

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 12.03.2019

CORAM:
THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.43301 of 2002
and
WPMP 63688/2002

M/s.Raghav Industries Limited,
T.S.No.7, Kattipalayam Village,
Tiruchengode - Namakkal Main Road,
Ela Nagar Post, Namakkal District.
Represented by its Managing Director,
Mr.Rajendra Kumar Kanodia Petitioner
[substituted as per the Court order of this Court,
dated 31.08.2018, in WMP.No.23635/2018
in W.P.No.43301 of 2002]

vs.

- 1.The Tamil Nadu Generation and Distribution Corporation Limited,
Anna Salai, Chennai - 600 002.
Represented by its Chairman
- 2.The Superintending Engineer,
TANGEDCO,
Namakkal Electricity Distribution Circle,
Namakkal - 637 001. Respondents
[R1 & R2 are substituted as per the order
of this Court dated 31.08.2018 in WMP.No.23636
& 23637/2018 in W.P.No.43301 of 2002]

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the second respondent comprised in Letter No.PR.650/A/CS.Br./ADR/HT/A.4/BF.176/ 2002 dated 17.10.2002 and quash the same as arbitrary and unreasonable and consequently direct the second respondent to permit the petitioner to avail the tariff concession, which it is entitled to for the entire 3 years period.

For Petitioner : Mr.R.Parthasarathy

For Respondents : Mr.S.K.Raameshuwar
Standing Counsel

O R D E R

The order under challenge in the present Writ Petition is to the demand made by the respondents herein to the petitioner towards the excess tariff concession to the tune of Rs.4,62,646/-.

2. According to the respondents, the tariff concession in the light of G.O.Ms.No.29 (Energy A2) Department, dated 31.01.1995, should have been allowed to the petitioner's High Tension service connection for a period of three years from the date of service connection, i.e, from 07.04.1998 at the following ratios:

- (a) First Year from 07.04.1998 to 06.04.1999 - 40%
- (b) Second Year from 07.04.1999 to 06.04.2000 - 30%
- (c) Third Year from 07.04.2000 to 06.04.2001 - 20%

3. According to the respondents, the tariff concession was already allowed from the first monthly reading, pursuant to the interim order of this Court, dated 18.08.1998, in W.P.No.12310 of 1998 in the following manner:

- (a) First Year from 27.08.1998 to 26.07.1999 - 40%
- (b) Second Year from 27.07.1998 to 26.08.2000 - 30%
- (c) Third Year from 27.08.2000 to 26.04.2001 - 20%

By stating so, the respondents had demanded a sum of Rs.4,62,646/- as excess tariff concession granted to the petitioner. The said order is under challenge in the present Writ Petition.

4. The issue as to whether the tariff concession could be granted in favour of the consumer like the petitioner herein, was already decided by the Hon'ble Apex Court in a decision reported in 2008 7 SCC 353 (Tamil Nadu Electricity Board and another vs. Status Spinning Mills Limited and another). Paragraph 52 of the said order reads as follows:

52. We have noticed herein before that some to 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. Those hard cases, even

according to Mr.Ganguli, should be brought within the purview of the proviso. We, therefore, hold:

1.As the concession had been granted by the State, it had the power to withdraw the same.

2.It is not a case wherein view of the doctrine of promissory estoppel, the State could not have in law amended the Schedule.

3.In view of existence of - interest the doctrine of promissory estoppel would have no application.

4.Even otherwise the appellants having not preferred appeals against the judgment of the Division Bench of the High Court, the said questions cannot be permitted to be raised before us.

5.Proviso appended to the main provision should be read down as stated in paras 51 and 52 supra.

6.In view of our findings aforementioned, we have not gone into the merit of the matter involved in each case separately.

5. As per the aforesaid decision of the Hon'ble Apex Court, the concession has been extended to the industries, which had installed generators and made application seeking electricity connection, and the industries, which had commenced commercial production before 14.02.1997. Subsequently, the respondents had issued a circular, dated 10.06.2008 by placing reliance on the decision of the Hon'ble Supreme Court order and issued certain instructions with regard to the further course of action to be taken. Based on the said circular, the second respondent herein had issued a demand letter, dated 04.07.2008 calling upon the petitioner to pay a sum of Rs.66,29,498/- terming it as a tariff concession arrears for the period from 09/1998 to 04/2001. Since the demand made by the second respondent in the aforesaid letter, dated 04.07.2008 pertains to the period from 09/1998 onwards, which was already the subject matter in the earlier batch of Writ Petitions, wherein, the petitioner had filed Writ Petition in W.P.No.16997 of 2008, this Court by an order dated 26.09.2008 had held as follows:

"1.By consent of the learned counsel on either side, the below mentioned order is passed:

"The petitioners in the above said writ petitions claim to have satisfied paragraph No.45 of the order dated 16.05.2008 passed by the Honourable Supreme Court in SLP.Nos.3940 of 2008, etc batch, regarding commencement of commercial production before 14.02.1997 by use

of generators. Hence the respondents are directed to extend the tariff concession sought for by the petitioners, within a period of four weeks from the date of receipt of a copy of this order, however subject to the production of the evidence of use of generators and commencement of commercial production before 14.02.1997."

2. With the above directions, these writ petitions are disposed of. No costs. Consequently, the connected Mps are closed."

6. Thus, as per the directions of this Court, the respondents were directed to extend tariff concession to the petitioner within a stipulated time, subject to the production of the evidence of usage of generators for commercial production before 14.02.1997. The challenge in the aforesaid batch of Writ Petitions was to the averments mentioned in the circular, dated 10.06.2008.

7. According to the learned counsel for the petitioner, the petitioner had already commenced commercial production before the cut-off date and hence they are entitled for the tariff concession. In support of his contention, the learned counsel for the petitioner placed reliance on the invoice relating to the purchase of generators, approval by the Chief Electrical Inspector to operate the diesel generator and also other proof of commercial production.

8. The learned Standing Counsel for the respondents on the other hand, vehemently opposed the said submission and stated that the petitioner herein has been granted concession tariff rates based on the interim order of this Court, but it was granted excessively for the period May 1999 to July 1999 and May 2000 to August 2000 and there was no infirmity in the demand made by them for the payment of the excess concession to the tune of Rs.4,62,646/-.

9. I have given careful consideration to the submissions made by the respective counsel for the parties and perused the original files produced by the petitioner.

10. The issue squarely revolves around the observations made by the Hon'ble Apex Court in the decision reported in 2008 7 SCC 353 (cited supra). As such, the tariff concession is required to be extended to the industries, which had commenced their commercial production prior to 14.02.1997 and also to such industries, which had also made application seeking for HT service connection and deposited the amount demanded for.

11. The object of the tariff concession scheme itself is to encourage new industries for the purpose of their sustainment.

It is in that background, the Apex Court has also clarified that such concession should be extended to industries, which have not been provided with service connection, but had made all other arrangements for commencement of the industry. As such, the Hon'ble Apex Court had included the industries which had made application seeking service connection and also the industries which had commenced commercial production even without service connection.

12. It is seen that the finding of the Hon'ble Apex Court has already been reiterated by this Court, which passed an order dated 26.09.2008 in W.P.No.16997 of 2008 etc., batch of cases. In view of the aforesaid two pronouncements, the only aspect that requires to be looked into is as to whether the petitioner made an application prior to 14.02.1997 or he had commenced commercial production prior to cut-off date.

13. It is not in dispute that the petitioner had made the application seeking for HT service connection on 04.07.1996. As the application has been made prior to the cut-off dated fixed by the Hon'ble Apex Court, the concession is required to be extended to the petitioner without any second thought. On this short ground, the petitioner is entitled to succeed. Nevertheless, it is seen that the petitioner-Company has also produced certain documents evidencing that they had commenced commercial production with the aid of generators from 1995 onwards and they had filed monthly / periodical return to the Central Excise Department in Form RT.12 from the month of March 1996 onwards, which evidences that they had commenced commercial production prior to cut-off date. While that being so, it can only be held that the petitioner squarely falls under the categories described in the orders passed by the Hon'ble Apex Court as well as this Court referred to above.

14. At this juncture, learned Standing Counsel for the respondents submitted that as against the order passed by the learned Single Judge of this Court dated 26.09.2008 in W.P.No.16997 of 2008, they have filed Review Application before this Court and the same is pending.

15. I am unable to endorse such a statement made, since the Review Application has been filed against the order dated 26.09.2008 in the year 2010 under SR.No.59748 of 2010 and the Review Application is yet to be numbered and taken on file. In the absence of any final orders having been passed in the Review Application, the respondents herein cannot take shelter on the ground that they had already sought for review of the earlier order of this Court and therefore attempt to sustain the impugned order.

16. It would not be out of place to mention that already eight years has lapsed since the Review Application has been filed and the respondents have not taken effective steps to number the Review Application. As such, it can only be construed that the presentation of the Review Application has been made only to sustain these kinds of impugned demands to the petitioner as well as similarly placed consumers.

17. The learned counsel for the petitioner also relied upon the decision of the Hon'ble Division Bench of this Court passed in W.P.No.15078 of 2000, dated 28.07.2009, wherein, in identical circumstances, the Division Bench had held that the application made by the consumer for High Tension service connection prior to the cut-off date, is entitled for tariff concession.

18. In view of the categorical findings of the Apex Court as well as this Court and also taking into account the fact that the petitioner had commenced commercial production prior to 14.02.1997 itself, and had also made an application on 04.07.1996 itself, they would be entitled for the tariff concession from the date of service connection itself and as such, the demand made by the respondents herein stating that the concession extended from 27.08.1998 onwards for a period of three years under the guise of excess tariff concession, cannot be sustained.

19. In the light of the above observations, the order of the second respondent in No.PR.650/A/CS.Br./ADR/HT/A.4/BF.176 of 2002, dated 17.10.2002 is quashed and the Writ Petition stands allowed. No costs.

Connected Miscellaneous is Closed.

Sd/-

Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

pvs

To

1.The Chairman

The Tamil Nadu Generation and Distribution
Corporation Limited,
Anna Salai,
Chennai - 600 002.

2.The Superintending Engineer,
TANGEDCO,
Namakkal Electricity Distribution Circle,
Namakkal - 637 001.

+1cc to Mr.S.K.Raameshuwar, Advocate, S.R.No.23498
+1cc to Mr.R.Parthasarathy, Advocate, S.R.No.23530

W.P.No.43301 of 2002

GP (CO)

RRS (02/05/2019)



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