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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No. 886 of 2015

and

M.P.No.1 of 2015

Raagam Exports, HTSCNo.90 and 91
S.F.No.252, Kangayam Main Road,
Nallur, Tirupur - 641 606,
Rep. By its Manager,
S.Paramasivam

... Petitioner

Vs

1. Tamil Nadu Electricity Regulatory
Commission Rep. By its Secretary,
19-A, Rukmini Lakshmipathy Salai,
(Marshall's Road),
Egmore, Chennai - 600 008.
2. Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
Rep. By its Chairman and Managing Director,
144, Anna Salai, Chennai - 600 002.
3. The Superintending Engineer,
TANGEDCO,
Tirupur Electricity Distribution Circle,
Tirupur.

...Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Mandamus, calling for the records of the third respondent in his impugned demand notice Lr.No.SE/TEDC/TPR/AAO/DFC/F.HT/BOAB/D. /14 dated 23.12.2014 along with BOAB Audit slip no.208 seeking refund of to the encashment amount already paid to the petitioner towards unutilized banked wind energy for the period 2011-12 quash the same as illegal, arbitrary, without the authority of law, against the violation of principal of natural justice and against Electricity Act 2003.



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For Petitioner : Mr.S.P.Parthasarthy
For Respondents : Mr.L.Jai Venkatesh
Standing counsel for TANGEDCO

O R D E R

The learned counsel for the petitioner made a submission that the issues raised in this writ petition had already considered and an order was passed by Tamil Nadu Electricity Regulatory Commission and the learned counsel for the respondent also has not disputed the said fact.

2. The relevant portion of the findings of the Regulatory Commission in D.R.P.No.67 of 2014 dated 22.09.2020 stands extracted hereunder:

"8.2. The Commission is not inclined to accept the stand of the Respondent that the Cross Subsidy Surcharge for the adjusted units during the period in question is required to be collected necessarily before releasing of payment for surplus energy available at the end of the year. We are of the view that the payment for the unutilized energy and collection of Cross Subsidy Surcharge are two different issues which cannot be interlinked as they operate on different spheres. The payment for the unutilized banked energy purely arises out of supply of energy by a generator to a distribution licensee and it is governed by the relevant Tariff Order. However, the collection of Cross Subsidy Surcharge arises out of failure to adhere to the Electricity Rules, 2005 and stands on a different footing. Hence, we find that there is no reason to interlink these two issues. Insofar as the present petition is concerned, the grievances of the petitioner is that the payments have not been made for the unutilized energy and hence the issue cannot travel beyond the same and it has to confine itself to the fact whether payments have been made by the licensee or not. On perusal of the records, we find that no such payment has been made for unutilized banked energy and the same is withheld on account of the issue of Cross Subsidy Surcharge. We are to observe here that it is not appropriate to withhold the payment due on



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unutilized banked energy on such ground of non-payment of Cross Subsidy Surcharge. In such circumstances, we order that the payment for the unutilized banked energy in full as prayed for along with interest @ 1% per month to be released within 30 days time. With these observations and directions, the petition is allowed.
ORDER:-

In view of the above findings, the petition is allowed as above."

3. The said findings of the Regulatory Commission has been followed in yet and another case in D.R.P.No.1 of 2016. The Board has also not preferred any further appeal and the issues reached finality.

4. Thus, the petitioner is entitled for the same relief. Accordingly, the impugned order passed by the 3rd respondent in proceedings in Lr.No.SE/TEDC/TPR/AAO/DFC/F.HT/BOAB/D. /14 dated 23.12.2014 stands quashed and consequently, the writ petition stands allowed. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
Tamil Nadu Electricity Regulatory
Commission,
19-A, Rukmini Lakshmipathy Salai,
(Marshall's Road),
Egmore, Chennai - 600 008.
2. The Chairman and Managing Director,
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
144, Anna Salai, Chennai - 600 002.



3. The Superintending Engineer,
TANGEDCO,
Tirupur Electricity Distribution Circle,
Tirupur.

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+1cc to Mr.Pandiyaraj, Advocate, S.R.No.62783

W.P.No. 886 of 2015

MG (CO)
SU (08/12/2021)