IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.11233 to 11235 of 2016
and
W.M.P.Nos.9745, 9746, 9748,
9749, 9751 & 9752 of 2016

M/s.Asian Fabricx (P) Ltd.,
Solar Power Generator No.003,
No.746/1&2, 751/1&2,
Manmangalam, Semmadai,
Karur - 06, Rep. by its Authorised Signatory
S.Senthil Kumar

... Petitioner in
W.P.Nos.11233 & 11235 of 2016

K.Subramanian,
Solar Power Generator No.004,
292, Mahatma Gandhi Road,
Karur - 02.

... Petitioner in
W.P.No.11234 of 2016

Vs.

1. Tamil Nadu Generation & Distribution Corporation Limited
   rep. by its Chairman & Managing Director
   5th Floor, NPKKR Maligai
   144, Anna Salai Chennai 600 002

2. State Load Dispatch Centre
   TANTRANSCO
   144, Anna Salai, Chennai 600 002

3. Tamil Nadu Generation & Distribution
   Corporation Limited
   Represented by the Director (Finance)
   144, Anna Salai
   Chennai 600 002

4. Tamilnadu Transmission Corporation Ltd.
   Represented by its Managing Director
   144, Anna Salai
   Chennai 600 002

5. Tamil Nadu Electricity Regulatory Commission
   No 19A, Rukmini Lakshmipathy Salai,
   Egmore, Chennai – 600 008.

6. Superintending Engineer,
   Karur Electricity Distribution Circle,
   Karur.

7. Accounts Officer,
   Karur Electricity Distribution Circle,
   Karur. ... Respondents

WP No.11233 of 2016: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the third respondent herein in Lr.No.CFC/FC/REV/DFC/ AAO.HT/AS-3/D.No.166/14 dated 25.11.2014 and all consequential demands for payment of scheduling and System Operation charges including the impugned demand issued by the 6th respondent herein in Lr.No.SE/KEDC/KRR/DFC/AS/HT/F.SPG011/ D51/2015 dated 03.01.2015 and quash the same as being arbitrary, illegal and without authority of law and consequently direct refund of the sums collected towards Scheduling and System Operation charges from the petitioner together with interest at the same rate charged by the Respondents towards Belated Payment Surcharge.

WP No.11234 of 2016: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the third respondent herein in Lr.No.CFC/FC/REV/DFC/ AAO.HT/AS-3/D.No.166/14 dated 25.11.2014 and all consequential demands for payment of scheduling and System Operation charges including the impugned demand issued by the 6th respondent herein in Lr.No.SE/KEDC/KRR/DFC/AS/HT/F.SPG004/ D44//2015 dated 03.01.2015 and quash the same as being arbitrary, illegal and without authority of law and consequently direct refund of the sums collected towards Scheduling and System Operation charges from the petitioner together with interest at the same rate charged by the Respondents towards Belated Payment Surcharge.

WP No.11235 of 2016: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the third respondent herein in Lr.No.CFC/FC/REV/DFC/ AAO.HT/AS-3/D.No.166/14 dated 25.11.2014 and all consequential demands for payment of scheduling and System Operation charges including the impugned demand issued by the 6th respondent herein in Lr.No.SE/KEDC/KRR/DFC/AS/HT/F.SPG003/ D43/2015 dated 03.01.2015 and quash the same as being arbitrary, illegal and without authority of law and consequently direct refund of the sums collected towards Scheduling and System Operation charges from the petitioner together with interest at the same rate charged by the Respondents towards Belated Payment Surcharge.

For Petitioners	:	Mr.S.P.Parthasarathy (in all W.Ps)
For Respondents R1 to R4, R6 & R7	:	Mr.L.Jai Venkatesh Standing Counsel (in all W.Ps)
R5	:	No appearance

COMMON ORDER

The issue relates to the Scheduling and System Operation charges to be collected from the generators who are in 'Sale to Board' categories.

2.The learned counsel for the petitioner brought to the notice of this Court that for Bagasse based co-generation plants, the Hon'ble Appellate Tribunal for Electricity [APTEL] in its order RP.No.13 of 2013 dated 30.06.2014 in Appeal No.199 of 2012 & batch, held that the Scheduling and System operation charges are not applicable to sugar mills selling their entire powers to the distribution license.

3.In this context, the learned counsel for the petitioner relied on the order dated 24.05.2013 passed by the APTEL and the relevant paragraphs are extracted:

> "77. There are two types of Wind energy Generators. The first type of wind energy generators are those who supply their entire energy to the distribution licensees. The second type of wind energy generators are those who supply their energy mainly for captive use or to third parties by availing open access and also bank their energy with distribution licensee for reuse during the specified banking period. However, the payment for unutilized wind energy at the end of the specified banking period is made by the distribution licensee at the rates determined by the State Commission. For the first type of wind energy generators, the wheeling charges, line losses, banking charges, applicable demand charges

> and energy charges for captive use etc., are not relevant as these wind energy generators supply their entire energy at the delivery point directly to the distribution licensees. The charges as indicated in Regulation 8 are relevant to the second category of wind energy generators.
>
> 78. The reading of both the Regulations and the provisions of the wheeling agreement would make it evident that the tariff of the wind energy generators who have signed PPA for supply of their energy output to the distribution licensee would not be re-opened with subsequent revision of wind energy tariff. However, wheeling charges, line losses, transmission charges etc., for wind energy generators who supply their energy mainly for their captive consumption or for third party sale through open access has to be decided by the State Commission from time to time. The Wheeling charges, transmission losses, transmission charges, banking charges etc., are decided in the tariff order for the control period and during that control period the same charges would prevail. With subsequent revision in the open access charges by tariff order, new charges would become applicable to such wind energy generators who are supplying power through open access."

4. In yet another order and judgment of the Hon'ble APTEL in the South Indian Sugar Mills Association and others Vs. TNERC and others in RP No.13 of 2013 in Appeal Nos.199 of 2012 & batch dated 30.06.2014, the APTEL held as follows:

> "32. As pointed out by the Review Petitioners in respect of the Appellants sugar mills selling their energy to the distribution licensee in the impugned tariff order in respect of matters enumerated in para 8.2 would not be applicable.
>
> 33. In view of the above, it would be appropriate to hold that the provisions of the impugned tariff order enumerated in para 8.2 being matters enumerated in the Regulation 8 should not be made applicable to the sugar mills who sell their energy to the distribution licensee. Thus, the finding given in respect of this issue is modified to the said effect. Accordingly ordered."

5. However, it is informed that the said judgments are taken by way of an Appeal before the Hon'ble Supreme Court of

India by the respondent/Electricity Board and there is no interim order in force.

6. Admittedly, the Appeals are pending. This being the factum the order passed by the APTEL dated 24.05.2013 in Appeal No.197 of 2012 & batch and order and judgment of APTEL dated 30.06.2014 in RP No.13 of 2013 in Appeal Nos.199 of 2012 & batch stands extended in favour of the petitioner, however, subject to the final orders to be passed by the Hon'ble Supreme Court of India in the pending Appeals already filed by the respondent Electricity Board.

7. With these observations, these Writ Petitions stand disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

cse

To

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   Karur.

7. Accounts Officer,
   Karur Electricity Distribution Circle,
   Karur.

+3ccs to M/s.R.S.Pandiyaraj, Advocate, S.R.No.64644

W.P.Nos.11233 to 11235 of 2016

RGN(CO)
SU(04/01/2022)
SU(10/01/2022)