

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2020

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SUBRAMONIUM PRASAD

W.A.No.4130 of 2019
and C.M.P.No.25793 of 2019

- 1.Tamil Nadu Electricity Board,
Rep. by its Chairman, Anna Salai,
Chennai 600 002.
- 2.The Superintending Engineer,
Coimbatore Electricity Distribution Circle/
South, Tamil Nadu Electricity Board,
Tatabad, Coimbatore 641 012. .. Appellants

-vs-

- 1.Sanpreet Castings (P) Ltd.,
Rep. by its Managing Director.
- 2.State of Tamil Nadu,
Rep. by its Secretary to Govt. of Tamil Nadu,
Energy Department, Fort St.George,
Chennai 600 009. .. Respondents

Appeal filed under Clause 15 of the Letters Patent against the order dated 06.09.2019 passed in W.P.No.10540 of 2011 on the file of this Court.

Prayer in W.P.No.10540 of 2011 : Petition filed under Article 226 of the Constitution of India praying for the issue of a writ of certiorarified mandamus Calling for the records relating to the Order of the third respondent in letter No.SE/CEDC/S/CBE/DFC/AO/Rev/HT/AS/F.TF Concessions/Sanpreet/D 24/09 dated 29.08.2009 and quash the same and consequently direct the respondents to grant the tariff concession to the petitioner as per G.O.Ms.No.29 Energy Department dated 31.01.1995 read with G.O.Ms.No.17 Energy Department dated 15.02.1997 for a period of three 3 years from the date of service connection to the petitioner and consequently refund the excess amount paid by the petitioner

For Appellant

: Mr.N.Damodaran

JUDGMENT

(Delivered by Subramonium Prasad, J.)

The instant appeal is filed by the Tamil Nadu Electricity Board challenging the order dated 06.09.2019 passed in W.P.No.10540 of 2011, by which the learned Single Judge has quashed the order dated 29.08.2009 passed by the Electricity Board and has directed the appellants/respondents to grant tariff concession to the first respondent/writ petitioner as per G.O.Ms.No.29, Energy Department, dated 31.01.1995 read with G.O.Ms.No.17, Energy Department, dated 15.02.1997.

2.The material on record indicates that the first respondent / writ petitioner manufactures Cast Iron Castings and the factory uses an induction furnace. The first respondent/writ petitioner applied for HT service connection on a maximum demand of 450 KVA by paying necessary fees. By Board proceedings dated 20.07.1996, administrative approval was granted and the writ petitioner was asked to deposit a sum of Rs.1.35 lakhs towards Earnest Money Deposit. The money was deposited. The plant was fully ready and the production started, for which the writ petitioner purchased two generator sets of a capacity of 125 KVA and 320 KVA respectively.

3.While so, the Superintending Engineer, Coimbatore Electricity Distribution Circle/South, by an order dated 18.03.1997, cancelled the application of the petitioner for the service connection with a demand of 450 KVA. On a request made by the writ petitioner, the cancellation was revoked and the petitioner was asked to deposit a further sum of Rs.1,95,100/-. The supply of electricity in the High Tension service connection eventually started in 2000, even though the industry had been set up and it had started functioning before February 1997.

4.The Tamil Nadu Electricity Board issued an letter dated 17.08.2000, whereby the new HT industries set up in any area after 15.02.1997 shall not be eligible for new Industries Tariff concession. The appellant/writ petitioner made a request for new tariff concession on the ground that it had set up its unit prior to 15.02.1997 and therefore, the appellant/writ petitioner is entitled to the tariff concession on the ground that the unit had been set up after February 1997. The said request was rejected.

5. The material on record discloses that the letter refusing to grant tariff concession for industries which the units were set up prior to 15.02.1997, but the supply of electricity was given after February 1997, was challenged in the High Court by filing W.P.No.16516 of 2000. The writ petition was allowed and the letter dated 17.08.2000 was quashed. The material on record further discloses that the matter was taken on appeal in W.A.No.290 of 2008 and the Division Bench by an order dated 23.12.2008 had affirmed the order of the learned Single Judge stating that the issue stands covered by the judgment of the Hon'ble Supreme Court in Tamil Nadu Electricity Board and another vs. Status Spinning Mills Limited and another, reported in (2008) 7 SCC 353.

6. By filing the instant writ petition, the respondent/writ petitioner has challenged the rejection of the concession tariff to it. The learned Single Judge held that the issue already stands covered by the earlier orders of this Court and that the appellants had rejected the request of the petitioner without applying their mind and accordingly, dismissed the writ petition. This order is under challenge in the instant writ appeal.

7. When confronted the learned counsel for the appellants with a question as to whether the instant case is squarely covered by the judgment of the Hon'ble Supreme Court in the case of Status Spinning Mills Limited (supra), he had no answer. We have perused the judgment of the Hon'ble Supreme Court and we find that the said judgment covers the issue in question completely. It has been held in the said judgment of the Hon'ble Supreme Court that all what is required was that the industry must be set up. Para 43 of the said judgment reads as under:-

"43.The proviso is an exception to the main clause whereas all industries which were set up on or after 15th February become wholly ineligible for any tariff concession but those who had set up prior thereto shall continue to avail themselves of the said tariff concession. Legally, those who had not become consumer of electrical energy, but were the potential consumers, they had not only applied for it but they were and, in fact, some of them has also been gone into commercial production. Once they have set up the high tension industries and who had gone up for commercial production must be held to have set up the high tension industries. Once they have set up the high tension industries after 31st March, 1995, they became entitled to the benefit of concessional tariff for a period three years. Such concession was to be availed by them from the date of grant of service connection. If they

had already been granted service connection, they would continue to avail themselves of the said tariff concession."

8. It is not in dispute that the writ petitioner's unit had started functioning prior to 15.02.1997 and therefore, the case of the writ petitioner is identical to the cases challenged before this Court. In this view of the matter, we find no infirmity in the order of the learned Single Judge.

9. In view of the above, the writ appeal is dismissed. No costs. Consequently, C.M.P.No.25793 of 2019 is also dismissed.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

sra

To

- 1.The Secretary to Govt. of Tamil Nadu,
Energy Department, Fort St.George,
Chennai 600 009.
- 2.The Chairman,
Tamil Nadu Electricity Board,
Anna Salai, Chennai 600 002.
- 3.The Superintending Engineer,
Coimbatore Electricity Distribution Circle/
South, Tamil Nadu Electricity Board,
Tatabad, Coimbatore 641 012.

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VSN II (CO)
GMY (06/03/2020)