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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2021

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.20436 of 2018

and

W.M.P.Nos.24007 & 24008 of 2018

ITC Limited,
Having its Registered Office at
"Virgina House" 37 J.L.Nehru Road,
Kolkata 700 071 and its factory at SF No.423/5,
Vivekanandapuram, Mettupalayam Taluk,
Coimbatore 641 113
Rep.by its Divisional Chief Executive. ...Petitioner

Versus

1.Tamil Nadu Generation & Distribution
Corporation Ltd (TANGEDCO),
Rep.by its Chairman and Managing Director
144, Anna Salai, Chennai - 600 002.

2.The Superintending Engineer,
TANGEDCO, CBE EDC/North,
Coimbatore - 641 012.

3.Accounts Officer / Revenue,
TANGEDCO, CBE EDC /North,
Coimbatore - 641 012.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, to call for the records of the respondents relating to the Demand Notice dated 21.06.2018 bearing reference Lr.No.SE/CEDC/CBE/AAO/HT/A.1/F HTSC 235/D 354/18 and quash the same as illegal and forbear the respondents, their subordinates, men and agents from in any manner levying or enforcing Harmonic Compensation Charges for HTSC 235 belonging to the petitioner except in accordance with law.

For Petitioner : Mr.Shivathanu Muhan
for M/s.S.Ramasubramaniam & Asso

For Respondents: Mr.L.Jai Venkatesh
Standing Counsel



ORDER

This Writ Petition has been filed seeking for issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondents relating to the Demand Notice dated 21.06.2018 bearing reference Lr.No.SE/CEDC/CBE/AAO/HT/A.1/F HTSC 235/D 354/18 and quash the same as illegal and forbear the respondents, their subordinates, men and agents from in any manner levying or enforcing Harmonic Compensation Charges for HTSC 235 belonging to the petitioner except in accordance with law.

2. The petitioner is a Company inter-alia engaged in the business of manufacture of paper board. The petitioner requires continuous, uninterrupted electricity supply for its manufacturing activity which apart from being sourced from TANGEDCO is also being provided from the petitioner's captive generating plant at its factory and windmills at Tirupur District. The petitioner further submits that the 2nd respondent by letter dated 23.08.2013 indicated that adequate harmonic suppression equipment are to be provided by the petitioner to avoid dumping of harmonic beyond the limits specified by the Central Electricity Authority Regulations failing which compensation would be payable by the petitioner in respect of HTSC No.235. However, TANGEDCO had not carried out any measurement of harmonics for HTSC No.235. Subsequently, on 20.01.2015, TANGEDCO carried out harmonic measurements at the petitioner's factory in respect of HTSC No.235 and found that certain parameters were beyond the permissible limits. It is only after the measurement of harmonics conducted on 20.01.2015 by TANGEDCO that the petitioner was made aware of the requirement to install suitable harmonic suppression equipments based on the harmonic measurements recorded by TANGEDCO. Later, the petitioner installed suitable harmonic suppression equipment and requested TANGEDCO to measure the harmonics level. A harmonic test was conducted by TANGEDCO on 11.08.2015 and it was found that all parameters were within the permissible limits. After this test, there was no demand from the respondents towards harmonic compensation charges. Hence, after a period of nearly 2 ½ years, the 2nd respondent issued the show-cause notice dated 17.03.2018 wherein they have provided details of their demand towards Harmonic Compensation Charges for the months of January, February, March, April and August 2015 aggregating to Rs.48,45,248/-. By reply dated 20.04.2018, the petitioner categorically informed the 2nd respondent that their demand towards Harmonic Compensation Charges aggregating to Rs.48,45,258/- is illegal. However, by demand notice dated 21.06.2018, the 2nd respondent referring to the letter dated 23.08.2013 has indicated that sufficient 3 months notice was



provided by the said letter dated 23.08.2013. The said letter directed the petitioner to pay the amount of Rs.48,45,258/- towards Harmonic Compensation Charges within 7 days of receipt of the letter, failing which it will be included in the monthly CC bills without any further intimation to the petitioner. Hence, the petitioner is constrained to move the present writ petition.

3. The learned Standing Counsel appearing for the respondents would submit that the petitioner has been issued with three months notice dated 28.08.2013, calling upon the petitioner to provide adequate harmonic suppression equipment to avoid dumping of harmonics beyond the limit as specified by CEA regulations, failing which they shall be liable to pay 15% compensation charges. However, the petitioner failed to comply with the same and further an inspection was conducted on 20.01.2015 and it was found that the Total Harmonic Distortion for current is above its permissible limit of 8% specified by CEA regulation which the petitioner brought down the harmonic within the limits on 11.08.2015 and therefore, the petitioner is liable to pay the compensation charges @ 15% of the respective tariff from the date of measurement i.e., from 21.01.2015 to 11.08.2015 and thereby the respondents have rightly issued impugned demand notice and the petitioner without complying the same, rushed to this Court.

4. The learned counsel appearing for the petitioner would mainly contended that the impugned demand notice cannot be sustained since the demand for harmonic compensation charges pertaining to the period viz., January to April and August 2015, is clearly barred by limitation under Section 56 (2) of the Electricity Act, 2003. Therefore, the impugned demand notice is liable to be set aside.

5. Heard the learned counsel for the petitioner as well as the learned Standing Counsel appearing for the respondents and perused the materials available on records.

6. It is relevant to extract Section 56(2) of the Electricity Act, 2003, which reads as under:

"56 (2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied



7. A perusal of the impugned demand notice, it appears that the harmonic compensation charges for the period, January to April and August 2015 were levied only in the year 2018 ie., after a lapse of three years. As rightly contended by the learned counsel for the petitioner the impugned demand notice is not sustainable by virtue of Section 56(2) of the Electricity Act, 2003. A perusal of the above provision makes it clear that no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied. Therefore, the provision of Section 56 does not empower the respondents to recover any amount, if the period of two years has lapsed.

"9. Applying the aforesaid ratio to the facts of the present case, the licensee company raised an additional demand on 18.03.2014 for the period July, 2009 to September, 2011.

Section 56(2) did not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case of a mistake or bona fide error. It did not however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity



supply, for recovery of the additional demand.

As per Section 17(1)(c) of the Limitation Act, 1963, in case of a mistake, the limitation period begins to run from the date when the mistake is discovered for the first time.

In Mahabir Kishore and Ors. v. State of Madhya Pradesh,⁵ this Court held that :-

Section 17(1)(c) of the Limitation Act, 1963, provides that in the case of a suit for relief on the ground of mistake, the period of limitation does not begin to run until the plaintiff had discovered the mistake or could with reasonable diligence, have discovered it. In a case where payment has been made under a mistake of law as contrasted with a mistake of fact, generally the mistake become known to the party only when a court makes a declaration as to the invalidity of the law. Though a party could, with reasonable diligence, discover a mistake of fact even before a court makes a pronouncement, it is seldom that a person can, even with reasonable diligence, discover a mistake of law before a judgment adjudging the validity of the law." (emphasis supplied)

In the present case, the period of limitation would commence from the date of discovery of the mistake i.e. 18.03.2014. The licensee company may take recourse to any remedy available in law for recovery of the additional demand, but is barred from taking recourse to disconnection of supply of electricity under sub-section (2) of Section 56 of the Act. "

9. In the light of the above discussion, the impugned demand notice dated 21.06.2018 made by the respondents cannot be



sustained and hence, the same is quashed.

10. Accordingly, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

Pns

To:

1. Tamil Nadu Generation & Distribution Corporation Ltd (TANGEDCO),
Rep. by its Chairman and Managing Director
144, Anna Salai, Chennai - 600 002.
2. The Superintending Engineer,
TANGEDCO, CBE EDC/North,
Coimbatore - 641 012.
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SMI (CO)
SB(30/12/2021)