

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.8742 of 2004
and
W.P.M.P.No.10236 of 2004

M/s.Sai Mirra Innopharm Pvt. Ltd.
Rep. by its Director V.R.Ravikumar
K.R.Building, Third Floor
124-A/5, L.B.Road
Adyar, Chennai 600 020

...Petitioners

Vs.

The Executive Engineer
Operation & Maintenance
CEDC / South /Adayar
110/KV Tidel Park S.S.Complex
Tharamani Road
Chennai 600 113

... Respondent

Prayer:

The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records of the respondent relating to the order passed in letter No.EE/O & M/Ady/R.46/F.Theft/D.No.432/04 dated 23.02.2004 and quash the same and direct the respondent to refund the amount of Rs.2,76,347/- collected for compounding charges and Rs.31.256/- collected towards first instalment for extra levy.

For Petitioner : Mr.V.Sanjeevi

For Respondent : Mr.S.K.Rameshwar

O R D E R

The writ petition has been filed by the petitioner for issuance of a writ of Certiorarified Mandamus, to call for the records of the respondent relating to the order passed in letter No.EE/O & M/ Ady/R.46/F.Theft/D.No.432/04 dated 23.02.2004 and quash the same and direct the respondent to refund the amount of

Rs.2,76,347/- collected for compounding charges and Rs.31.256/- collected towards first instalment for extra levy.

2.The case of the petitioner is that the petitioner Company is a Private Limited Company engaged in manufacturing of pharmaceuticals and medicinal drugs. The factory of the petitioner is situate at No.288, SIDCO Estate, Ambattur, Chennai-98, the Corporate Office of the petitioner company is at K.R.Building, Third Floor at No.124-A/5, L.B.Road, Adyar, Chennai. The entire building has 12 service connections and all the meters are fixed only in the basement. The Service Connection for the 3rd floor (where the petitioner's Corporate Office is functioning) is assigned service connection Account No. as LTCT A/C.No.203-21-434. While that being so, on 21.02.2004 at about 6.30 p.m. the Assistant Engineer / Flying Squad and Assistant Engineer / O & M, Indira Nagar inspected the above premises and alleged to have found that the lighting line to the extent 8.088 K.W. is tapped from the incoming distribution box without reference to the energy meter in respect of the above service connection. Immediately thereafter the respondent registered a criminal case and thereafter the petitioner was forced to pay the compounding fee for withdrawal of the criminal case and further without giving any opportunity to the petitioner, the respondent Board imposed civil liability and passed an assessment order on 23.02.2004, against which, the present writ petition came to be filed.

3.The learned counsel appearing for the petitioner would submit that even on a bare perusal of the compounding fee, it would show that the same is illegal and unsustainable one. Though the old Act was repealed on 10.06.2003, even after the Repeal Act came into force, the Electricity Authority proceeded the matter under the Old Act which is illegal and unsustainable one. As per the calculation, whether it is old Act or new Act only lesser amount has to be imposed under the compounding fee. However, the Authority has imposed exorbitant amount which is contrary to the New Act as well as the old Act and the same is illegal and contrary to the provisions of the Old Act as well as the New Act. Hence, prays for setting aside the impugned order and to remand the matter back the respondent for a fresh consideration.

4.The learned counsel appearing for the respondent Board would submit that as per Section 185 of the Tamil Nadu Electricity Act 2003, the respondent Board is entitled to proceed the matter under the Old Act and also under the New Act even though the same is repealed. In respect of the calculation of the compounding fee, this Court may set aside the impugned order without refund of the amount already deposited by the petitioner. The learned counsel would further submit that the

very same issue has been dealt by the Division Bench of this Court in batch of cases in W.A.Nos.1808, 1811 of 2009, W.P.Nos.29882 of 2004 and 3013 of 2014 and W.P.No.(MD) Nos.2360 and 2361 of 2008, as follows:

29.The above submission made by the learned Senior Counsel for the petitioners cannot be accepted, because once there is a saving clause provided under the New Act, then there is no impediment or bar for the Department to proceed under the Old Act in the absence of proof that it is inconsistent with the provisions of the Act, 2003. More so, quoting a wrong provision of the Act will not entitle a wrong doer to escape from the clutches of law, especially when Section 126 of the Act, 2003 extends power to the Department / Board / Authorities to ensure that the electricity consumed unauthorisedly is calculated and necessary charges are paid by the defaulter. In the decision, Hitech Mineral Industries (P) Ltd., Salem V.TNERC, Chennai, reported in 2010 (3) MLJ 697, it is inter alia, observed that the persons who steal energy or use energy unauthorisedly have to be punished.

34.Significantly, it is to be pointed out in respect of theft of energy as per Section 135 of the Electricity Act, 2003, 'Mens Rea' is required. Whereas under Section 126(6) Explanation (b) of the Act, an intention relating to unauthorised use of electricity by utilising the electricity by the means as mentioned is just enough. In a proceeding under Section 126, a high decree of responsibility on the part of authority concerned rests, mainly to act impartially, fairly, objectively and to proceed in the matter with an open mind due consideration and deeper application of mind.

35.At the risk of repetition, the assessment under Sections 126 and 135 of the Electricity Act, 2003 is quite different from each other. In reality, the ingredients of Section 126 of the Act can be pressed into service for unauthorised use of Electricity. However, in respect of Section 135 of the Act, it is for theft of Energy and this subtle difference is to be borne in mind by a reasonable and prudent person.

6.The learned counsel appearing for the respondent Board would further submit that the authority may be directed to re-do the entire calculation in respect of the compounding fee without refund of the amount already deposited by the petitioner and pass a fresh order after affording an opportunity of hearing to the petitioner.

7. In view of the above submissions made on either side, this Court without going into the merits of the case, is inclined to remand the matter back to the Original Authority. The impugned order dated 23.02.2004 is hereby set aside without the order of refund of the amount already deposited by the petitioner. The respondent Board shall re-do the entire calculation and pass orders in accordance with law. It is made clear that the recalculation is applicable only in respect of compounding fee and anything excess will be adjusted towards the future consumption charges. Further, with regard to Civil liability, the respondent board is directed to give opportunity to the petitioner and thereafter pass appropriate orders.

8. With the above direction, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

kas

The Executive Engineer
Operation & Maintenance
CEDC / South /Adayar
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+1cc to Mr.S.K.Rameshwar, Advocate, S.R.No.53709

+1cc to Mr.V.Sanjeevi, Advocate, S.R.No.53703

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GP(CO)
CS/14/08/2019

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