IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2022

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.19917 of 2020
And
W.M.P.No.24592 of 2020

M/s.RBA Exports P Ltd.,
Rep. by its General Manager
S.Balasubramanian ... Petitioner

Vs.

1.The Chairman,
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
10th Floor, 144, Anna Salai,
Chennai – 600 002.

2.The Chief Engineer – NCES,
TANGEDCO, 2nd Floor,
144, Anna Salai,
Chennai – 600 002.

3.The Chief Financial Controller/Revenue,
TANGEDCO, 7th Floor,
144, Anna Salai,
Chennai – 600 002.

4.The Accounts Officer/ Revenue
The Superintending Engineer Office,
TANGEDCO,
Chennai Electricity Distribution Circle/North,
Chennai – 600 002. ... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the 4th respondent's impugned CC bill dated 02.12.2020 insofar as serial no.18 'Adjustment Charges' alone is concerned and quash the same as illegal, arbitrary, without authority of law, against the Circular Memo dated 19.07.2016 issued by the 2nd respondent under the order of the 1st Respondent/ Chairman, TANGEDCO.

For Petitioner : Mr.R.S.Pandiyaraj

For Respondents : Mr.L.Jai Venkatesh

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Certiorari calling for the records of the fourth respondent's impugned CC bill dated 02.12.2020 insofar as serial no.18 'Adjustment Charges' alone is concerned and to quash the same as illegal, arbitrary, without authority of law, against the Circular Memo dated 19.07.2016 issued by the second respondent under the order of the first respondent/ Chairman, TANGEDCO.

2.According to the petitioner Industry, their Industry is involved

in the manufacturing of iron products, having High Tension Electricity Supply in HTSC No.1824 coming under the fourth respondent's Circle. The grievance of the petitioner is that, in the impugned bill, the fourth respondent has relied on the Circular Memo dated 12.03.2019 issued by the second respondent to justify that, the revision of petitioner's CC Bills and its adjustment of wind energy from the common banking account for the period 12/2016 and 03/2017 is in order. According to the petitioner, the Circular Memo dated 12.03.2019 issued by the second respondent pertains to a clarification issued to the fourth respondent in similar audit slip issued to M/s.Ammarun Foundries. Whereas, in the present case, the alleged revision of Bill pertains to the period from 01.04.2016 to 01.04.2017, when the Circular Memo dated 19.07.2016 was fully in force. Hence, it is the case of the petitioner that, the impugned order is liable to be set aside.

3. When the matter was taken up for hearing, learned counsel appearing for the petitioner produced a copy of the order dated 17.08.2021 passed by this Court in W.P.Nos.8634 of 2019 etc., batch and submitted that the issue involved in the case on hand, is squarely covered by the said order. For better appreciation, relevant portion of the said order is extracted hereunder:

> "30. The Circular Memo dated 19.07.2016, came into effect from 01.04.2016 and obviously this was issued after taking into consideration the rule position. On the coming into force of this Circular Memo, all the Superintending Engineers were directed to adhere to the procedure prescribed under the Memo for maintaining banking account and for

adjustment of banked energy for captive use. This was acted upon and the current consumption bills were raised accordingly for the period 01.04.2016 to 31.03.2017.

31. Insofar as placing reliance on Circular Memo dated 31.03.2017 is concerned, it came into effect only from 01.04.2017 and therefore, it cannot be applied retrospectively for any period prior to 01.04.2017. It is therefore clear that none of the letters issued by the 3rd Respondent and the modified Circular Memo dated 31.03.2017, will have any bearing during
the relevant period between 01.04.2016 to 31.03.2017 and consequently, there was no justification for the 4th Respondent to place reliance upon these proceedings.
Grounds a, b and c are answered accordingly.

32. Insofar as ground 'd' is concerned, even if
the justification given by the 3rd and 4th Respondents are accepted for the sake of argument, even then, the modified Circular Memo dated 31.03.2017, cannot be given a retrospective effect to the period prior to 01.04.2017. This position was made clear even while discussing grounds a, b and c and rendering a finding.
Hence, ground 'd' is answered accordingly.

33. Before proceeding further to deal with the next ground, this Court must also deal with yet
another Circular Memo dated 03.10.2017, which has been relied upon by the 4th Respondent along with modified Circular Memo dated 31.03.2017. The Circular Memo dated 03.10.2017, was again issued by the 3rd Respondent and it pertains to implementation of the order issued by TNERC in R.A.No.6 of 2017, dated 31.03.2016. Instructions were issued for current consumption bills in respect of wind energy captive users from 01.08.2012 to 31.03.2016. The Circular Memo will not apply to the case on hand since it pertained to the period from 01.04.2016 to 31.03.2017, when Circular Memo dated 19.07.2016 was in force.

In view of the same, the Circular Memo dated 03.10.2017, can have no applicability and the 4th Respondent went wrong in placing reliance upon the same.

34. Now, this Court will proceed to deal with the last ground 'e' which pertains to the order passed by this Court in W.P.(MD) Nos.6221 and 6222 of 2018. A careful reading of the facts in this case shows that, the Petitioner therein had sought for adjustment of banked energy prior to the revised energy wheeling agreement dated 26.09.2017 and this is after the issuance of the modified Circular Memo dated 31.03.2017, by the 2nd Respondent. ...

...

36. The facts of the present case will also attract the principles of promissory estoppel. The 2nd respondent who issued the Circular Memo on the approval and order of the 1st Respondent, had given an assurance to all group captive consumers, who entered into an energy wheeling agreement during the period from 01.04.2016 to 31.03.2017, the manner in which the banking of wind energy, maintenance of banking account and adjustment of banked wind energy for captive use will be dealt with. This was acted upon by TANGEDCO and the captive users and bills were raised accordingly and payments were also made. The captive users had also arranged that affairs in line with the Circular Memo in force. The captive users cannot at a later point of time be informed that, their current consumption bills are revised by relying upon a subsequent Circular Memo and superceded letters of the 3rd Respondent and such an action on the part of the 4th Respondent is certainly vitiated by the principles of promissory estoppel.

38. In the light of the above discussion, this Court is of the considered view that, the demand made by the 4th Respondent from the petitioners, by virtue of the respective impugned letter is held to be unsustainable in law and accordingly, all the impugned letters are quashed.

39.In the result, all the Writ Petitions are allowed and if any payments have been made by any of the Petitioners on the basis of the impugned letter issued by the 4th Respondent, the same is liable to be reimbursed or in the alternative, adjusted in the future bills. Any consequential benefits to which the petitioners are entitled to, if any, will enure in their favour by virtue of quashing the impugned letters issued by the 4th Respondent."

4. In terms of the said order passed by this Court, the impugned order dated 02.12.2020 passed by the fourth respondent is held to be unsustainable and the same is quashed. It is made clear that, if any payments have been made by the petitioner on the basis of the impugned letter issued by the fourth respondent, the same is liable to be reimbursed or in the alternative, adjusted in the future bills and any consequential benefits to which the petitioner is entitled to, if any, will enure in their favour by virtue of quashing the impugned letter issued by the fourth respondent.

5.The writ petition is allowed with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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Chennai Electricity Distribution Circle/North,
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+1cc to Mr.R.S.Pandiyaraj, Advocate, S.R.No.8514

W.P.No.19917 of 2020
And
W.M.P.No.24592 of 2020

MT(CO)
SB(10/03/2022)