



W.P.No.31173 of 2015

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 03.04.2025	Pronounced on 02.06.2025
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CORAM

THE HONOURABLE MR JUSTICE RMT. TEEKAA RAMAN

**WP No. 31173 of 2015
and
WMP No. 8051 of 2016**

R.Murugan,
S/o. T.Ramaiah,
C7, Cauvery Apartments,
Brindavan Street,
Mylapore, Chennai-4.

Petitioner(s)

Vs

1.The Secretary to Government,
Energy Department,
Government of Tamil Nadu,
Fort St. George, Secretariat,
Chennai 600 009.

2.The Chairman and Managing Director
Tamil Nadu Generation and Distribution
Corporation Ltd.,
No.144, Anna Salai, Chennai-2.

Respondent(s)

PRAYER

Writ Petition filed under Article 226 of Constitution of India for issuance of



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Writ of Certiorarified Mandamus to call for the records relating to the order in G.O. (2D) No.64 Energy (B2) Department dated 24.08.2015 of the 1st Respondent and quash the same and consequently direct the Respondents herein to permit the Petitioner herein to retire from service with effect from 30.09.2012 with all attendant benefits.

For Petitioner(s): Ms.AL.Gandhimathi,
Senior Counsel
for Mr.S.Rajiv Gandhi.

For Respondent(s): Mr.P.Kumaresan,
Additional Advocate General, Assisted
by Mr.V.Veluchamy, (for R1)
Additional Government Pleader
Mr.K.Rajkumar (for R2)

ORDER

The Writ Petition has been filed to call for the records relating to the order in G.O.(2D) No.64 Energy (B2) Department dated 24.08.2015 of the 1st Respondent and quash the same and consequently, direct the Respondents herein to permit the Petitioner herein to retire from service with effect from 30.09.2012 with all attendant benefits.



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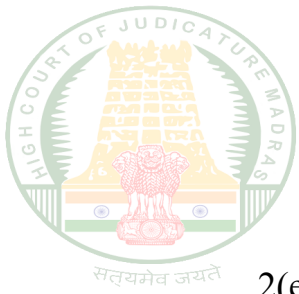
2.The brief facts leading to filing of the petition is summarised as under:

2(a).The service matrix of the petitioner is that the petitioner joined as Assistant Engineer in Tamil Nadu Electricity Board. Later, he was promoted as Assistant Executive Engineer, then Executive Engineer, then Superintending Engineer and was promoted as Chief Engineer (Transmission). On 05.11.2007, the petitioner joined as Chief Engineer (Transmission).

2(b).On 23.07.2007 when the petitioner was working as Chief Engineer (Transmission), Chennai, a tender was floated in specification No.1458 dated 23.07.2007 for supply of 110 KV x 630 Sq. Millimetre aluminium XLPE cable and 1 x 240 Sq. Millimetre copper XLPE cable with accessories and installation joints and termination under ICB (International competitive bidding) basis.

2(c).On 23.07.2007 itself, the tender as aforesaid was floated and the bid was granted in favour of M/s.Easun Products of India Pvt. Ltd. on firm price on domestic sale basis.

2(d).However, later, when the petitioner was working as Managing Director/TAN-TRANSCRO Chennai, a Memorandum of Charges dated 23.07.2012 was served on the petitioner.



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2(e).Based upon the recommendation of the Director of Vigilance and Anti Corruption, the Government in its G.O. (2D) No.27, Energy (B2) Department, dated 29.12.2011, wherein the Chairman and Managing Director/Tamil Nadu Generation and Distribution Corporation Limited was directed to take Departmental action against the petitioner, Thiru R.Murugan then Managing Director/Tamil Nadu Transmission Corporation Limited, now removed from service, for having hidden the deviations taken in the price bid, which caused loss to the tune of Rs.13.78 crores to the Board.

2(f).The petitioner was suspended from Board's service on 28.9.2012 and not permitted to retire from Board's service

2(g).The petitioner was suspended in 2012 and based on the report of Directorate of Vigilance and Anti-Corruption, charges were framed against the petitioner vide Board's Memo. No.39839/A5/A51/2011-14, dated 23.07.2012 under regulation 8(b) of the Tamil Nadu Electricity Board Employees' Discipline and Appeal Regulation read with Tamil Nadu Electricity (Re-organization and Reforms) Transfer Scheme, 2010.

2(h).Following charges were framed against two persons, wherein the first delinquent is the petitioner herein:

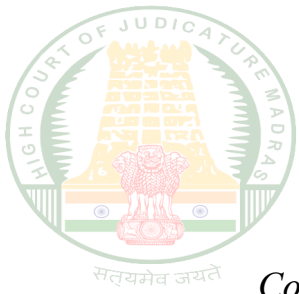


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Charge:-

Thiru R. Murugan, Managing Director/TANTRANSCO, Chennai while he was working as Chief Engineer/Transmission/Chennai-2, in Specification No.1458, dated 23.07.2007 floated a tender for supply of 110 KV X 630 Sq.mm. Aluminium XLPE Cable and 1X240 Sq.mm Copper XLPE Cable with accessories and installation joints and termination under CB basis. M/s. Easun Products of India Ltd., quoted 'Nil' deviation specification, but quoted 2 months delivery instead of 1 month. There was also no mention about the taxes and duties. As per clause 13.2.2 Section: It of the Specification, any statutory variation in customs duty, excise duty and sales tax would be to the account of the Board and it would be paid extra at actual against proof of document. In this connection, instructions have also been issued vide Accounts Branch Circular dated 27.03.2008 notifying reduction of Counter Veiling Duty (CVD) from 16.48% to 14.42% w.e.f. 01.03.2008 by the Central Government. Suppressing these vital facts, misled the Board to approve the proposal placed before the Board in its 912th meeting held on 30.04.2008. Accordingly, the Letter of Intent (Lol) was also placed to M/s Easun Products of India Ltd. The further 10% reduction of CVD vide circular dated 11.12.2008 was also not followed, while making the payment to the said



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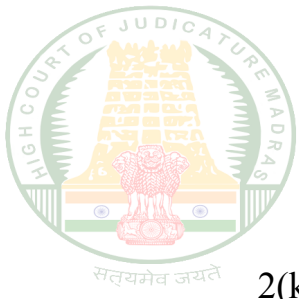
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Contractor. The above act of Thiru R.Murugan, then CE/Transmission/Chennai-2, now Managing Director/TANTRANSCO had caused a loss to the tune of Rs. 13.78 crores to the Board.

Thus, Thiru R.Murugan, then Chief Engineer/Transmission now Managing Director/TANTRANSCO has failed to maintain absolute integrity and devotion to duty and thereby contravened regulation 3(a) and 3(c) of the TNEB Conduct Regulations.

2(i).In essence, there is two elements in the charges and due to the negligence and improper act of the petitioner, the respondent/Electricity Board has suffered loss to the tune of Rs.13.78 crores and accordingly, the petitioner was charged as he failed to maintain absolute integrity and devotion to duty and thereby contravened regulation 3(a) and 3(c) of the TNEB Conduct Regulations.

2(j).The petitioner was called upon to submit his explanation and he submitted the same on 17.08.2012 and the Principle Secretary to Government, Planning & Development Department was appointed as enquiry officer. The Enquiry Officer submitted a report as charges are partly proved and hence, the showcause notice was issued to submit his further representation and the same was submitted.



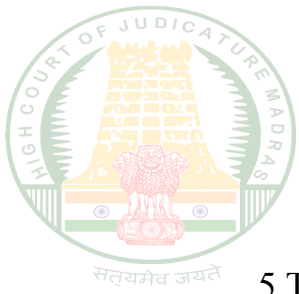
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2(k).Writ Petition was filed in W.P.27005 of 2004, challenging the charge and the same dismissed with a direction to complete the disciplinary proceedings within a stipulated time. The first respondent/Government imposed punishment of removal from service vide G.O.(2D)No.64, dated 24.08.2015. Hence the Writ Petition.

3.With regard to the details of the charges, the facts where the role of the petitioner was allotted assumes significance. Though there are number of Writ Petitions filed by the two bidders L1 & L2, which has resulted in splitting of the bid into conversion of international tender into the domestic sale basis and Indian rupee from US dollars were also part of the judicial proceedings, which are not relevant, except to the limited extent that has been extracted supra.

4.With regard to the charges framed against the petitioner and two others viz., Selvaraj and Narayana Moorthy, who are working as Chief Engineer, Superintending Engineer and Assistant Executive Engineer in the same place, in connection with tender No.1458, the Writ Petition filed against the charges is dismissed as stated supra.



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5.The charges have two elements viz., The first element of the charge relates to suppression of the circular dated 27.03.2008 on the reduction in the CVD from 16.48% to 14.42% with effect from 01.03.2008 and the second element was causing loss to the Board by failure to deduct the reduction in CVD from 16.48% to 14.42% with effect from 01.03.2008 and further reduction of CVD from 14% to 10% vide circular dated 11.12.2008 from the payments of M/s. EPI.

6(a).On perusal of enquiry report this Court finds that, it was found by the Enquiry Officer that out of the total loss amount of 13.78 Crores indicated in the charge memo, only the loss of 1.93 Crores incurred on account of the failure to account for 2% reduction in CVD on 01.03.2008 before the date of LOI can be considered as the real loss to the Board attributable to the delinquent officer 1, 2 and 3.

6(b).In other words, the charge in relation to suppression of- circular dated 27.03.2008 was held to be factually proved. In respect of loss caused to the board, though the charge was Rs.13.38 crores loss, the Enquiry Officer



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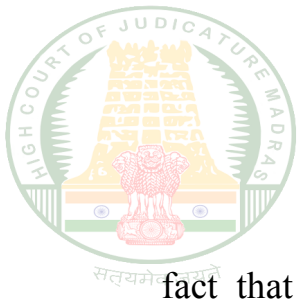
stated that it is Rs.1.93 crores as real loss, after adjusting the economical inflation and other issues.

7.The learned senior counsel appearing for the petitioner would contend that there is no loss, if it is calculated in another way.

8.The learned Additional Advocate General appearing for the first respondent would contend that as against the impugned order, there is an Appeal remedy, so without invoking appeal remedy contemplated under the regulation, the Writ Petition has been filed, without exhausting the alternate remedy and is not maintainable. The impugned order was passed based upon the enquiry report and hence, made submissions in support of the order of the disciplinary authority.

9.Heard the learned counsel appearing on either sides and perusal the materials available on record.

10.As per the the petitioner, there is no violation in CVD, in view of the



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fact that the offer on a domestic firm price basis was not considered and consequently, charges were held to be partly proved.

11.The learned senior counsel appearing for the petitioner would contend that the tender committee has approved the proposal of M/s. Easun Products India Pvt. Ltd. and recommended the same to the Board on 14.01.2008 and the said recommendation was placed before the Board on 19.01.2008 and subsequently, only with regard to the splitting of the orders between the two eligible tenders and matching of prices and losses, a report was called for, a note was prepared and placed before the BLTC.

12.The second contention of the learned senior counsel for the petitioner is that even before the CVD was reduced on 01.03.2008 which was intimated by the Accounts Branch by Circular dated 27.03.2008, the price bids were opened by the Board and the Tender committee has approved the proposal of M/s.Easun Products India Pvt. Ltd. As such, the reduction in CVD does not make a difference in the price bids and the price bids were opened even before 01.03.2008 and the proposal was approved by the Tender Committee.



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13.After referring to the typed set of papers, the learned senior counsel would contend that the Board has not incurred any loss in respect of the present tender. In view of the exchange in rate variation, the board has gained the same.

14(a).On perusal of the typed set of papers, I find that what was approved on 30.04.2008 was only with regard to splitting of supply between two eligible bidders and conditions of offer given by M/s.Easun Products India Pvt. Ltd., dated 19.01.2008 was approved by the Board. The proposal was placed before the Board and the same was approved on 30.04.2008.

14(b).With regard to the contents of the charges, whether there is any suppression of fact in placing necessary materials before the Board, to arrive at the conclusion, due to such suppression, whether the Board has incurred loss, which is now re-assessed as Rs.1.93 crores.

14(c).On perusal of the enquiry report filed in the typed set of papers, I find that on 23.7.2007, the Tamil Nadu Transmission Corporation Limited floated a Tender Number 1458 for supply of 110 KV X 630 Sq.mm. Aluminium



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XLPE Cable and 1X240 Sq.mm Copper XLPE Cable with accessories and installation joints and termination in International Competitive Bidding. Tenders were received from two bidders, namely M/s. Easun Products of India Ltd. (M/s. EPI) and M/s Universal Cables. After analysing all the aspects, in clause 13.2.2 among other commercial terms it was specified as follows:

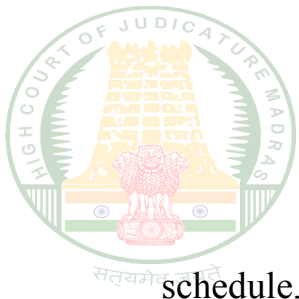
13.2.2:- Any statutory variation in customs duty, excise duty and sales tax within the accepted delivery schedule will be to the account of the board and will be paid extra at actual against the proof of document.

13.2.3:- In case of any delay in supply of materials the increase in customs duty and sales tax due to statutory variation beyond the delivery period will be to the account of suppliers.

On 26.11.2007, the price bids were opened. In the price bids among other things it was mentioned in clause 16.1 as follows:-

16.1 Any, increase or decrease in customs duty, CVD, Special Additional Customs Duty is to board's account. In the commercial terms it was also specified among other things, the CVD rate is 16%.

The techno commercial bids were opened on 19.9.2007. In the techno commercial bid M/s.Easun Products of India Limited indicated that they have taken no deviations in the technical specifications. Only for the delivery



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schedule, they sought two months instead of one month. They had also not made any indication regarding taxes and duties in the technical bid. In the meantime, the petitioner had joined as Chief Engineer/Transmission on 05.11.07.

15.It is pointed out by the learned Additional Advocate General that the petitioner himself processed the tender and while the tender was in process, he himself recommended the second respondent to place the entire quantity with M/s.Easun Products of India Limited, after negotiation with M/s.Easun Products of India Limited and after obtaining remarks from the Accounts Branch, it was decided in the Board Level Tender Committee meeting held on 14.01.2008 that the entire quantity may be placed on M/s.Easun Products of India Limited. The above recommendation was accepted in the Board meeting held on 19.01.2008. In the subsequent meeting, it appears that the tender between two bidders was split up, which is not germane to the facts and circumstances of this case.

16(a).As to the charge of the second element, my attention was drawn to



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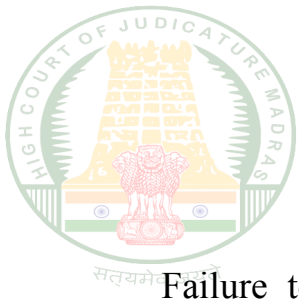
the circular memo dated 27.03.2008. After going through the same, I find that the Accounts Branch issued a circular memo on 27.03.2008, informing all concerned Tender processing authorities about the reduction of excise duty/Counter Veiling Duty from 16.48% to 14.42% with effect from 01.3.2008.

16(b).At this stage, it is pertinent to note that the petitioner ought to have taken note of the above reduction in the Counter Veiling Duty rate from 16.48% to 14.42% in the Board note. But the petitioner suppressed the above fact in the Board note, which caused revenue loss to the Board.

16(c).The said fact appears to be a part of the enquiry finding by the Enquiry Officer, who had reported that the reduction in Counter Veiling Duty from 16.48% to 14.42% with effect from 01.03.2008 was issued by the Accounts Branch in its circular memo dated 27.03.2008 (Document 16) as per tender specification clause 13.2.2 and 13.2.3, which are as follows:

13.2.2:- Any statutory variation in customs duty, excise duty and sales tax within the accepted delivery schedule will be to the account of the board and will be paid extra at actual against the proof of document.

13.2.3:-In case of any delay in supply of materials the increase in customs duty and sales tax due to statutory variation beyond the delivery period will be to the account of suppliers.



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Failure to take note of the above Accounts Branch circular memo by the petitioner, was clearly an oversight by the petitioner.

17.In this connection, the enquiry officer in his enquiry report has categorically found that if the Board note had been sent to Accounts Branch after vacating of the court stay on 04.04.2008, in Writ Petition No.2876 of 2008 filed by Shree Trading Corporation on the file of this Court, wherein the this Court has dismissed the Writ Petition as it deserves no merits, then there would have been a chance that this aspect would have commented on by the Accounts Branch. This was also not done. Hence, the Enquiry Officer has rightly come to the conclusion that lack of due diligence in this aspect by the petitioner.

18.It remains to be stated that the proposal was further referred to account branch, only for commercial terms quoted in the Board Note. Therefore, account section cannot be blamed for the same, for his non failure to comment on the reduction in Counter Veiling Duty rate. Hence, I have no hesitation in my mind to come to the conclusion that the contention made by the learned senior counsel that the Accounts Branch should have remarked the



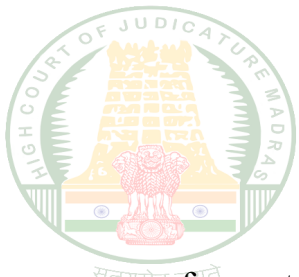
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deviation in the Counter Veiling Duty rate and the Accounts member should have indicated the above deviation in the Technical Scrutiny Committee, are untenable and the said contention is liable to be rejected

19.Yet another issue is that the Inquiry Officer has clearly reported that the second respondent referred the matter to the Accounts Branch for its view and suggestion, only on the limited question placing the entire quantity with L1 bidder, namely the M/s.Easun Products of India Limited. Hence, the issue of going into the correctness of the quoted price would not have come up for review stage and therefore, the argument that the account section has not discussed in deviation from the specification, mentioned about the reduction of CVD could not be countenanced. Thus, it is to be noted that the above subject was approved in the Board meeting held on 30.4.2008 without change in the Counter Veiling Duty commercial rate (i.e. 16.48% to 14.42%) (The BLTC note para 18.1 was re-produced, unchanged). Based on the above approval, the Letter of Intent (Lol) No. 1885, dated 07.5.2008 was issued.

20.In this connection, it is also seen from the records that the reduction



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of counter veiling duty (CVD) from 16.48% to 14.42% was issued by the Accounts Branch well before the finalization of Board note i.e. 30.4.2008. In such circumstances, the reduction of Counter Veiling Duty rate ought to have been incorporated in the Board note by the petitioner, even though the price bid was on firm price basis, the petitioner failed to do so. Hence, the contention of the petitioner that the reduction of Counter Veiling Duty was out of context and the same was not accounted as deviation and was not discussed by the Accounts Branch, are untenable.

21.Learned Additional Advocate General for the Electricity Board would submit that initially while seeking approval from Board Level Tender Committee, with reference to the Price Bid analysis, the commercial terms and conditions vide clause 16.0 is exclusively included wherein the price offered by the firm is on domestic sale basis inclusive of i) Customs duty @ 7.5%, ii) Counter Veiling Duty @ 16%. iii) Edu cess on Counter Veiling Duty @ 2%, iv) Higher Edu cess @ 1%, v) Customs Higher Edu. Cess @ 1% and Special Additional Customs Duty @ 4% etc. Thereafter, in Accounts Branch Circular Memo, dated 27.03.2008, it was informed that the Counter Veiling Duty rate



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was reduced by 2% and the said reduction should have been incorporated by the petitioner in the Board note even though the orders were placed based on Indian rupees, the variation in customs duty of exchange rate need not be considered, is untenable. The Inquiry Officer after considering deposition of witness came to the conclusion that the charges against the petitioner was partly allowed.

22(a). Thus, I find that the contention of the petitioner that if the orders placed based on the Indian rupees, the variation in customs duty or exchange rate need not be considered cannot be countenanced. In fact, the same is taken into consideration by the Enquiry Officer and consequently, he has held that the charges are partly proved and after going through the Enquiry Officer's report, I find that even though the orders were placed to M/s Easun products of India Limited on domestic sale basis, the reduction of Counter Veiling Duty rate by 2% issued by the Accounts Branch in its Circular Memo, dated 27.3.2008 should have been taken note by the petitioner in the board note. Having failed to taken note of such Counter Veiling Duty rate is a clear violation and due negligence on the part of the petitioner.



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22(b).Hence, on the that score the petitioner cannot neither shrunk his responsibility nor shuttle his responsibility for the financial loss, which was occurred due to the lack of diligence in placing necessary policy decision and statistics before the Board.

23.From the Enquiry Officer's report, I find that that the petitioner joined as Chief Engineer/Transmission on 05.11.07 and he himself processed the tender and put up a note to the second respondent to place the entire quantity to M/s. Easun Products of India Limited. Therefore, his contention that he has only signed in the fair copy of proposal cannot be countenanced.

24.Enquiry Officer in his findings clearly reported that the reduction in Counter Veiling Duty rate from 16.48% to 14.42% with effect from 01.03.2008 was issued by the Accounts Branch's circular, dated 27.03.2008 and the failure to take note of the above Accounts Branch circular, is clearly an oversight by the petitioner and other erring officials.

25.The Enquiry Officer has further stated that if the Board Note would



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have been sent to the Accounts Branch for regular vetting after the vacation of the court stay on 04.04.2008, then there would had been a chance that this aspect i.e. reduction in Counter Veiling Duty from 16.48 % to 14.42% might have been commented on by the Accounts Branch. This was also not done as per Tender Specification 13.2.2 and 13.2.3. Hence, there appears to have been a lack of due negligence on the part of the petitioner.

26.Thus, based upon the above finding, this Court come to the conclusion that once the domestic sale price with the firm price and any change in customs duty, Counter Veiling Duty rate and Special Additional Customs Duty is to the account of the bidder, the fact that the change in the rate occurred between the date of opening of the bid and date of placing of purchase order should have been taken note of and an appropriate reduction obtained in the final price. To that extent, a saving could have obtained for the Board by the petitioner. This opportunity has been missed out by the petitioner and therefore, the above act of the petitioner caused additional expenditure to the second respondent Board. Hence, it is merely a due negligence on the part of the petitioner who failed to take note of the said reduction and he has clearly



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misled the Board. Therefore, that the charges that the petitioner has misled the board to approve the proposal placed on 30.4.2008 is proved, and thus, the charges against the petitioner that he has mislead the Board to approve the proposal placed on 30.04.2008 stands proved.

27(a).On coming into the aspect of loss, there is a variation between the charges and finding. Major submission of the learned senior counsel for the petitioner is that he put the blame on the account section and according to the petitioner, no loss was caused to the Board to award the tender to M/s.Easun Products India Pvt. Ltd., only on the account of technical loss.

27(b).However, it remains to be stated that the petitioner failed to incorporate the reduction of Counter Veiling Duty in the board note, which caused revenue loss to the board and hence, Enquiry Officer has rightly come to the conclusion that charges are proved.

27(c).In this aspect, with regard to quantum of loss caused to the Board, he has arrived at a different amount viz., Rs.1.93 crores. Furthermore, in this connection it is to be stated that before approval of the purchase order by the Board on 30.4.2008, the file was not referred to Accounts Branch specifically



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with reference to the fact of reduction in Counter Veiling Duty rate by 2%.

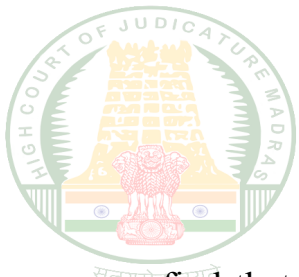
Secondly the enquiry Officer after considering the above aspect and deposition of witness came to the conclusion that the charges were partly proved.

28.Learned senior counsel for the petitioner relied upon the Comptroller and Auditor General report, wherein the Comptroller and Auditor General has commented in Audit paras, among other things as follows:-

(i) "The Board has benefitted to an extent of Rs. 12.98 crores due to variation in Exchange rate and Rs.15.5 crores on account of technical losses".

But, the said Comptroller and Auditor General had not commented on the issue of Counter Veiling Duty rate, which is a different element from other issues and technical losses. Thus, I find that enquiry was conducted in a fair manner and the petitioner has failed to incorporate the reduction of CVD (Counter Veiling Duty) in Board note, which caused revenue loss to the board.

29.The second part of the charge as discussed supra, is also proved to the limited extent and in the absence of any comment by the Comptroller and Auditor General on the issue of Counter Veiling Duty rate as stated supra, I



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find that the Enquiry Officer has conducted the enquiry in a fair and unbiased manner and the first respondent, after considering all the aspects in the report of the Enquiry Officer in detail, accepted the Enquiry Report and since charges are grave in nature, the first Respondent herein imposed punishment of removal from service on the petitioner. Admittedly, there is an alternative remedy, however, he has not availed it. Since this Court finds on merit that the petitioner has not made out any ground to interfere with the order, I find that the charges are proved and even as per the enquiry report loss is assessed at Rs.1.78 crores for the year 2008 and for the proved charges, the first respondent imposed removal of service which, is incommensurate with the proved charges.

30. Accordingly, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

02.06.2025

Index: Yes/No
Speaking/Non-speaking order
Internet: Yes
Neutral Citation: Yes/No

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2.The Chairman and Managing Director
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RMT.TEEKAA RAMAN J.
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**Pre-delivery order made in
WP No. 31173 of 2015 and
WMP No. 8051 of 2016**

Dated: 02.06.2025