

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.07.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.16045 of 2008
and
WMP.No. 1 and 2 of 2008

M/s. V. G. Paper and Boards Ltd- Unit II
Represented by its Chairman,
V. Genguswamy,
Swaminathapuram,
Madathukulam -642 113. ...Petitioner

vs

1. The Government of Tamil Nadu
Represented by its Secretary to Government,
Energy Department,
Fort St. George,
Chennai- 600 009.

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

3. Chief Electrical Inspector to Government
Thiru-Vi-Ka Industries Estate
Guindy
Chennai-600 032.

4. The Superintending Engineer
Udumalpet Electricity Distribution Circle
Udumalpet.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of certiorarified mandamus or or any other appropriate writ, order or direction of like nature, calling for the records relating to the proceedings Lr.No.SE/UEDC/UDT/DFC/AO/HT/AS/AS3/F.TF-CONCESSION/D210/08 dated 24.06.2008 on the files of the 4th respondent and quash the same and consequently direct the 4th respondent to refund the excess amount remitted by the petitioner by giving effect to HT Tariff concession and pass such further or other orders.

For Petitioner : Mr. Ritachandrasekaran for
M/s. Aiyar and Dolia

For Respondents : Mr. J. Ramesh, AGP for R1
Mr S.K. Rameshwaran for R2 and R4

O R D E R

The case of the petitioner is that the Board of Directors of the petitioner company decided to set up a new project in the year 1995 and immediately thereafter, the petitioner made an application on 09.10.1995 for new HT service connection for maximum demand of 3500 KVA. The first respondent issued a G.O.Ms.No.29 (A2), Energy Department dated 31.1.1995 granting tariff concession for High Tension Industries to be set up in the area other than Madras Metropolitan Area. As per the above Notification, the concessional tariffs shall be charged for the first three years from the date, the consumer is given service connection. Subsequently, the first respondent issued G.O.Ms.No.17 dated 14.02.1997, withdrawing the High Tension Tariff Concession granted in the Government Order dated 31.01.1995, but stated that High Tension Industries set up in any area other than Madras Metropolitan Area before 15.02.1997 shall continue avail themselves of the said tariff concession until the expiry of the period of three years from the date on which the consumer is given service connection.

2. Thereafter, the petitioner company filed W.P.No.4953 of 1999 before this Court for issuance of Writ of Mandamus directing the Tamil Nadu Electricity Board to extend the tariff concession in respect of High Tension Service Connection to the petitioner in terms of Government Order dated 31.01.1995 and the amendment Government Order dated 14.02.1997. This Court by its order dated 23.04.1999 disposed of the Writ Petition and observed that it is for the individual industry to establish before the Board that there were ready and applied for power connection on or before 14.02.1997 and if they satisfy the Board, they are entitled for tariff concession for the full period of three years. Aggrieved by the said order, the Electricity Board preferred appeals before this Court. By a common Judgment dated 19.07.2005, this Court disposed of those Writ Appeals by observing that individual industrial units shall approach the Board and if they satisfy that the unit was in fact set up before 15.02.1997, they will get the benefit of tariff concession and directed the Board to dispose of the claims for tariff concession by individual units within two months from the date of receipt of a copy of the said order. Aggrieved by the said order dated 19.07.2005, the Electricity Board preferred Special Leave Petition before the Hon'ble Supreme Court. By its

order dated 16.05.2008, the Hon'ble Supreme Court disposed of the batch of Civil Appeals and observed that the State which had granted the concession have power to withdraw the same and in view of existence of public interest, the doctrine of promissory estoppel would have no application and it is further observed in paragraph 45 of the Judgment " not only had started the 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 amounts asked for." are entitled to receive the tariff concession from the Electricity Board. However, contrary to the said observation of the Hon'ble Apex Court, respondent Board rejected the Petitioner's request for concession of tariff and passed the impugned order dated 24.06.2008 calling upon the petitioner company to pay a sum of Rs.1,13,65,691/- being the tariff concession arrears within a period of 15 days. Aggrieved by the above said order, the present Writ Petition is filed.

3. The learned counsel for the petitioner would submit that though the petitioner had made the application on 09.10.1995, the second respondent Board accorded new HT service connection on 19.08.1996 and the petitioner also remitted Rs.10,50,000/- towards Earnest Money deposit on 11.09.1996. The petitioner also informed the fourth respondent its readiness on 18.09.1996 to the effect that the civil works were completed, but necessary equipments were required to be installed. Subsequently, by proceedings dated 1.09.1997, the fourth respondent demanded the petitioner to remit Rs.5,50,945/- towards development charges, etc., which was remitted by the petitioner on 3.9.1997. Thus, on remittance of all required amounts and with all infrastructure and installations in accordance with the regulations of fourth respondent for the purpose of obtaining service connection. Despite this, the High Tension electricity supply was effected by the fourth respondent belatedly on by on 12.01.1998.

4. The learned counsel for also submits that a certificate issued by the Superintendent of Central Excise on 20.02.1998, certifies that the petitioner had commenced its Commercial production from 28.01.1998 as per RGI Register under Registration Certificate No.356/97, dated 29.12.1997.

5. While so, the Hon'ble Supreme Court by its verdict dated 16.05.2008 in a batch of Appeals, while dealing with the proviso to the amended Notification dated 14.02.1997, held that the concession to be extended not only to the companies, who commenced commercial production before 14.02.1997, but also who had applied and were otherwise ready to take electrical connections having deposited the amounts asked for. In the present case, the application to the 2nd respondent was made on

09.10.1995, however service connection was effected by the fourth respondent on 12.01.1998. In such circumstances, on the basis of the decision of the Hon'ble Apex Court, the petitioner is entitled to the benefit of concession.

6. Per Contra, learned Standing Counsel for the respondents submit that though the application was made in the year 1995, however on the date of application, the construction work and installation of machineries were not completed. The records show that after completion of infrastructure and installation of machineries, the service connection was effected only on 12.01.1998, which is after the cut off date viz. 14.02.1997 and therefore the petitioner is not entitled for the concession.

7. On a perusal of the series of events, referred by the learned counsel for the petitioner, it reveals that though the petitioner made the application in the year 1995. On 09.06.1997, the petitioner sent a letter to the second respondent, in which it is categorically stated that the civil works and erection of machineries were almost completed and the petitioner have planned to commission their plant in the first week of July 1997 and was also intimated to the fourth respondent in their letter dated 03.03.1997. On a perusal of the letter dated 09.06.1997, it is clear that by that time, the petitioner had not completed the civil works and erection of machineries. Further by letter dated 15.11.1997 addressed to the Chief Electrical Inspector, the petitioner informed that their Electrical Contractor completed the erection of H.V and M.V. equipment. On a perusal of the above letter, it is clear that even on 15.11.1997, HV and MV equipment was not erected in the petitioner's Mill. In the absence of erection of HV and MV Plant, it was impossible to effect service connection in favour of the petitioner. Admittedly, as per the certificate dated 20.02.1998, the Superintendent of Central Excise Department confirmed that the commercial production of the petitioner was commenced on 28th January 1998. Therefore, following the cut off date viz. 14.02.1997, as laid down by the Hon'ble Supreme Court, the petitioner is not entitled to the relief sought for and accordingly, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mrn

To

1. The Secretary to Government,
The Government of Tamil Nadu
Energy Department,
Fort St. George,
Chennai- 600 009.

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

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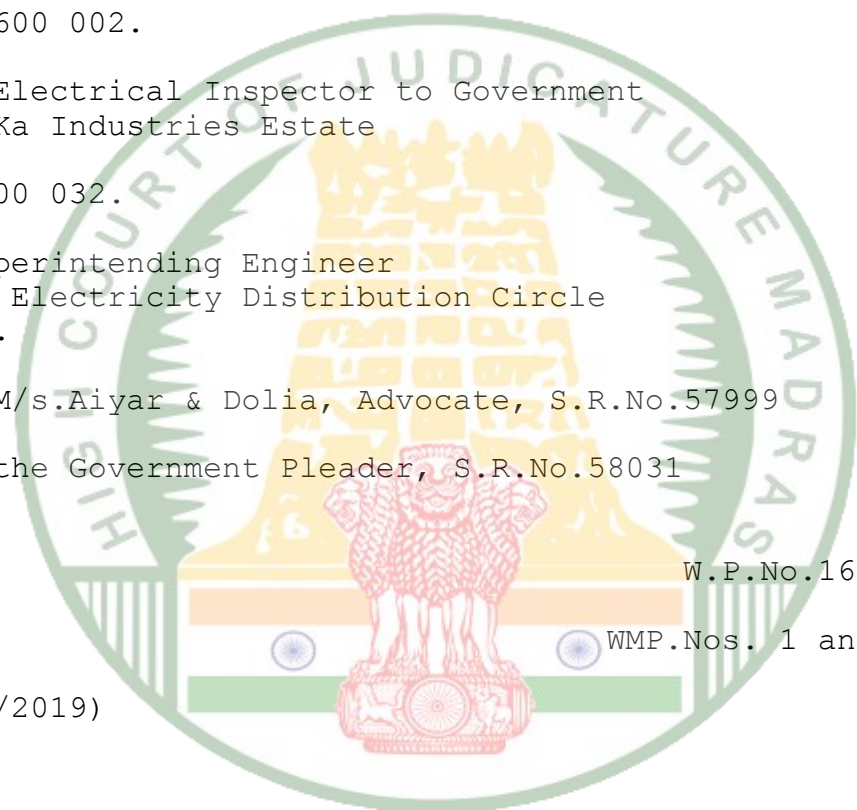
4. The Superintending Engineer
Udumalpet Electricity Distribution Circle
Udumalpet.

+1 cc to M/s.Aiyar & Dolia, Advocate, S.R.No.57999

+1 cc to the Government Pleader, S.R.No.58031

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and
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NRJK(CO)
SSM(17/09/2019)

The seal of the High Court of Judicature Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion standing in front of it. The lion is facing forward and is flanked by two smaller lions. The entire emblem is set against a green background with a white border. The words "HIGH COURT OF JUDICATURE MADRAS" are written in a circular path around the central image. Below the seal, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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