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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2021

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THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.Nos. 27039 & 27128 of 2019
and

W.M.P.Nos.26489, 26492, 26504 & 26505 of 2019

1.M/s. Creamline Dairy Products Limited,
Registered Office:
6-3-1238/B/21, Asif Avenue,
Raj Bhavan Road, Somajigunda,
Hyderabad-500 082,
Factory at:
Survey No.39/1, Melmaruvathur Road,
Biruthur Village, Vandavasi Taluk,
Tiruvannamalai District,
Tamil Nadu.

... Petitioner in
WP.27039/2019

2.M/s.Dodia Dairy Limited,
Registered Office:
8-2-293-82/A, Plot No.270-Q,
Road No.10-c, Jubilee Hills,
Hyderabad, Telangana-500 033.
Factory at:
Survey No.71/2A2,
Keezhasathamangalam Village,
Vandavasi Taluk,
Tiruvannamalai - 604 408,
Tamil Nadu.

... Petitioner in
WP.27128/2019

Versus

1.Tamil Nadu Generation & Distribution
Corporation Limited (TANGEDCO),
10th Floor, 144, Anna Salai,
Chennai - 600 002.

2.The Superintending Engineer,
Villupuram Electricity Distribution Circle,
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
Vandavasi, Tamil Nadu.



3. The Assistant Engineer,
Villupuram Electricity Distribution Circle,
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
Vandavasi, Tamil Nadu.

... Respondents
[in both WPs]

Prayer in W.P.No.27039 of 2019:

Writ Petition filed under Article 226 of the Constitution of India praying to issue of Writ of Certiorarified Mandamus, calling for the records of the respondents relating to the demand of Rs.6,32,707/- raised in the Notice (K.No.74 vu.mi.po/north/ko-audit/va.ma.po.1/19-20), dated 24.06.2019 and confirmed by letter (K.No.127 vu.mi/e&pa/vadavur/ko.Audit/Rs.1//19-20), dated 06.08.2019 issued by the 3rd respondent and quash the same as illegal and forbear the respondents, their subordinates, men and agents from in any manner levying and/or collecting electricity charges under Low Tension Tariff V (Commercial) for the petitioner's Low Tension Service Connection No.261-008-572.

Prayer in W.P.No.27128 of 2019:

Writ Petition filed under Article 226 of the Constitution of India praying to issue of Writ of Certiorarified Mandamus, calling for the records of the respondents relating to the demand of Rs.3,02,470/- raised in the Notice (K.No.vu.mi.po/e&pa/south/va.vasi/va.ta.review/ko.1 No.50), dated 25.06.2019 and confirmed by letter (K.No.77/vu.mi.po/e&pa/the/va.vasi/ko.Board Audit/2019), dated 05.08.2019 issued by the 3rd respondent and quash the same as illegal and forbear the respondents, their subordinates, men and agents from in any manner levying and/or collecting electricity charges under Low Tension Tariff V (Commercial) for the petitioner's Low Tension Service Connection No.262-013-1644.

For Petitioner :	Mr.S. Ramasubramaniam
(in both Wps)	For S. Ramasubramaniam & Associates
For Respondents:	Mr. L. Jaivenkatesh
(in both WPs)	Standing Counsel for TNEB

COMMON ORDER

Writ Petition No.27039 of 2019 has been filed to issue a Writ of Certiorarified Mandamus, calling for the records of the respondents relating to the demand of Rs.6,32,707/- raised in



the Notice (K.No.74 vu.mi.po/north/ko-audit/va.ma.po.1/19-20), dated 24.06.2019 and confirmed by letter (K.No.127 vu.mi/e&pa/vadavur/ko.Audit/Rs.1//19-20), dated 06.08.2019 issued by the 3rd respondent and quash the same as illegal and forbear the respondents, their subordinates, men and agents from in any manner levying and/or collecting electricity charges under Low Tension Tariff V (Commercial) for the petitioner's Low Tension Service Connection No.261-008-572.

2. W.P.No.27128 of 2019 has been filed to issue a Writ of Certiorarified Mandamus, calling for the records of the respondents relating to the demand of Rs.3,02,470/- raised in the Notice (K.No.vu.mi.po/e&pa/south/va.vasi/va.ta.review/ko.1 No.50), dated 25.06.2019 and confirmed by letter (K.No.77/vu.mi.po/e&pa/the/va.vasi/ko.Board Audit/2019), dated 05.08.2019 issued by the 3rd respondent and quash the same as illegal and forbear the respondents, their subordinates, men and agents from in any manner levying and/or collecting electricity charges under Low Tension Tariff V (Commercial) for the petitioner's Low Tension Service Connection No.262-013-1644.

3. The case of the petitioners is that the petitioners/Companies are manufacturers of dairy products. They have several processing units, one of which is located at Survey No.39/1, Melmaruvathur Road, Biruthur Village, Vandavasi Taluk, Tiruvannamalai District. The Companies are being supplied electricity by Low Tension (LT) Service Connections. The petitioners/Companies' premises belonged to one Mrs.Rani, who had leased out the same in the year 2010 to the petitioners. The said companies are engaged in manufacturing activities, such as, milk procurement, processing the milk by way of chilling operations, storage of such processed milk etc. Subsequently, the processed milk is being stored in silos and then transported to another unit for further processing and value addition in order to produce several varieties of the final product. Therefore, it is evident that the activities undertaken by the petitioners/companies inter alia involves the first step of the manufacturing process viz., chilling the milk by using the "Plate Heat Exchanger" technology. Moreover, the petitioners have been paid electricity charges under Industrial Tariff viz., Low Tension Tariff, III-B. In such circumstances, the 3rd respondent/TANGEDCO had issued a notice dated 24.06.2019 demanding an amount of Rs.6,32,707/- for the period from February 2015 to February, 2019, and Rs.3,02,470/- for the period from November 2017 to April 2019 in W.P.No.27128/2019 for the applicable tariff would not be Low Tension Tariff III-B (Industrial), and but Low Tension Tariff V (Commercial). Hence, the respondents had unilaterally and without any notice or opportunity being afforded to the petitioners, had revised the tariff applicable to the Low Tension Service Connections



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supplying electricity to the factories of the petitioners from LT III-B (Industrial) to LT-V (Commercial). However, the petitioners have requested the respondents to withdraw their demand for Rs.6,32,707/- vide notice dated 24.06.2019 and Rs.3,02,470/- vide notice dated 25.06.2019 in W.P.No.27128 of 2019. In response to the reply dated 23.07.2019 received by the third respondent, a hand written letter dated 06.08.2019 was issued by the third respondent reiterating that there is no industrial activities being undertaken at the said factory of the petitioner. Apart from the revision of tariff being illegal, the same being made retrospectively applicable is unsustainable in law. Nevertheless, the demand based on the illegal revision tariff with retrospective effect for the aforesaid period raised by the respondents, vide notices dated 24.06.2019 and 25.06.2019 are barred by limitation. As per the provisions of the Section 56(2) of the Electricity Act, 2003, the respondents are not entitled to recover any charges for electricity beyond a period of two years, unless such charges for electricity are continuously shown as arrears. Therefore, the demand for a period beyond two years, would be barred by limitation as per Section 56(2) of the Electricity Act, 2003. Hence, the demand raised by the respondents to revise the tariff with retrospective effect from Low Tension Tariff III-B (Industrial) to Low Tension tariff-V (Commercial), is not legally or factually sustainable. As per the provisions of the Tariff Order, it is mandatory to produce the Udyog Aadhar Memorandum from the District Industries Centre by the intending consumers applying for service connection under LT tariff III-B claiming to have established the industries engaged in the manufacturer or production of goods. In cold storage units, no manufacturing activities or production of goods is carried out. Hence, the LT tariff III B is not applicable in respect of cold storage units. Hence, the hand written letter dated 06.08.2019 in W.P.No.27039 of 2019 and 05.08.2019 in W.P.No.27128 of 2019 issued by the 3rd respondent further directing that the failure to pay the illegal demand of Rs.6,32,707/- and Rs.3,02,470/- based on the wrongful revision of tariff mentioned above, would result in disconnection of the electricity supply to the factory of the petitioners. Aggrieved by the same, the writ petitioners have come forward with the present writ petitions.

4. The learned counsel appearing for the petitioners submitted that the very same issue has been dealt with by the Tamil Nadu Electricity Regulatory Commission (TNERC) in T.A.No.1 of 2020 by order dated 02.02.2021 in W.P.(MD).Nos.23845 and 21945 of 2019 and arrived at a conclusion that "Cold Storage Units" are entitled to be classified under Low Tension category and accordingly, shall be classified under LT - III B only.



5. Heard the learned counsel for the petitioners as well as the learned Standing Counsel appearing for the respondents 1 to 3 and perused the materials available on record.

6. It is useful to extract the relevant portion of the above order dated 02.02.2021:-

7.10. the moot question herein is whether the Cold storage units have to be classified under LT - III-B or LT - V. Though this dispute has arisen due to conversion of tariff of respondent No.1 service from LT tariff III-B to LT-V as a result of TANGEDCO's internal communication vide U.O.No.CFC/reg.Cell/FC/SE/RC/F.Tariff clarification/D.17/19, dt.19.01.2019, it is an admitted fact by both the parties that still many services for cold storage are under LT III-B only.

7.12. In view of the above, considering the importance of Cold storage in preserving the food and agricultural products and in resolving the industrial codification issue in line with the tariff categorized in respect of Cold storage units under HT category, we conclude that the 'Cold Storage Units' are entitled to be classified under LT category and accordingly, shall be classified under LT-III B only.

7.13. TANGEDCO is, therefore, directed to rework the billing of the 'Cold Storage Units' under LT III B from 11.08.2017 and if it is found that therein any excess billing, the same may be refunded to the consumer by way of adjustment in the ensuing bills in equal installments commensurate with the bi-monthly/monthly CC bills. ordered accordingly.

7. In view of the above order of the TNERC in similar cases, I am inclined to set aside the impugned orders. Accordingly, the impugned orders dated 02.02.2021 and 25.06.2019 are hereby set aside and the matter is remitted back to the first respondent for fresh consideration. Further, the first respondent is directed to pass appropriate orders, on merits and in accordance with law, after issuing notice to the petitioners, within a period of four weeks from the date of receipt of a copy of this order.



8. costs.
closed.

Both the Writ Petitions are disposed of as above. No
Consequently, connected Miscellaneous Petitions are

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Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

msm

To

1.Tamil Nadu Generation & Distribution
Corporation Limited (TANGEDCO),
10th Floor, 144, Anna Salai,
Chennai - 600 002.

2.The Superintending Engineer,
Villupuram Electricity Distribution Circle,
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
Vandavasi, Tamil Nadu.

3.The Assistant Engineer,
Villupuram Electricity Distribution Circle,
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
Vandavasi, Tamil Nadu.

+2cc to Mr.S. Ramasubramaniam, Advocate, S.R.No.65660,65659
+2cc to Mr. L. Jaivenkatesh, Advocate, S.R.No.66532,66533

W.P.Nos. 27039 & 27128 of 2019

PL(CO)
CT 08/02/2022