IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:29.08.2019

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.18978 of 2008
and M.P.No.1 of 2008

M/s.Ecare India Private Limited
rep. by its Managing Director,
Deepak Kumar Sanghi,
27-18, Woods Road,
Mount Road, Chennai 600 002. ... Petitioner

Vs.

1. The Chairman
Tamil Nadu Electricity Board,
No.800, Anna Salai,
Chennai 600 002.

2. The Superintendent Engineer,
CEDC/Central,
Valluvar Kottam,
Chennai 600 034.

3. The State of Tamilnadu
rep. by its Secretary,
Information Technology Department,
Ezhilagam, Chennai 600 009. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the second respondent in Memo No.SE/CEDC/C/DFC/AAO/HT/A4/D 88/08, dated 1.02.2008 demanding differential tariff charges retrospectively for a back period of two years and quash the same as illegal, so far as classifying the petitioner's service connection Nos.101-003-153, 101-003-145 and 101-003-146 under the LT Tariff V instead of LT Tariff III-B category and direct the respondent 1 and 2 not to levy tariff charges for the above service connections under LT Tariff V.

For Petitioner : Mr.D.Trilokchand Chopde
S.T.Pramod Kumar Chopde

For Respondents : Mr.P.R.Dilip Kumar
Standing Counsel-TNEB

O R D E R

This writ petition has been filed seeking to quash the memo of the second respondent in Memo No.SE/CEDC/C/DFC/AAO/HT/A4/D 88/08, dated 1.02.2008, demanding differential tariff charges retrospectively for a back period of two years, classifying the petitioner's service connection Nos.101-003-153, 101-003-145 and 101-003-146 under the LT Tariff-V instead of LT Tariff III-B category and direct the respondents 1 and 2 not to levy tariff charges for the above service connections under L T Tariff V.

2.The petitioner company is an Export Oriented Unit under the Software Technology Park Scheme of Government of India and have been approved by STPI by their letter dated 27.05.2006. The petitioner provides IT services as defined in the IT policy of the 3rd respondent viz., Processing Services relating to call centers, data processing, insurance claim processing and business processing services. Accordingly as an IT enabled services (ITES) Industry, the petitioner applied for electricity service connection under LT Tariff III-B and the respondents Board granted three service connections under the above tariff vide Connection Nos. 101-003-145, 101-003-146 and 101-003-153. While so, the second respondent issued a Memo No.SE/CEDC/C.DFC/AAO/HT/A4/D 88/08 dated 01.02.2008 based on the Member (Accounts) Memo No.CFC/Rev/Dir/Tf.Cell/F, ITES/D/77/08 dated 04.2.2008 that the ITES industries are to be charged under HT tariff III for HT services and LT tariff V for LT services. Based on the above memo, the Assistant Accounts Officer demanded alleged shortfall on account of differential tariff charges of Rs.7,59,650/- retrospectively for back period of two years for three service connections provided to the petitioner. Challenging the said demand, the petitioner has filed the present writ petition.

3.Heard Mr.T.Pramodkumar Chopda, learned counsel for the petitioner and Mr.P.R.Dilipkumar, learned standing counsel for the respondent Board.

4.Mr.Pramodkumar Chopda, learned counsel for the petitioner would submit that as per the State Government Policy, the 3rd respondent in its Information and Technology Policy (in short IT policy) vide IT Policy 1997, 2002, 2005 and 2008, has categorically stated that the IT industries will include IT services and IT enable services (ITES). Based on the above policies, the 3rd respondent treating the IT and ITES companies as an Industry, the Tamil Nadu Electricity Regulatory Commission in its Tariff dated 15.03.2003 has classified the applicable Tariff rate for IT and ITES industries as HT Tariff or LT Tariff. The petitioner being the LT Tariff consumer, is entitled to enjoy the benefit of LT Tariff III-B. However, the petitioner was charged LT Tariff-V, which is legally unsustainable. The learned counsel further submitted that the applicability of the above Tariff was reiterated by TNERC in its order No.3 of 2010 dated 31.07.2010, which came into effect from 01.08.2010 and the Electricity Commission decides to adopt HR Tariff/TT Tafiff III-B for Information Technology Services as defined in the Information Communication Policy (ICT Policy) 2008 of Government of Tamil Nadu. The IT services are broadly defined as systems integration, processing services, information services outsourcing, packaged software support and installation, hardware support and installation. Further, the above position was reconfirmed by the TNERC in its Order No.1 of 2012 dated 01.03.2012 with effect from 01.04.2012 for industries like the petitioner using LT services will be charged LT Tariff III-B only. Therefore, the petitioner is entitled to be charged only under LT Tariff-III B only. The learned counsel for the petitioner further submitted that this court may permit the petitioner to file an application before the authority concerned within a week to enjoy the benefit of the policy, which came into force from 01.04.2012 and thereafter, the authority may pass orders within a reasonable time. He further submitted that in respect of the retrospective demand by the TNERC in the connected matters, the Electricity Board is to file an application before the Regulatory Commission. Hence, the interim order made by this Court dated 07.08.2008 will continue till the disposal of the application filed by the Electricity Board.

5.Mr.P.R.Dilipkumar, learned standing counsel for the respondents Board would submit that with regard to the the demand of tariff charges retrospectively for a back period, the Electricity Board have decided to file an appropriate application before the Tamilnadu Electricity Regulatory Commission (TNERC) and till a decision is taken, a status quo order is to continue. He further submitted that the petitioner may file an application for availing the benefit of TNERC before the concerned authority and on receipt of the same, the authority shall pass orders in accordance with law.

6.Considering the submissions made on either side, with regard to the demand made in the impugned order, the Electricity Board itself conceded that they are going to make an application before the Tamilnadu Electricity Regulatory Commission for appropriate orders, whether the Board has a right to demand retrospectively or not. Till such time, interim order already granted by this Court shall continue. In order to enjoy the benefit of TNERC Order No.1 of 2012 dated 1.3.2012 (effective from 1.4.2012), I am inclined to grant permission to the petitioner to make an application before the 2nd respondent within a period of two weeks from the date of receipt of copy of this order and on receipt of the same, the 2nd respondent would consider the application and the pass orders within a period of two weeks therefrom, in terms of Order No.1 of 2012. If the respondent Board decided to extend the benefit of Order No.1 of 2012, the amount already paid by the petitioner shall be adjusted in the future bills of the petitioner. The petitioner is at liberty to submit an application for refund of the amount he had already paid from the year 2008 to 2012 before the Tamilnadu Electricity Regulatory Commission.

7.The writ petition stands disposed of on the above terms. No costs. Connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman
   Tamil Nadu Electricity Board,
   No.800, Anna Salai,
   Chennai 600 002.

2. The Superintendent Engineer,
   CEDC/Central,
   Valluvar Kottam,
   Chennai 600 034.

3. The Secretary,
   The State of Tamilnadu
   Information Technology Department,
   Ezhilagam, Chennai 600 009.

+1 cc to M/s.P.R.Dhilip Kumar, Advocate, S.R.No.75067

+1 cc to M/s.T.Pramodkumar, Advocate, S.R.No.74743

+1 cc to the Government Pleader, S.R.No.74596

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VSN-II(CO)
SSM(16/10/2019)