

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2019

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.23836 of 2009
and
M.P.Nos.2 and 3 of 2009

M/s.Ramco Industries Limited,
"Auras Corporate Centre" VI Floor,
98A, Dr.Radhakrishnan Road,
P.B.No.2949, Mylapore,
Chennai - 600 004.

... Petitioner

Vs

1.Tamil Nadu Electricity Board,
Represented by its Chairman,
Anna Salai, Chennai - 600 002.

2.The Superintending Engineer,
Vellore Electricity Distribution Circle,
Vellore - 6.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorarified mandamus, to call for the records of the second respondent in his impugned Lr.No.125/SEV/RCS/ DFC/A2/F/1177/09, dated 04.11.2009 and set aside the same as being arbitrary, illegal and contrary to the judgment of the Hon'ble Supreme Court in the case of Tamil Nadu Electricity Board Vs Status Spinning Mills and consequently direct the respondents to forthwith grant refund of the sum of Rs.8,21,622/- wrongly collected by the respondents by denial of tariff concession which the petitioner is entitled to together with interest thereon for the period till April, 2008 amounting to Rs.15,21,661/- aggregating Rs.23,43,283/- and further interest from that date till the date of payment at 18% per annum, in terms of the judgment of the Hon'ble Supreme Court.

For Petitioner : Mr.R.Parthasarathy

For Respondents : Mr.M.Varunkumar

ORDER

This writ petition has been filed to quash the order dated 04.11.2009 issued by the second respondent and consequently direct the respondents to refund the tariff concession, which was denied by the respondents, along with interest, as per the decision of the Supreme Court in Tamil Nadu Electricity Board and another v. Status Spinning Mills Limited and another reported in (2008) 7 SCC 353.

2. Today, when the matter was taken up for hearing, the learned counsel for the petitioner and the learned counsel for respondents jointly submitted that the issue involved herein is squarely covered by the judgment of the Division Bench of this Court in W.A.No.2436 of 2010 etc., batch, dated 29.11.2013, wherein it was observed and held as follows :

"1.These writ appeals are filed by the Tamil Nadu Electricity Board challenging the order of the learned single Judge dated 13.11.2008 made in a batch of cases in W.P.Nos.16348 of 2008, wherein the respective first respondent-Industries have challenged the circular issued by the Tamil Nadu Electricity Board dated 10.6.2008 on the ground that the same was issued by the Tamil Nadu Electricity Board (for short "the Board") contrary to the directions issued by the Supreme Court in the decision in Tamil Nadu Electricity Board and another v. Status Spinning Mills Limited and another (2008) 7 SCC 353. The challenge was also made in some cases with regard to the individual orders passed by applying the circular by the appellant-Board pursuant to the directions of the Hon'ble Supreme Court in the judgment cited supra. The Hon'ble Supreme Court in the said decision held thus:-

"52. We have noticed hereinbefore that some of 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, 14-2-1997 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 where in view of the doctrine of promissory estoppel, the State could not have in law amended the Schedule.
3. In view of existence of public 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 44 and 45 supra.
6. In view of our findings aforementioned, we have not gone into the merit of the matter involved in each case separately.

53. We direct accordingly. The matters would now be examined by the appropriate authority of the Board, as directed by the High Court in individual cases. The appeals are allowed with the aforementioned directions. No costs."

7. We have considered the said submissions. The point in issue is as to whether the parties are bound by the judgment of the Supreme Court referred to above, particularly, paragraphs 52 & 53. In most of the cases, individual orders have not been passed by the concerned authority of the Board deciding the matter one way or other and in some cases, separate orders have been passed, by applying the circular dated 10.6.2008, which was found illegal by the learned single Judge, and the same is also withdrawn today before this Court as per the submissions made by the learned Additional Advocate General.

8. In the light of the said submission, such individual orders are set aside and we direct the concerned authority of the appellant-Board to call the

individual Industries who had litigated before the Hon'ble Supreme Court and who are litigating before this Court to consider the individual claims for tariff concession, and after affording opportunity to the individual Industries to adduce documentary proof to sustain their claim, pass appropriate orders strictly in accordance with the directions issued by the Hon'ble Supreme Court in the judgment referred to above, within a period of three months from the date of receipt of a copy of this order. If any rejection orders are to be passed by the concerned authority of the Board affecting the rights of the Industry/Industries, we are of the view that opportunity of hearing should be extended to the individual Industries by the concerned authority to substantiate their claim. It is also made clear that neither the stand taken in the counter affidavit nor in these writ appeals shall be relied on by the concerned authority of the Board while taking a decision as directed above and the concerned authority is directed to follow strictly the directions issued by the Hon'ble Supreme Court. It is also needless to state that if the order of the learned single Judge is complied with and implemented in any of the matters, the said order will stand good. The writ appeals are disposed of with the aforesaid observations and directions. Consequently, connected M.Ps. are closed. No costs."

3. Following the aforesaid judgment, this writ petition stands allowed by setting aside the order dated 04.11.2009 passed by the second respondent. The respondents shall consider the claim of the petitioner-Industry with regard to tariff concession, after affording an opportunity to adduce documentary evidence to sustain their claim and also personal hearing to the petitioner and pass appropriate orders, strictly in accordance with the aforesaid Supreme Court decision. Such an exercise shall be completed within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

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To

1.The Chairman,
Tamil Nadu Electricity Board,
Anna Salai, Chennai - 600 002.

2.The Superintending Engineer,
Vellore Electricity Distribution Circle,
Vellore - 6.

+1cc to Mr.M.Varunkumar, Advocate SR.No.9224

W.P.No.23836 of 2009
and
M.P.Nos.2 and 3 of 2009

RJI (CO)
GMV (03/05/2019)