(2014) 12 MAD CK 0285

In the Madras High Court

Case No : Writ Appeal Nos. 1661 and 1662 of 2012, M.P. No. 1 of 2012 in W.A. No. 1661 of 2012 and M.P. Nos. 1 and 2 of 2012 in W.A. No. 1662 of 2012

The Tamilnadu Electricity Board APPELLANT

Vs

Perambalur Sugar Mills Limited RESPONDENT

Date of Decision : 03-12-2014

Acts Referred:

Citation : (2014) 12 MAD CK 0285

Hon'ble Judges : P.R. Shivakumar, J;N. Paul Vasantha Kumar, J

Bench : Division Bench

Judgement

N. Paul Vasantha Kumar, J.—Heard Mr.P.Gunaraj, learned counsel appearing for the appellants and Mr.S.Rajesh, learned counsel appearing for the first respondent and Mrs.A.Shrijayanthy, learned Special Government Pleader appearing for the respondents 2 and 3.

2. These writ appeals are filed against the common order made in W.P. Nos.6119 of 2008 and 7773 of 2009, wherein the 1st respondent - M/s. Perambalur Sugar Mills Limited prayed to quash the order of the fourth respondent - Tamil Nadu Electricity Regulatory Commission dated 31.5.2005 and the consequential proceedings dated 11.9.2007 as well as the order of the second appellant - Member (Accounts), Tamil Nadu Electricity Board dated 8.2.2007 and prayed for a direction to refund excess electricity charges collected from the first respondent for the Service Connection-HT SC No. 27 as Commercial Tariff instead of Industrial Tariff for the period from 1998-99 till ending December, 2005 i.e. for a sum of Rs.8,15,399/-.

3. The case of the first respondent before the learned single Judge was that first respondent was having two HT Service Connections, namely HT SC.No.15 with the capacity of 500 KVA for the purpose of sugar machinery operations and HT SC.No.27 with the capacity of 800 KVA for drawal of water from Vellar River exclusively to be used for Industrial purpose. As per the said agreement, the

electricity charges is to be paid under Tariff-I during crushing period and under Tariff-III during non- crushing period. Since the first respondent''s main activity was production of sugar and the said activity was coming within the purview of HT SC 15. As stated HT SC No. 27 was used for drawing of water for Sugar Mill from Vellar river, which is incidental to the industrial purpose and the first respondent mill is liable to be charged under Tariff-I. However, the appellants wrongly charged Tariff-III for the Service Connection-HT SC.No.27. The appellants cannot change the Tariff rate from Industrial Tariff to Commercial Tariff and the act of charging of electricity under a different heading, namely, commercial purpose, is against the terms. The first respondent submitted a representation on 24.3.1998 to the third appellant and the same was rejected by the third appellant by letter dated 12.10.1998. Thereafter, the first respondent submitted another representation dated 26.8.2004 to the Tamil Nadu Electricity Regulatory Commission to change HT Tariff for SC.No.27 from Tariff-III to Tariff-I. On 31.5.2005, the Tamil Nadu Electricity Regulatory Commission passed an order accepting the request of the first respondent stating that HT SC.No.27 may be charged under Tariff-I, as the same was done earlier. Thereafter, the first respondent addressed a letter to the Tamil Nadu Electricity Board to refund Rs.8,15,339/-, which was collected as excess from the first respondent Mill and the said claim was rejected by the third appellant by order dated 8.8.2006. Again, the first respondent submitted a representation on 20.1.2007 to the Chief Engineer, Tamil Nadu Electricity Board, Chennai. By order dated 8.2.2007, the second appellant, rejected the said representation stating that the Tamil Nadu Electricity Regulatory Commission has not ordered to refund the excess amount collected for the period from 1998-99 till December, 2005. Hence, the first respondent has filed the writ petitions with the above said prayers.

4. The appellants filed counter-affidavit stating that in their letter dated 31.5.2005 and 23.11.2005, the Tamil Nadu Electricity Regulatory Commission has not ordered to adopt HT Tariff-IA for any earlier period and those orders have only prospective operation. The first respondent filed D.R.P. No.6 of 2007 before the Tamil Nadu Electricity Regulatory Commission claiming Tariff revision for HT SC.No.27 for the earlier period, however, by order dated 11.9.2007, the Tamil Nadu Electricity Regulatory Commission dismissed the said petition stating that the first respondent''s conduct in remaining silent for more than five years and ten months when their request was not considered by the Superintending Engineer, Trichy on 12.10.1998, cannot claim retrospective effect and the first respondent was eligible for HT Tariff-IA only after the direction of the Tamil Nadu Electricity Regulatory Commission. Hence, the first respondent has no legal right to claim refund for the earlier period and prayer for dismissal of the writ petitions.

5. The learned single Judge considered the issue namely Sugar Mill is an Industrial Unit and the quarters and other facilities are provided only as incidental to industrial purpose and allowed the writ petitions with a direction to the Tamil Nadu Electricity Board to adjust the refund claim towards the first respondent''s future consumption charges, instead of refunding the same to the

first respondent Mill.

6. The case of the appellants before the learned single Judge was that on 17.3.1986, an agreement was entered into between the Public Works Department, Government of Tamil Nadu and the first respondent and Clause-20 of the agreement permits the Sugar Mill to draw water for industrial purpose and water was drawn for industrial activities, as per the said agreement and for that purpose, the electricity supply was obtained in HT SC.No.27 and the said service connection was assessed with Tariff-I, namely Industrial Tariff, however, in the year 1996, erroneously the Tamil Nadu Electricity Board has changed the Tariff to that of Commercial Tariff and the first respondent Mill has also erroneously paid the Tariff at Commercial rate from September, 1996 onwards.

7. It is seen from the records that on 28.9.1998, the first respondent made a request to change HT SC.No.27 under Tariff-I instead from Tariff-III and claimed refund of the amounts paid. The said request was rejected by the Superintending Engineer, Tiruchirappalli Electricity Distribution Circle (North) by order dated 12.10.1998 and ultimately, the first respondent approached all authorities in the Tamil Nadu Electricity Board and this issue went before the Tamil Nadu Electricity Regulatory Commission in D.R.P. No.6 of 2007 and by order dated 11.9.2007, the Tamil Nadu Electricity Regulatory Commission sustained the claim of change of Tariff from Commercial to Industrial, however, denied refund of claim on the ground that the first respondent without protest accepted the change of Tariff and therefore, it had waived its right to claim refund. The said issue was considered by the learned single Judge and the learned single Judge held that industrial purposes having been established by the first respondent before the Tamil Nadu Electricity Regulatory Commission and since there is no change from 1996 onwards, the claim of refund made atleast from 1998 as prayed in the writ petition is bound to be allowed.

8. We are in entire agreement with the said finding rendered by the learned single Judge, as the first respondent has raised its objection on 28.9.1998 regarding change of Tariff and claimed refund, which is evident from the letter of the Superintending Engineer, Tiruchirappalli Electricity Distribution Circle (North) addressed to the first respondent dated 12.10.1998. The refund claim having been made only from 1998 till ending December, 2005 as per the prayer in the writ petitions, the refund claim made by the first respondent is just and proper. Apart from that the Tamil Nadu Electricity Board was not directed to refund the amount and direction was issued by the learned single Judge to adjust the said amount refundable in future electricity consumption charges. Hence, we are unable to find any reason to interfere with the said finding arrived at by the learned single Judge.

9. In the result, the writ appeal is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.