

(2011) 09 JH CK 0064

In the Jharkhand High Court

Case No : Writ Petition (C) No. 2239 of 2011

Bhawani Ferrous Private Limited

APPELLANT

Vs

Jharkhand State Electricity Board and Others

RESPONDENT

Date of Decision : 27-09-2011

Acts Referred:

Citation : AIR 2012 Jhar 49

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.R. Prasad, J.—The Petitioner, a company incorporated under the provision of the Companies Act set up its unit in the year 2002. It got electric connection from the Jharkhand State Electricity Board for a contract demand of 100 KVA and an agreement to that effect was executed on 20.11.2002 wherein purpose for supply was mentioned as "wire drawing".

2. On 2.6.2003 the contract demand of the company was enhanced to 300 KVA and hence, agreement was arrived at wherein the purpose was mentioned as "Wire Drawing" and Re-Rolling Mill. The Tariff Schedule which was made applicable was mentioned as HTS-I and accordingly, bills were being raised which were raised till December, 2003. From January bills were being raised under 2004 Tariff Schedule and the payments were made.

3. In February, the contract demand was enhanced from 400 KVA to 2800 KVA and subsequently upto 3400 KVA. Accordingly agreement was executed wherein purpose was shown as "Re-rolling and Melting of Iron". The tariff schedule which was applicable was mentioned as HTSS (Induction Furness). Accordingly, bill on being raised under 2004 tariff were being paid.

4. Again in June, 2010 when the contract demand of the company was enhanced to 3800 KVA, an agreement was executed wherein tariff schedule applicable was mentioned as HTSS (Induction Furnace). Accordingly, bills were being raised

under 2010 tariff. In the month of October, 2010, the Petitioner was served with a notice issued by the Electrical Superintending Engineer intimating therein that the Petitioner's unit never falls within HTSS tariff category rather falls within the ambit of HTS category. In January it was informed that the company needs to take two separate connection one under HTS-II tariff category and other under HTSS tariff category, failing which the Board will be charging bills under HTS-II tariff category which according to the Petitioner was quite illegal. It is also the case that on getting the said notice, the Petitioner was contemplating to agitate the issue but in the meantime, the Petitioner was served with bill for the month of March, 2011 which had been raised under HTS tariff category and that necessitated filing of this writ application for quashing of the energy bill of March, 2011 and also for quashing the letter dated 9.3.2011 issued by the Electrical Superintending Engineer, Electric Supply Circle, Deoghar whereby directions were issued to the Petitioner to install a separate meter for its Re-rolling Mill in spite of the fact that point of supply is single which as per agreement is for Re-rolling and Melting of Steel.

5. Mr. Mittal, learned Senior counsel appearing for the Petitioner submitted that since the inception of the factory, the Petitioner had entered into an agreement with the Board on four different points of time but at all occasions, the point of supply has been mentioned as single and therefore, any directive issued by the authority of the Board to have separate connection for both the units would be contrary to the agreement and also in derogation of Clause 9.3 of the Supply Code Regulation and that agreement entered into between the parties does postulate of charging the energy bill as HTSS tariff and therefore, officer of the Board does not have any authority to charge electric bill unilaterally under HTS tariff.

6. It was also contended that under the agreement, the Petitioner was always put under the category of HTSS, tariff which always used to be higher than tariff of HTS and the Petitioner happily accepted that status and went on making payment of the electric energy but under the new tariff of 2010, when tariff of HTSS has been lowered down, the Petitioner is being sought to be put in HTS category and this action of the Respondent-Board is quite arbitrary. Therefore, bill raised for the month of March, 2011 on the basis of HTS tariff is quite illegal and is fit to be set aside.

7. Mr. Rajesh Shankar, learned counsel appearing for the Board submitted that the Petitioner had executed an agreement on June, 2010 for enhancement of load from 3400 to 3800 KVA for Re-Rolling and Melting of Iron on HTSS induction. In course of time, Jharkhand State Regulatory Commission came with tariff 2010-11 whereby HTSS (33 KVA) category is applicable for induction furnace/arc furnace of contract demand of 300 KVA or more whereas for other consumption like Rolling/Re-Rolling it was put under HTS category.

8. It was further pointed out that since clubbing of both the tariff is not permissible, the Petitioner was requested to apply for new connection for their

HTSS category but the Petitioner did not take any initiative and therefore, there was no option left with the authority but to issue bill for March, 2011 applying tariff of HTS category and thus, the application is devoid of any merit and is liable to be dismissed.

9. Admittedly, the Petitioner has been running factory since, 2002 and since then, the Petitioner had entered into an agreement with the Electricity Board at different occasion. Lastly, the Petitioner entered into an agreement for a contract demand of 3800 KVA in June, 2010 wherein point of supply was shown as single for Re-Rolling and Melting of Steel Iron. As per the agreement, tariff which was to be applied was HTSS (induction furnace) in terms of Clause 5.25 category of 2004 tariff which reads as follows:

5.25 category - 8:HT Special Service (HTSS) (HT consumer with induction furnace)

This tariff schedule shall apply to all consumers who have a contracted demand of 300 KVA and more for induction furnace, however, it will not apply to casting units having induction furnace of melting capacity of 500 Kg. or below.

Under 2010 tariff, the situation got changed whereby High Tension Voltage Supply Service has been put in HTS category whose applicability has been defined hereunder:

The schedule shall apply for all consumers including induction/arc furnaces having contract demand above 100 KVA.

This tariff schedule shall also apply to all consumers who have a contract demand of 300 KVA and more for induction/arc furnace under the HTSS tariff earlier.

10. Thus, there has been clear cut departure from earlier tariff.

Under the new tariff unit having induction/ arc furnace, which had been put in HTSS tariff under the 2004 tariff, has now been put under HTS tariff which would be quite enforceable in view of one of the clause of the agreement entered into in between the Board and the Petitioner which reads as follows:

The Board shall be at liberty at any time to alter the demand charges, energy charges including fuel surcharge and minimum guarantee charges as set out in the schedule appended hereto and this schedule shall be deemed as having been automatically revised with effect from the date the Board enforces the new tariff rate for the consumer.

11. Thus, I do not find any substance in the submission made on behalf of the Petitioner that the Board does not have any authority to put the Petitioner to be charged under HTS tariff instead of HTSS tariff.

12. Accordingly, I do not find any merit in this application and hence, this application stands dismissed.