IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2022

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.Nos.3467 & 3473 of 2022 &
WMP.Nos.3586, 3587, 3591 & 3594 of 2022

M/s.A Plus Exports Pvt Ltd.
Rep by its Director
Mr.Mohammed Habib ...Petitioner in WP.No.3467 of 2022

Mr.M.D.Habib ...Petitioner in WP.No.3473 of 2022

Vs.

The Assistant Executive Engineer
Operation and maintenance,
Ambattur Indsutrial Estate
CEDC-West- TANGEDCO
Chennai- 600 098. ..Respondent in both WPs

Prayer in W.P.No.3467 of 2022: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of certiorarified mandamus calling for records of the respondent in and connected with final assessment order passed under section 135 of electricity Act 2003 dated 09.02.2022 in letter No. AEE / O and M / ABT IE / F.NO.TOE/ D.NO. 56 / 2022 quash the same and direct the said respondent restore the electricity connection in SE No. 036 - 001- 637 / TF- III B to the Petitioner on such terms and conditions as may be deemed fit by this Honble court.

Prayer in W.P.No.3473 of 2022: Writ Petitions filed under Article 226 of the Constitution of Indi3a, to issue a Writ of certiorarified mandamus Calling for records of the respondent in and connected with final assessment order passed under section 135 of electricity Act 2003 dated 09.02.2022 in letter No. AEE / O and M / ABT IE / F.NO.TOE/ D.NO. 57 / 2022 quash the same and direct the said respondent restore the electricity connection in SE No. 036 - 001- 641 / TF- III B to the Petitioner on such terms and conditions as may be deemed fit by this Honble court.

For Petitioners : Mr.B.Satish Sundar

For Respondents : Ms.Keerthana Shenoi for
Mr.L.Jai Venkatesh
Standing Counsel

C O M M O N O R D E R

Ms.Keerthana Ashok, learned counsel for Mr.L.Jai Venkatesh, learned Standing Counsel accepts notice for the respondents and is armed with sufficient instructions enabling final disposal of the matter.

2. The petitioners have a three phase service connection and low tension supply with a load of 112 kilowatt, the approved tariff rate for which is Rs.6.35 per unit at their premises at No.26, 1st Street, SIDCO Industrial Complex, Ambattur, Pattravakam, Chennai-600098(premises). They had earlier faced allegations of misuse of tariff and theft of energy pursuant to an inspection conducted on 02.02.2022 by the respondents in their premises.

3. According to the petitioners, there was no merit in the allegations levelled as aforesaid as they had entered into a lease agreement with a pharmaceutical company on 23.04.2019 and has, consequent thereto, sought change in tariff classification from 'industry' to 'commercial'.

4. While the petitioner relies upon a letter dated 18.06.2019, ostensibly filed before the respondent in this regard, such a letter was not submitted at all as there is no acknowledgment of the same and it is the case of the respondent that reference to the aforesaid letter is an afterthought.

5. However, I hardly need dwell further upon this issue, as there is, admittedly, a procedural flaw in the impugned proceedings. A provisional assessment was made on the petitioner on 02.02.2022, proposing to confirm the allegations made initially of theft of energy and quantifying the loss caused on this account.

6. Objections, if any, of the petitioner, were called for, to be filed within seven days from date of receipt of the provisional assessment order. The order also states that the petitioner may chose to appear in person or through an authorized representative for further enquiry before the Officer.

7. The petitioner sought compounding of the offence in terms of Section 152 of the Electricity Act, 2003 and simultaneously filed objections on 07.02.2022. Inter alia, at paragraph 9.2, the petitioner seeks a personal hearing of its counsel, details of whom have been furnished in the objection itself. Admittedly, the objections have been received on

08.02.2022 by the Authority.

8. The impugned order of final assessment has been passed on 09.02.2022 confirming the proposal made in the provisional assessment order. The procedure followed by the Authority appears to be in line with the procedure set out in terms of Rule 23 coming under Chapter IV, titled 'Tampering, Distress or Damage to Electrical Plant, Meters etc.' of the Tamil Nadu Electricity Regulatory Commission's Code and Regulations, 2015 which in para 12 to 16 set out the procedure in this regard, reading as follows:

(A) Tampering of meters and theft of electricity:

....

(12) Within seven working days from the date of submission of such accused person’s reply, if made within the seven working days from the date of receipt of provisional assessment order, the authorized officer shall arrange a personal hearing with such accused person. For this purpose the authorized officer shall serve a three days notice to such accused person to allow him for a personal hearing and shall also allow any additional submission of new facts or documents if any, during the course of hearing by such accused person. If such accused person does not respond to the notice in the matter, the authorized officer shall proceed to issue the final assessment order, as per the procedure specified herein after.

(13) Before the personal hearing, the authorized officer before whom personal hearing shall be conducted, shall analyze the case after carefully considering all the documents, submissions by the accused person, facts on record and the consumption pattern, whatever available.

(14) The authorized officer shall also compute the quantum of energy consumption for the past twelve months. The Assessment Officer may study the energy consumption pattern of the Service Connection concerned for the past one year or more. If necessary, it may also be compared with the load/production pattern or output of the service connection. In case of suspected theft, if consumption pattern is commensurate with the assessed consumption or in case of the decision that the case of suspected theft is not established, no further proceedings shall be taken and the decision shall be communicated to the accused person under proper receipt within three working days and the supply to the premises shall be restored

forthwith.

(15) Considering the facts submitted by the accused person, the authorised officer shall issue, within seven working days from the date of enquiry, a final assessment order in Form 10 in Appendix to this code. If the accused person does not respond to the personal hearing, the authorised officer shall issue a final assessment order within fifteen days from the issuance of provisional assessment order. This speaking order shall contain a brief of inspection report, submissions made by accused person in his written reply as well as during his personal hearing and reasons for acceptance or rejection of the same and the assessment charges as per sub-regulation (12). In the final assessment order, charges, if any, paid by the accused person during the period for which the assessment is done shall be duly credited, if arranted, to avoid duplication of billing for such period.

(16) The final assessment amount and the last date should be clearly stated in the speaking order. A copy of the speaking order shall be handed over to the accused person under proper receipt on the same day.

9. As per Clause 12, the Authorized Officer is to 'arrange a personal hearing with the accused person within 7 days from the date of receipt of the reply/objection'. The use of the word 'arrange' connotes that a notice of hearing must be issued, fixing a specific date and time for the conduct of such personal hearing. In the provisional assessment order passed in this case, the authority merely calls upon the noticee to appear in the interim, without stipulating a specific date and time for such hearing.

10. It cannot be expected that the officer would be available at all times at his desk, to entertain the noticee and afford a hearing. The offer in the provisional assessment order to the effect that the noticee may 'also chose to appear in person or through an authorized representative with relevant documents for an enquiry before the undersigned' is to my mind merely service to the statutory mandate.

11. Sub-Clause 15 states that the final order of assessment order is to be a speaking order passed in consideration of the objections set out by the noticee and the facts involved. This requirement is also seen to be denied on a perusal of the impugned final assessment order which is cryptic and does not advert, let alone deal with, any of the objections set out in the explanation tendered by the petitioner.

12. For the reasons as above, impugned orders dated 09.02.2022 are set aside. Learned counsel for the respondents would assure the Court that the petitioner will be heard and final orders passed in line with the statutory mandate as noticed in the preceding paragraphs.

13. Learned counsel for the petitioner offers to pay a portion of the demand under the impugned orders dated 09.02.2022 well as a pre-condition for the personal hearing to be conducted by the respondent.

14. Let 50% of the demand be deposited within a period of two weeks from today. Upon receipt of the same, a personal hearing shall be conducted and orders passed within a period of four weeks from the date of personal hearing. With the setting aside of the impugned orders, as above the supply of the electricity is to be resumed forthwith. It is made clear that if the 50% of the disputed demand as offered above is not paid within two weeks from today, the direction for resumption of connection shall stand withdrawn.

15. With the above directions, these writ petitions are disposed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

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To

The Assistant Executive Engineer
Operation and maintenance,
Ambattur Indsutrial Estate
CEDC-West- TANGEDCO
Chennai- 600 098.

+2cc to M/s.B.Satish Sundar, Advocate SR.No.10956, 10957
+2cc to Mr.L.Jaivenkatesh, Advocate SR.No.11049

W.P.No.3467 & 3473 of 2022 &
WMP.No.3586, 3587, 3591 & 3594 of 2022

PMK(CO)
CB(11/04/2022)