**(2000) 09 PAT CK 0052**

**In the Patna High Court**

**Case No :** C.W.J.C. No. 1515 of 1999 (R)

Tata Yodogawa Ltd. APPELLANT

Vs

Bihar State Electricity Board and Others RESPONDENT

**Date of Decision :** 19-09-2000

**Acts Referred:**

**Citation :** (2000) 09 PAT CK 0052

**Final Decision :** Allowed

## Judgement

M.Y. Eqbal, J.—Heard Mr. Biren Poddar, learned Counsel appearing for the petitioner and Mr. V.P. Singh. learned Counsel appearing for the Electricity Board.

2. In this writ application the petitioner seeks declaration that petitioner is not liable to pay delayed payment Surcharge amounting to Rs. 94,609/- under clause 16.2(a} of the 1993 Tariff arid also entitled to the rebate for timely payment of the bill for the month of April, 1995.

3. The facts of the case are not much in dispute. When the energy bill for the month of April, 1995 had not been received by the petitioner till 23-5 95 the petitioner made inquiry from the office of the Electrical Superintending Engineer, Jamshedpur Electrical Circle, Adityapur. Jamshedpur from where copy of the bill was handed over to the petitioner on 24-5-95. On receipt of the copy of the bill petitioner immediately paid the amount shown in the bill in full on 25-5-95.

Petitioner thereafter made a claim vide letter dated 25-5-95 stating inter alia that the payment of the bill of April, 1995 was made within the due date as the bill was posted under Postal Certificate only on 13-5-95. When the petitioner received the bill for the month of May, 1995 they were surprised to find that the amount of Rs. 94,699/- had been shown as the Delayed Payment Surcharge and the prompt payment rebate of Rs. 19,104/- had been treated as forfeited. Petitioner then made representation to the Chairman of the Board vide letter dated 15-6-95 in response whereof petitioner was informed that according to the decision of the Chairman petitioner was liable to pay D.P.S. charges and also will not be entitled to the benefit of rebate. Petitioner then filed writ petition challenging the decision of the Chairman being CWJC No. 3095 of 1997(R). This Court by order dated 13-11-98 allowed the writ application and quashed the decision of the Chairman and remitted back the matter to the General Manager of the Board directing him to decide the claim of the petitioner. Petitioner''s case is that in terms of the direction of the Court a detailed claim was made before the General Manager-cum-Chief Engineer on 26- 11-98 but till date no decision has been taken.

4. Having regard to the facts of the case, the question therefore falls for consideration is as to whether petitioner was liable to pay Delayed Payment Surcharge amounting to Rs. 94,699/- and further entitled to rebate for timely payment of the bill.

5. For better appreciation clauses 15and 16 of the Tariff is worth to be looked into. The relevant portion of Clause 15.4 of the Tariff is quoted herein below :

(a) For payment of bills on account of energy and other charges the due date specified in the bill shall be as follows :---

6. Clause 16.1 of the 1993 Tariff makes 6.

(i) ..... . . . . .

(ii) All HTS, EHTS con-  sumers not covered by the

20 days from the

date of issue of the

bill.

(i) above

(iii) to (iv) .....

(iv) .....

6. Clause 16.1 of the 1993 Tariff makes provision for grant of rebate to the consumers who makes timely payment of the bill within due date specified in the bill as per Clause 15.4. Clause 16.1 further provides that in the case of High Tension and Extra High Tension and Railway Traction consumers such rebate shall be at the rate of one paise permit billed. Clause 16.1 of the Tariff reads as under :

"Clause 16.1. Rebate for timely payment: A rebate at the following rates shall be allowed to the consumer who makes payment of the bill within the "due date" specified in the bill as per Clause 15.4 :--

(a) in case of I High Tension and Extra High Tension and Railway Traction Consumers at the rate of one paise per unit billed."

7. Clause 16.2 of the Tariff makes provision about charge of interest surcharge

 

for delayed payment of bill. According to this clause in case of all categories of consumers who do not pay the bill in full by the due date indicated in the bill, they shall have to pay interest/surcharge on the outstanding amount at the rate of 2% per month or part thereof for the delay made. Clause 16.2(a) of the Tariff reads as under :

"In case of all categories consumers Including 2E.H.T., Railway Traction, H.T.L.T.I.S. and L.T. consumers if the consumer does not pay the bill in full by the due date indicated on the bill, he shall have to pay interest/ surcharge on the outstanding amount. The interest/surcharge will be at the rate of 2.00(two) per cent per month or part thereof for the delay made, irrespective of the period of delay. The interest/surcharge will be leviable from the date immediately following the due date in all cases. No interest/surcharge will be charged on the interest/ surcharge already accrued."

8. In the instant case date of issue of the bill for the month of April, 1995 was shown as 3-5-95 and the said bill was sent to the petitioner under postal certificate on 13-5-95. The Electrical Superintending Engineer, Jamshedpur Electrical Circle, Jamshedpur vide memo No. 1124 dated 12-6-95 addressed to General Manager-cum-Chief Engineer, South Bihar and Chhotanagpur Area Electricity Board, Kanchi has admitted the following facts :

(i) Bill for the month of April, 1995 was issued on 3-5-95 and it was posted under Certificate of posting on 13-5-95.

(ii) The said bill posted to the pctittoner was not actually reached to the petitioner and the petitioner was handed over the copy of the bill on 24-5-95. Petitioner accordingly made payment of the bill amount on 25-5-95 vide receipt No. 744122 dated 25-5-95.

9. Petitioner''s case is that the date when the bill was posted under certificate of posting i.e. 13-5-95 shall be taken as the date when the bill was issued by the respondent and in view of the mandatory provisions of clause 15.4(a)(ii) of the Tariff the due date of payment of the bill was 1-6-95 i.e. 20 days reckoned from the date of issue i.e. 13-5-95.

10. As noticed above, the only question falls for consideration is as to whether the date mentioned in the bill or the date when the bill is posted to the consumer will be taken as the date of issuance of the bill. This question is no longer res integra. In the case of Banarasi Devi Vs. Income Tax Officer, Calcutta, , the Supreme Court considered the question as to whether Section 4 of the Income Tax (Amendment) Act applies in cases where notices issued in time but served out of time. Considering the various decisions their Lordship held that :

"Section 4 of the Amending Act was enacted for saving the validity of notices issued u/s 34(1) of the Act. When that section used a word interpreted by courts in the context of such notices it would be reasonable to assume that the expression was designedly used in the same sense. That apart, the expressions "issued" and "served" are used as inter-changeable terms both in dictionaries and in other statutes. The dictionary meaning of the word "issue" is "the act of sending out, put into circulation, deliver-with authority or delivery".

11. In the case of Poddar Trading Corporation Vs. State of Bihar and Others, a Division Bench of this Court while considering the similar question u/s 20(1)(45) of the Finance Act read with Rule 19 of Bihar Sales Tax Rules, 1983 has observed :

"11 It is true that according to Sub-rule (1) of Rule 19 a date for hearing has to be fixed, which shall in no case be more than 15 days from the date of issue of notice. But in view of the language of Rule 19(1) the word "issue" is to be equated with the word "service". The date of issue of notice is not the date on which it is issued. The issuance of notice is complete when there is actual or deemed service on the dealer. In this connection reference can be made to the decision of the Apex Court in Banarasi Devi Vs. Income Tax Officer, Calcutta, . That apart rule does not require that appeal must be heard on the date so fixed. Sub-rule (3) of Rule 19 gives power to the concerned authority to adjourn the case, if its fact and circumstances so warrant."

12. As noticed above, clause 15.4 of the Tariff provides that in case of all High Tension consumers, the due date for payment of bill has been fixed as 20 days from the date of issue of the bill. This clause however, does not fix a time limit for the issuance of the bill or sending of the bill. Obviously therefore expression "issue" has neither used in a narrow sense nor it can be given narrow meaning. For example, suppose the bill is prepared by the respondent/Board on a particular date which is the date of the Issuance of the bill. The said bill is actually posted to the consumer after 15 days and the same reaches to the consumers after expiry of 20 days from the date of issuance of the bill, in such case show the date of issuance of the bill shall be taken for the purpose of reckoning 20 days as provided under clause 15.4(a)(II) of the tariff, in my considered opinion therefore the period of 20 days shall have to be reckoned from the date when the bill, is actually sent to the consumer and not ''the date of issuance of the bill.

13. In the instant case, admittedly the date of issue of the impugned bill was shown as 3-5-1995, but it was sent to the consumer on 13-5-95. In that view of the matter, reckoning 20 days from 13-5-95 the due date for the payment of the bill was 1-6-95. Admittedly, the petitioner deposited the bill amount on 25-5-95. These facts have been admitted by the Electrical Superintending Engineer, Jamshedpur Circle, Jamshedpur in his letter dated 12-6-95, a copy of which has been annexed as Annexure 14 to the writ application. By the said letter the Electrical Super-intending Engineer strongly recommended the case of the petitioner while sending the representation to the General Manager-cum-Chief Engineer for consideration stating inter alia that petitioner is the bona fide consumer and has always been paying the bill within time and there is no latches and negligence on the part of the petitioner in the payment of bill.

 

14. Having regard to the facts and circumstances of the case the recovery of delayed payment surcharge and forfeiture of rebate of the respondent/Board is absolutely illegal, arbitrary and unjustified. It is held that petitioner is not only entitled to refund of the amount but also entitled to interest on the said amount.

15. In the result, this writ application is allowed and the respondent-Board is directed to refund the delayed payment surcharge amounting to Rs. 94,699/- and Rupees 19,104/- being amount of rebate together with 12% Interest from the date of deposit of the bill till the date of payment of the aforesaid amount within a period of two weeks from the date of receipt/production of copy of this order.

 