



W.P.(MD)No.20022 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :23.01.2023

CORAM

THE HONOURABLE MR.JUSTICE K. KUMARESH BABU

W.P.(MD)No.20022 of 2014

and

M.P.(MD).No.1 of 2014

S.Mohanraj

... Petitioner

Vs.

1.The Assistant Executive Engineer,
O & M Town,
TANGEDCO,
Pudukottai.

2.The Assistant Engineer,
O & M Town,
TANGEDCO,
Pudukottai.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the 1st respondent in his proceedings in k.no.A.E.O/E.Ka/Na/Pudhukai/Ko.Kattu/No.187/14 dated 22.11.2014, quash the same and direct the respondent to refund the amount of Rs. 23,000/- to the petitioner.



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For Petitioner :Mr.V.Panneer Selvam

For Respondents :Mr.S.Deenadhayalan
Standing Counsel

ORDER

The writ petition has been filed challenging the proceedings of the first respondent, dated 22.11.2014, wherein, the petitioner was called upon to pay the compounding charges of Rs.18,000/- (Eighteen Thousand Rupees), rejecting the request of the petitioner and holding that the petitioner therein would only be Tariff-V and not Tariff-IIIB.

2. The learned counsel for the petitioner would submit that the petitioner is carrying on an Auto Service Centre and has been issued with the certificate by the Director of Industries and commerce, Chennai, stating that in the Auto Service Centre, the petitioner is a Proprietor as a small scale industry for the manufacturing/processing activity of auto mobile repairing and servicing only. Thereafter, the petitioner had also obtained a service connection in Tariff-IIIB and has been running the Unit, on payment of necessary charges as demanded by the respondents. While that being so, an



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inspection was made by the Anti Power Theft Squad (APTS) and the petitioner was issued with the working sheet on the premise that the tariff connection available to the petitioner would be chargeable under tariff V and not Tariff III B. Hence, the petitioner had misled the Department and had caused loss to the department to the tune of Rs.20,434/- (Twenty Thousand Four Hundred and Thirty Four Rupees). He has also paid compounding charges of Rs.18,000/- (Eighteen Thousand Rupees), which is only to avoid any criminal action or disconnection of electricity. In spite of it, the electricity was disconnected. Challenging the working sheet issued by the respondents and also to refund the compounding charges, he had approached this Court in W.P.(MD).Nos.15656 of 2012 and 15853 of 2013. This Court, by order dated 17.03.2014, had directed the petitioner to submit his objections within a period of four weeks and directed the respondents to pass appropriate speaking orders, after duly considering the representation of the petitioner.

3. Pursuant to the said order, the impugned order has been passed by the respondents. He would submit that the petitioner, is running a small



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scale industry and has been certified by the concerned Department also to that effect. The small scale industries are only chargeable under Tariff III B and not under Tariff V as claimed by the respondents. Hence, he would submit that the order impugned, calling upon the petitioner to pay the compounding charges, is arbitrary and without any valid reasons. He would also submit that even though the respondents have rejected the petitioner's claim for Tariff III B, the petitioner is not running the Auto Mobile Service Centre any more and therefore, he would not press the claim for Tariff III B for the present. Hence, he would submit that the order impugned has to be set aside.

4. Countering his arguments, the learned counsel for the respondents would submit that the operations carried on by the petitioner are purely commercial process, for which, only Tariff V is applicable. The petitioner's business is in connection with Tariff III B, which is only applicable for small scale industries. He would further submit that the load permitted for a small scale industries is less than 12KV. But, the petitioner has been using the connection above 12 KV capacity. When the petitioner is



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using the connection with more than 12 KV capacity, he is bound to pay the Tariff V charges and not Tariff III B charges, which is only applicable to the small scale industries, having connection upto 12 KV. Hence, he would submit that there is no infirmity in the order passed by the respondents.

5. I have considered the rival submissions made by the learned counsel appearing on either side.

6. The impugned order passed by the first respondent is to the effect that the petitioner is running an Auto Service Centre, for which, he is liable to pay charges under Tariff V and not Tariff III B.

7. The only reasoning assigned by the first respondent is that the operations of the petitioner are commercial in nature. The petitioner is running a commercial operation, which is referable to Tariff V and not Tariff III B, the first respondent had come to such a conclusion, on the basis that no such documents have been produced by the petitioner to substantiate that he would be chargeable only under Tariff III B. The service connection has



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been given to the petitioner under Tariff III B recognizing him as a small scale industry, based upon the certificate issued by the Director of Industries and Commerce, Madras. The said certificate is not disputed by the second respondent. The argument of the learned counsel for the respondents that the petitioner has been availing a higher load, i.e., more than 12 KV, is not a reason that has been assigned in the impugned order. The impugned order is to be taken as it is and any reasons by way addition cannot be permitted to be made either by way of a counter affidavit or arguments. The Hon'ble Apex Court, in the case of *Mohinder Singh Gill Vs. Chief Election Commissioner* reported in **1978 (1) SCC 405**, has reiterated this ratio. In the light of the same, I reject the arguments made by the learned counsel for the respondent, with regard to the load capacity.

8. The reason assigned by the respondents in the impugned order that the petitioner is carrying on the commercial operation, is not acceptable for the reason that it admits that the petitioner is carrying on an Auto Servicing Centre, for which, he had been issued with a certificate, as stated supra. In the light of the same, I am of the view that the tariff charges, which



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the petitioner would be liable to pay, would be only under Tariff III B and not Tariff V.

9. In fine, the writ petition is allowed and the order impugned in this writ petition is set aside. It is open to the petitioner to approach the respondents for remedying his grievances in the manner known to law. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

23.01.2023

Index : Yes / No
Speaking Order/Non Speaking Order
sbm

To

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K.KUMARESH BABU, J.

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