

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.9504 & 9505 of 2009

RR Donnelley India Outsource Private Limited,
(formerly Astron Document Management Pvt Ltd.),
AD 42-45 Shanthi Colony,
4th Avenue, Anna Nagar,
Chennai-600 040, India

Represented by its Company Secretary and
Associate General Counsel

Mr.S.Porchelvan ...Petitioner in both W.Ps

Vs.

1. The Superintending Engineer
C.E.D.C./West, Anna Nagar,
Chennai-600 040.

2. The Chairman,
Tamil Nadu Electricity Board,
No:144, Anna Salai,
Chennai-600 002.

...Respondents 1&2 in
both WPs

3.Karuna Sesh

...Respondent 3 in
WP.No.9504/2009

4.Avais Musvee

...Respondent 3 in
WP.No.9505/2009

Prayer in W.P.No.9504 of 2009: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records relating to the impugned letter dated 16.04.2009 passed by the First Respondent bearing reference No.Lr.No.SE/CEDC/W/DFC/AS/H.T.Sc.No.1714/D.No.5309 in relation to HT SC 1714 drawing reference to the letter dated 18.03.2009 (ref. No.Lr.No.SE/CEDC/W/DFC/AS/H.T.Sc.No.1713/D.No.1706/2009 and quash the same and direct the First Respondent to continue to bill the petitioner Company under Tariff IA.

Prayer in W.P.No.9505 of 2009: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records relating to the impugned letter dated 16.10.2008 passed by the First Respondent bearing reference vide Lr.No.SE/CEDC/C/DFC/AAO/HT A/C 2407/D 491/08 and quash the same and direct the First Respondent to continue to bill the petitioner Company under Tariff IA

For Petitioner : Mr.Krishna Srinivasan for
M/s.Rama Subramaniam Associates

For Respondents : Mr.S.K.Rameshwar

COMMON ORDER

The petitioner, in both these writ petitions, has approached this Court, seeking the following relief:-

"To issue a writ of Certiorarified Mandamus, calling for the records relating to the impugned letter dated 16.04.2009 passed by the First Respondent bearing reference No.Lr.No.SE/CEDC/W/DFC/AS/H.T.Sc.No.1714/D.No .5309 in relation to HT SC 1714 drawing reference to the letter dated 18.03.2009 (ref.

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2.The case of the petitioner is that the petitioner Company is engaged in the business of IT Enabled Services and Business Process Outsourcing (BPO) Operations. It is pertinent to mention that the premises occupied by the petitioner Company at AD 42-45, Shanthi Colony, 4th Avenue, Anna Nagar Chennai, is a registered unit under the Software Technology Parks of India (STPI). The petitioner Company is entitled to claim the status of 'Industry' and all the concessions assured under the periodical IT and ITES

Policies declared by the State and Central Governments. The petitioner Company has leased the premises at AD 42-45 Shanthi Colony, 4th Avenue, Anna Nagar, Chennai 600 040 from the Third Respondent in WP.No.9504/2009 and Door No.43 A, 1st Main Road, R.A.Puram, Chennai 600 028 from the third respondent in WP.No.9505/2009. The electricity supply to the said premises is being supplied by the Tamil Nadu Electricity Board [hereinafter referred to 'the Board'] under HT A/C 1714. The entire premises are occupied by the petitioner Company to carry on its business activities.

3.The Petitioner company was initially paying electricity charges levied by the Board based on Tariff III which is applicable to commercial units. Subsequently, during the year 2006, the petitioner Company made an application to the Board for revision of Tariff from III (Commercial Tariff) to 1 A (Industrial Tariff), by virtue of the petitioner Company being a registered STPI unit and an industry which is assured of the concessions granted under the periodical IT and ITES policies and the Tariff Order 2003. The said application was approved by the Board by letter dated 17.05.2006, which revised the Tariff from III to I A with retrospective effect from October, 2004. Thereafter, the petitioner Company has been paying electricity charges levied by the TNEB based on Tariff I A, which is applicable to industries such as the petitioner Company which carries out IT enabled services and BPO operations. The Board through various communications has assured the petitioner Company that Tariff IA shall be applicable from October-2004 and the difference in amounts paid by the petitioner Company shall be adjusted in the future bills.

4.In such circumstances, by the impugned letter dated 16.04.2009, the Board has unilaterally revised the Tariff from IA (Industrial) to III (Commercial) and has also made such revision applicable with retrospective effect. As against which, the present writ petitions have been filed.

5.The learned counsel for the petitioner would submit that the petitioner Company is determined as integrated IT company and also Business Outsourcing Operations in technology and other areas. As per IT, ITES Policies and Tariff Order, 2003, the Board approved by its letter dated 17.05.2006, which revised Tariff from III to IA with retrospective effect from October, 2004 onwards. Subsequent clarification dated 08.11.2010, processing services include outsourced services in Banking, HR, Finance, Technology and other areas. Hence, the petitioner Company's service is not an independent service and it is connected with IT Sector.

Therefore, the impugned order is bad in law and the same is liable to be quashed.

6.The learned Standing Counsel appearing for the Respondent Board would submit that the determination of tariff for generation, intra-state transmission and distribution was issued by order No.3 of 2010 dated 31.07.2010, which came into effect from 01.08.2010. He further submitted that the Outsourcing Services are connected as a part of IT sector. Hence, this Court may pass appropriate orders.

7.On a perusal of the records, it is seen that the petitioner Company is engaged in the business of IT Enabled Services and Business Outsourcing Operations being carried out at the premises located No.43-A, First Main Road, R.A.Puram, Chennai 600 028 and AD 42-45 Shanthi Colony, 4th Avenue, Anna Nagar, Chennai-600 040 respectively.

8.As per the memo dated 25.07.2006, issued by the Board, the tariff was revised and the petitioner was permitted to pay the charges under Industrial Tariff I A from Tariff III from June, 2004. The determination of Tariff for generation, intra-State transmission and distribution was based on Order No.3 of 2010, dated 31.07.2010, which came into effect from 01.08.2010, the relief under clause 9.10.4.7 which reads as follows:

"9.10.4.7. Therefore, the Commission decides to adopt HT Tariff III/LT Tariff III B for Information Technology Services as defined in the Information Communication Policy (ICT Policy) 2008 of Government of Tamil Nadu.

The definition is reproduced below:

"IT services are broadly defined as systems integration, processing services, information services outsourcing, packaged software support and installation, hardware support and installation."

and the clarificatory order No.3-1 of 2010 dated 08.11.2010, Point No.2 (a) reads as follows:

"2. Processing Services includes
a. Outsourced services in Banking, HR, Finance, Technology and other areas."

9.The above clause makes it very clear that the Outsourced Services in Banking, HR, Finance, Technology and other areas are charged with Tariff I A [industrial tariff] and the Board also extended the benefit by memo dated 25.07.2006 and subsequently, the above mentioned order

dated 31.07.2010 came to be effect from 01.08.2010. Hence, the petitioner Company is coming under the category of Tariff I A.

10.The impugned order was passed as if the petitioner Company has not engaged as IT Sector, which is legally unsustainable. Accordingly, these writ petitions are allowed and the impugned orders passed by the first respondent dated 16.10.2008 and 16.04.2009, are hereby quashed. As per the interim order of this Court, the respondent Board is directed to calculate the amount and if any excess amount paid by the petitioner that may be adjusted in future bills. No costs.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

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To

1. The Superintending Engineer
C.E.D.C./West, Anna Nagar,
Chennai-600 040.

2. The Chairman,
Tamil Nadu Electricity Board,
No:144, Anna Salai,
Chennai-600 002.

+2ccs to Mr.S.Rama Subramaniam, Advocate SR.No. 62661,62662
+1cc to Mr.P.R.Dhilip Kumar, Advocate SR.No. 62298

W.P.Nos.9504 & 9505 of 2009

In co
A.SK(22/08/2019)

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