an amount of Rs.3,22,033.45 Ps., which was allowed towards 25% rebate for the period from 11/2000 to 5/2003 within 30 days from the date of receipt of the said letter. The petitioner addressed a letter dated 6.8.2005 to the 3rd respondent stating that the letter of the 3rd respondent cancelling 25% rebate was not furnished to him and that the decision of 3rd respondent is unjust and requested to withdraw the said letter. When the representation of the petitioner dated 6.8.2005 is pending consideration before the 3rd respondent, the 4th respondent issued a letter dated 17.8.2005 stating that an amount of Rs.3,22,033.45 Ps., be included in August, 2005 bill on the ground that 25% rebate availed by the petitioner from October, 2000 to March, 2003 was cancelled. The petitioner made another representation dated 27.8.2005 to the 4th respondent stating that the authorities have allowed 25% rebate after due satisfaction of the eligibility of the petitioner and that the said rebate was already availed by him and cancellation of the said rebate without issuing any notice is unjust and requested to withdraw the letter dated 17.8.2005.

7. It is further stated that the amount of Rs.3,22,033.45 Ps., was included in the August, 2005 bill under the head cancelled 25% rebate and also a sum of Rs.67,686.60 Ps., under the head arrears i.e., 25% rebate for the months of April, 2003 to August, 2003 along with regular current consumption charges of Rs.30,460.00. The petitioner paid the undisputed amount and filed W.P.No.19972 of 2004 questioning the said bill and the said writ petition was dismissed on the ground that the order of cancellation was not questioned. Thereafter, the 3rd respondent while rejecting

the representation of the petitioner issued the impugned proceedings cancelling 25% rebate to the petitioner. Aggrieved by the same, the present writ petition is filed.

8. The 3rd respondent filed his counter stating that in the absence of clear instructions from the higher officials, he has mistakenly sanctioned 25% rebate from 28.3.2000 to 27.3.2000 and that on receipt of the representation from the petitioner, corrected the three years period from 18.10.2000 to 17.10.2003. It is further stated that the scheme "Target 2000" is applicable only to the power supply released on or before 31.03.2000 for a period of 3 years i.e., up to 31.03.2003, but the petitioner availed 25% rebate for the period from April, 2003 to August, 2003 amounting to Rs.51,443/- and that he addressed a letter to the petitioner intimating the fact that the Target 2000 scheme is applicable up to 31.03 2003 only. The 3rd respondent gave instructions to the 4th respondent vide Memo No. SE/O/RJY/SAO (R)/LT/A4/D.No.877/05, dated 6.7.2005 for cancellation of 25% rebate on power bills to the petitioner unit. The sanction of 25% rebate on power bills was ordered to the petitioner vide proceedings dated 16.5.2001 and the same was corrected vide memo dated 2.4.2002 with effect from 18.10.2000 to 17.10.2003 and that the 3rd respondent sanctioned 25% rebate with retrospective effect as per the then guidelines and subsequently after receipt of clear instructions from higher authorities, duly clearing the ambiguity on implementation of 25% rebate on power bills, the 3rd respondent has cancelled the sanction order already issued and therefore, prayed to dismiss the writ petition.

9. The petitioner filed reply affidavit reiterating the contents of the writ petition and denying the allegations in the counter filed by the 3rd respondent.

10. Heard.

11. The Government introduced the scheme of 25% rebate in power bills both on demand and energy for a period of 3 years from the date of commencement of commercial production, subject to a maximum rebate of Rs.50 lakhs in respect of large and medium scale industries and Rs.30 lakhs in respect of small scale industries. Believing the promise made by the Government, the petitioner set up a small scale industrial unit and obtained service connection to the said unit on 18.10.2000 and that the petitioner is entitled to 25% rebate on energy charges from 18.10.2000 to 17.10.2003. But, the respondents allowed the rebate of 25% to the petitioner only up to March, 2003 without giving any notice to the petitioner. The petitioner made several representations to the respondents, to extend the benefit up to October, 2003, but they have not responded to the said representations, having allowed the benefit, more so, they demanded the petitioner to pay the bill amount with retrospective effect.

12. The Government issued G.O.Ms.No.108, Industries & Commerce (IP) Department, dated 20-05-1996 and Clause 6.04 of the said G.O., reads as follows:-

“6.04) Rebate in Electricity Charges:-

All new industries, other than those listed in the Annexure and other than those set up in the Municipal Corporation areas of Hyderabad, Vijayawada and Visakhapatnam, will be eligible for 25% rebate in power bills (both demand and energy) for a period of 3 years from the date of

commencement of commercial production. The rebate shall be allowed by the A.P., State Electricity Board in their monthly bills. The maximum total admissible rebate for the 3 years will be Rs.50.00 lakhs in respect of Large and Medium Scale Industries and Rs.30.00 lakhs in respect of Small Scale Industries.”

As per clause 18 of the said G.O., the orders shall take effect from 15-11-1995 and will be in force up to 31-03-2000. The Government also issued G.O.Ms.No.11, Industries & Commerce (IP) Department, dated 16-1-1997, extending the benefit to the new industrial units for a period of 3 years from the date of release of power or going into commercial production whichever is later. The Government of Andhra Pradesh, District Industries Centre in its certificate No.78/B2/2001, dated 27.01.2001 confirmed extending benefit to the petitioner, holding that the petitioner is eligible for the said benefit. The Superintending Engineer, Operation, Rajahmundry in proceedings No.LT/A4/DNo.495/2001, dated 16-5-2001, sanctioned the rebate in terms of the said G.O., in favour of the petitioner. The Superintending Engineer, Operation, Rajahmundry in Memo No.SEO/Rjy/SAO/AO(R)/LT/A4/D.No.309/2002, dated 2-4-2002, accorded 25% rebate for a period of 3 years ending by 17-10-2003.

13. When one wing of the Government encourages the industrialists to set up new industries by granting rebate in energy charges, the other wing having accorded sanction, again withdrawing the said benefit unilaterally without any notice and thereafter, raising demand with retrospective effect, is highly arbitrary, in gross violation of principles of natural justice and is unsustainable.

14. Accordingly, the writ petition is allowed, declaring the petitioner is entitled for 25% rebate and the demand of arrears in proceedings of the 3rd respondent in Memo No.SE/O/RJY/SAO/AO (R)/LT/A4/D.No.877/05, dated 6/8.7.2005 is set aside. No order as to costs. As sequel, the miscellaneous petitions pending if any shall stand closed.

T.AMARNATH GOUD,J

Date: 15-06-2018
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