IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2022

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THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.P.No.22806 of 2016
and
W.M.P.Nos.19487 to 19489 of 2016

M/s.Transtonnelstroy – Afcons JV,
Represented by its Project Manager,
D.Murugadasan
Having Regional Office at "Kannappar Thidal"
T.S.No.1267/1 of Veppery Village,
Choolai, Chennai – 600 003. ... Petitioner

vs.

1.The Chairman,
Tamil Nadu Generation and Distribution Corporation Ltd.,
144, Anna Salai, Chennai – 600 002.

2.The Superintending Engineer,
Chennai EDC/ Central,
TANGEDCO, Valluvarkottam SS,
Chennai – 600 034. ... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the entire records in connection with the impugned letter Lr.No.SE/CEDC/C/DFC/

AAO/HT/ AAO/HT/AS/D.219/2016, dated 31.03.2016 of the 2nd respondent and quash the same and to refund or adjust the amount which was illegally charged by the respondent Under HT Tariff V from October 2015 and to direct the respondent to classify the petitioner's Tariff under HT Tariff III for the future electricity consumption.

For Petitioner : Mr.D.Balaraman

For Respondents : Ms.V.Revathy
for Mr.L.Jaivenkatesh

O R D E R

The prayer in the writ petition reads as follows:-

To call for the entire records in connection with the impugned letter Lr.No.SE/CEDC/C/DFC/AAO/HT/ AAO/HT/AS/D.219/2016, dated 31.03.2016 of the 2nd respondent and quash the same and to refund or adjust the amount which was illegally charged by the respondent Under HT Tariff V from October 2015 and to direct the respondent to classify the petitioner's Tariff under HT Tariff III for the future electricity consumption.

2. The petitioner who is a Contractor invested with the job of construction of Metro railway stations for the Chennai Metro Rail Limited was provided a space by the Chennai Corporation to build its on-site office and to have its ready-mix concrete unit. The site was provided on lease by the Chennai Corporation only because the petitioner was a Contractor doing work for Chennai Metro Rail Limited. The petitioner applied and obtained temporary service connection (HT) for the purpose of construction of the on-site office and erection of the ready-mix concrete unit.

3. The said construction was completed within four months and thereafter the petitioner applied for a permanent connection and the same was also provided by the respondents. An agreement was entered into between the petitioner and the respondents on 6th April 2013. As per the said agreement the petitioner was paying the current consumption charges as a permanent consumer under the HT commercial tariff. Upon inspection by the Audit party, an objection was raised to the provision of permanent connection with HT commercial tariff to the petitioner on the premise that the entire activity of the petitioner carried out at the leased site is temporary nature and the petitioner will wind-up the activity upon completion of the construction of the Metro Rail Stations which were entrusted with the petitioner.

4. Based on the objection, the respondent Company issued a demand notice dated 19.10.2015 claiming the difference of Rs.41,03,604/- from the petitioner and also changed the tariff from HT Commercial to HT temporary supply tariff with effect from October 2015. It is not in dispute that the petitioner is paying the tariff under HT temporary supply from October 2015 under protest. The demand relates to difference in consumption charges between June 2013 to September 2015.

5. The petitioner attempted to clarify that the respondent is not justified in demanding tariff on HT temporary supply that is HT tariff V, inasmuch as the petitioner has completed the construction of office and erection of the ready-mix concrete unit and the respondent Company has also entered into a Contract for supply of energy under HT commercial tariff.

6. The contention of the petitioner was that once construction of on-site office and construction of ready-mix concrete unit is completed, it assumed permanent character and therefore the claim of the Department that it should be treated as temporary purpose chargeable under HT tariff V is not correct. The Department rejected the claim of the petitioner and persisted in its demand which led to the filing of this writ petition. The contentions of the petitioner before the Department are reiterated in the affidavit filed in support of the writ petition.

7. Mr.D.Balaraman, learned counsel appearing for the petitioner would vehemently contend that once the respondent had treated the activity of the petitioner as permanent and allowed the petitioner to pay HT Commercial tariff, it cannot go back on it and treat the activity of the petitioner as temporary and demand HT tariff V. He would further add that the TNERC's Tariff Regulation 6.1.8.1 makes HT Tariff V applicable to temporary supply for construction and for other temporary purposes. According to Mr.D.Balaraman, once the construction is completed, the temporary purpose would become permanent.

8. A counter affidavit has been filed by Superintending Engineer, Chennai Electricity Distribution Circle, wherein, it is contended that the entire activity of the petitioner is temporary and the petitioner used the ready-mix concrete that is manufactured at the site for construction activity in other sites viz., metro stations that were under construction and therefore the tariff that would be applicable would be HT Tariff V and not HT commercial tariff. In paragraph 22 of the counter affidavit, it is stated that the production of ready-mix concrete being an integral part of the construction activity and the entire activity of the petitioner being temporary, that is till completion of the Contract for construction of railway stations for Chennai Metro Rail Limited. The activity of the petitioner at the site at Kannappar Thidal cannot be treated as permanent in nature and therefore the same is chargeable only under HT tariff V.

9. Ms.V.Revathy, learned counsel appearing for Mr.L.Jaivenkatesh, learned counsel appearing for the respondents would submit that tariff V would apply if the purpose for which the power supply obtained by the petitioner is temporary in nature, be it construction or any other activity. Laying stress on the words 'or for other temporary purpose' used in Tariff Condition 6.1.8.1, she would submit that the whole activity of the petitioner viz., construction of CMRL stations being temporary, the grant of permanent connection to the petitioner under HT commercial tariff itself was incorrect. All that the Department has done is to rectify the mistake which was brought to its notice after site inspection. Therefore, according to her, the demand is just and reasonable and perfectly legal within the four corners of the TNERC's tariff Rules.

10. I have considered the rival submissions. Though the contention of Mr.D.Balaraman is very attractive on the face of it, on a deeper examination, I am unable to persuade myself to agree with the contention of the counsel. The Tariff control order which prescribes HT V for temporary purposes states that the tariff as applicable to temporary supply for construction and **for other temporary purposes.** Therefore, it cannot be said that temporary supply can be given only for the purpose of construction. Temporary supply can be given for other purposes also. The question whether it is temporary supply or permanent supply would depend on the nature of the activity of the consumer. If the activity of the consumer is wholly temporary *dehors* the number of years for which it functions, the same will have to be under HT tariff V.

11. In the case on hand, the petitioner as a Contractor who has been favoured with Contracts for construction of railway stations for Chennai Metro Rail Limited. After the completion of the work viz., contract for construction of railway stations for Chennai Metro Rail Limited, the petitioner would remove the ready-mix concrete plant as well as the on-site office. It is not the case of the petitioner that it is going to continue occupying the office and operate the ready-mix concrete plant even after completion of the contract with Chennai Metro Rail Limited. It is also admitted that as on date the petitioner has vacated the office and had dismantled the ready-mix concrete plant. Therefore, the very purpose of the petitioner establishing the office as well as ready-mix concrete plant in a portion of the land at Kannappar Thidal leased to it by the Chennai Corporation is temporary and it has now been discontinued.

12. I am therefore convinced that the respondents were right in treating the entire user as temporary. Since it is not a permanent activity which would continue even after completion of the work of the Chennai Metro Rail Limited. Therefore, the contention of the petitioner that the construction having been completed, the power supply should be treated as permanent cannot be accepted. It is the entirety of the purpose that will have to be seen. If a person erects an on-site office for the purpose of a particular work and the on-site office is discontinued after completion of the particular work, the power connection that is given to the site office could only be temporary and it cannot outlive the requirement or the purpose of the on-site office.

13. I therefore, do not see any merit in the writ petition. The writ petition therefore fails and it is accordingly dismissed. The petitioner will have three (3) months time to pay the balance. No costs. Consequently, the connected writ miscellaneous petitions are closed.

13.07.2022

dsa
Index: No
Internet: Yes
Speaking order

R.SUBRAMANIAN, J.

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To

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