



WP.No.4604 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

WP.No.4604 of 2015 &

M.P.No. 1 of 2015

M.s,R.B.A.Exports [P] Ltd.,
H.T.Sc.No.1824, 56-61, EPIP,
SIPCOT Industries Estate, Gummidipoondi,
Thiruvallur District.
Rep. by its General Manager,
S.Balasubramanian

...Petitioner

... Vs ...

1. The Tamil Nadu Electricity Regulatory Commission,
Rep. by its Secretary,
19A, Rukmini Lakshmiipathy Salai,
[Marshalls' Road], Egmore, Chennai – 600 008.
2. The Chairman and Managing Director,
TANGEDCO, 144, Anna Salai,
Chennai – 600 002.
3. The Superintending Engineer,
TANGEDCO Ltd.,
Chennai Electricity Distribution Circle/North,
Tamil Nadu Electricity Board,
144, Anna Salai, Chennai – 600 002.

...Respondents



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Prayer:- This Writ Petition is filed, under the Article 226 of Constitution of India, to issue Writ of Mandamus to direct the second respondent to refund the amount, viz., Rs.33,75,507/- to the petitioner in the light of the Order of Appellate Tribunal in its Order No.36 of 2012 dated 31.10.2012 and the first respondent in R.A.No.4 of 2013 dated 25.02.2013.

For Petitioner : Mr.S.P.Parthasarathy
for Mr.K.Seshadri

For Respondents : Mr.L.Jai Venkatesh – R1 to R3

ORDER

This Writ Petition has been filed to direct the second respondent to refund the amount, viz., Rs.33,75,507/- to the petitioner in the light of the Order of Appellate Tribunal in its Order No.36 of 2012 dated 31.10.2012 and the first respondent in R.A.No.4 of 2013 dated 25.02.2013.

2. It is the case of the petitioner that the petitioner was permitted by the Tamil Nadu Electricity Board to purchase power from the third parties and the petitioner was managing the entire power requirements through the permissible quantum of power allotted by the respondent Board, through



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their own captive power generated by the petitioner and through the open access from third party generator. The dispute arose as to excess power purchased from the third party which has been ultimately settled by the Electricity Regulatory Commission and on appeal the policy was confirmed. However, the first respondent has issued the impugned notice for refunding the amount Ordered by the Regulatory Commission. Therefore, seeks to refund the amount.

3. The learned counsel appearing for the respondents filed a counter stating that they have sought clarification from the Regulatory Commission as to the date on which the Order of the Regulatory Commission to be implemented. Therefore, only after getting clarification, the amount can be decided.

4. A perusal of the appeal Order, it is seen that the quota for use of power has been fixed based on the consumption of the consumers for the period from October 2007 to October 2008 when there was no restriction and control over use of electricity. The third party purchase was only after 01.11.2008 for consumers with connected load of 1 MW and above.



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Further, the consumers upto load of 500 KW and 350 KW were permitted third party purchase through open access by the Electricity Board by memo dated 30.12.2008 and 17.07.2009 respectively. The appellate tribunal also held that the power procured through third party could not be deducted from the base energy demand based on the actual consumption for the period from October 2007 to October 2008 to fix the quota of supply of TNEB's grid power. The third party purchase was only to bridge the gap between the sanctioned demand of the consumers and TNEB's quota and the same should be treated as additionality. Thereafter, the Regulatory Commission while implementing the Orders passed the following Order :

“In the line with the aforesaid directions of the Hon'ble ATE, it is hereby directed that the date of effect of the Order dated 07.09.2010 of the Commission in MP No.6 of 2010, 9 of 2010 and 17 of 2010 and DRP NO.9 of 2010 shall be 17.07.2009 i.e., the date on which the TANGEDCO permitted open access to HT consumers. Consequently, TANGEDCO is directed to effect refund to the HT consumers accordingly.”



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Based on the above Order, refund has been sought by the petitioner.

Whereas, the impugned Order has been passed directing the petitioner to pay a sum of Rs.33.76 lakhs levied towards the excess energy charges over and above the quota fixed for the third party purchase. It is stated by the petitioner that the amount has been paid under protest.

5. It is relevant to note that levying of charges for the excess energy charges over and above the quota fixed itself has been set aside by the appellate tribunal and the appellate tribunal has clearly held that such levying is not possible and the regulatory commission also accepted the same. Such being the matter, now levying charges is not sustainable in the eye of law. Now, as the TANGEDCO has sought for certain clarification as to the date on which the Order has to be given effect, the amount could not be refunded. In respect of other findings of the appellate tribunal, they have not disputed. In such view of the matter, the excess amount collected by the TANGEDCO has to be refunded. The learned counsel for the respondents submitted that subsequently, the clarification has been obtained from the regulatory commission with regard to the date of implementation of the Order. Such view of the matter, any difference amount to be paid, the



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respondent is directed to refund the amount to the petitioner within a period of three months from the date of receipt of a copy of this Order.

6. With the above directions, this Writ Petition is disposed of. Consequently, connected miscellaneous petition is closed. No costs.

29.09.2022

vrc

To,

1. The Tamil Nadu Electricity Regulatory Commission,
Rep. by its Secretary,
19A, Rukmini Lakshmipathy Salai,
[Marshalls' Road], Egmore, Chennai – 600 008.
2. The Chairman and Managing Director,
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