



W.P(MD)No.22391 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 17.10.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.22391 of 2022

M/s.Mountain Spinning Mills Limited,
Represented by its Managing Director,
97/1A, Kootudankadu,
Mangalagiri Post,
Tuticorin – 628 103.

... Petitioner

Vs.

1.The Superintending Engineer,
TANGEDCO,
Tirunelveli Electricity Distribution Circle,
Tirunelveli.

2.The Chairman and Managing Director,
TANGEDCO,
144, Anna Salai,
Chennai – 02.

3.The Chief Financial Controller / Revenue,
TANGEDCO,
144, Anna Salai,
Chennai – 02.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent order in A.No. 974 of 2019 dated 25.04.2019 and quash the same and consequently direct the respondents to refund the amount of Rs.31,06,476/- recovered from the petitioner company towards 25% banked units vide audit slips dated 29.07.2015 and 28.01.2016 forthwith along with interest at the rate of 12% monthly rest till the date of realization.

For Petitioner : Mr.T.Mohan
Senior Advocate
for Mr.S.I.Muthiah

For Respondents : Mr.S.Dheenadhayalan
Standing Counsel

ORDER

Heard the learned Senior Counsel assisted by the learned counsel appearing for the petitioner and the learned Standing Counsel appearing for the respondents.

2.The writ petitioner had established wind mills and was wheeling the power generated for its own consumption. On account of the imposition of restriction and control measures by TANGEDCO, the petitioner could not fully utilise the generated wind energy. The



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petitioner was entitled to take advantage of the order passed by TNERC vide tariff order dated 20.03.2009 permitting encashment of the banked energy @ 75% of the value during the normal period and @ 100% of the value when restriction and control (R&C) measures were in force.

3.It is not in dispute that restriction and control (R&C) measures were in force from 01.11.2008 to 04.06.2015. The petitioner shut down its operations in the year 2016. The petitioner also wanted to sell their wind mills. But then, as a precondition, they had to obtain “No Dues Certificate” from TANGEDCO. When the petitioner approached TANGEDCO for issuance of such “No Due Certificate”, TANGEDCO insisted that the petitioner should pay 25% of the banked energy encashment. Such a demand was made by TANGEDCO based on certain audit objections and the circular dated 30.05.2015 issued by the Chief Financial Controller / Revenue, TANGEDCO. According to the petitioner, this amount was paid under coercive circumstances.

4. The petitioner therefore demanded refund of 25% of the bank energy encashment. Their request was rejected. Challenging the same, the present writ petition came to be filed.



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5. When the matter was taken up for hearing, certain subsequent developments were brought to my notice. The issue is no longer *res integra*. Vide order dated 27.04.2023 in W.P(MD)No.17091 of 2015 etc batch (Tamil Nadu Spinning Mills Association Vs The Tamil Nadu Generation and Distribution Corporation Limited & Others), a learned Judge of this Court had held as follows:

“15. In the light of the aforesaid reasonings and findings, I am of the view that the impugned letter dated 30-05-2015 is wholly without any authority much less arbitrary and hence illegal. In view of the aforesaid conclusion the consequential demand notices issued to the petitioners are also liable to be interfered with.

16. In fine the Writ Petitions are allowed, the impugned order dated 30-05-2015 is quashed and the consequential demand notices are also set aside.”

Giving effect to the said judgment, the Chief Financial Controller / Revenue, TANGEDCO had issued circular vide Letter No. CFC/REV/FC/REV/AS.3/REV/D.No.553/23 dated 17.06.2023 directing



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refund. Therefore, the prayer in the writ petition has to be necessarily conceded.

6.The learned Senior Counsel appearing for the petitioner points out that since the petitioner was made to unlawfully part with the amount, the refund has to necessarily carry interest.

7. I endorse the said contention. The respondents are directed to refund the petition-mentioned amount to the petitioner within a period of eight weeks from the date of receipt of a copy of this order with 6% p.a interest from the date of payment by the petitioner till date of refund.

8.This writ petition is allowed on these terms. There shall be no order as to costs.

17.10.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No

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Note: Issue order copy on 20.10.2023.



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G.R.SWAMINATHAN, J.

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To

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Tirunelveli.
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