

(2011) 09 JH CK 0114

In the Jharkhand High Court

Case No : Writ Petition (C) No. 2208 of 2011

Vikromatic Steel Private Limited

APPELLANT

Vs

Jharkhand State Electricity Board and Others

RESPONDENT

Date of Decision : 27-09-2011

Acts Referred:

Citation : (2011) 09 JH CK 0114

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 1996 having induction furnace as well as Re-Rolling Mill. It got electric connection from the Jharkhand State Electricity Board for a contract demand of 1400 KVA. At the time of inception of the Factory, 1993 tariff of the then Bihar State Electricity Board was in vogue enforced whereby the Petitioner's factory was put to the category of H.T consumer. In the year 1999, a separate tariff for the induction furnace consumer was introduced by the then Bihar State Electricity Board. The tariff for induction furnace was quite higher than the H.T tariff by not less than 3 to 4 times. After bifurcation of the State when Jharkhand State Electricity Board was formed, Jharkhand State Electricity Regulatory Commission came into being with the new tariff with effect from 1.1.2004. In course of time, contract demand of the Company was enhanced to 2400 KVA with effect from 29.12.2006 and the Petitioner entered into an agreement whereby HTSS tariff was applicable which was much more than the rate of HTS tariff. In the agreement, purpose was mentioned as Re-Rolling and Melting of Steel. In spite of that, energy bills which were being raised under HTSS tariff were being paid by the Petitioner and it was paid till September, 2010. In the month of October, 2010, Electrical Superintending Engineer communicated to the Petitioner that the Petitioner's factory does fall within HTS category and not to the category of HTSS. In the

month of January, 2011, the Company was informed that the Company has to take two separate connections, one for HTS-II category and the other for HTSS category. At the same time, the Company was warned that if the directives of the Electricity Board are not followed, the Company would be charged under HTS -II tariff. The said directive, according to the case of the Petitioner, was not in accordance with the provision as contained in 3.3.2 of the Electric Supply Code Regulation, 2005, as the point of supply was single, though two separate units, namely, Re-Rolling Mill and induction furnace are there in one premises. Since the directive issued by the Electricity Board was illegal, the Petitioner was contemplating to agitate the issue but in the meantime, energy bill for the month of March, 2011 was issued to the Petitioner whereby charges were levied on the basis of HTS tariff and that necessitated filing of this writ application for quashing of energy bill dated 8.4.2011 and also for quashing the letter dated 19.1.2011 issued by the Electrical Superintending Engineer, Electric Supply Circle, Deoghar whereby directions were issued to the Petitioner to install a separate transformer for its Re-Rolling Mill unit, in spite of the fact that, point of supply is single which, as per the agreement, is for Re-Rolling and Melting of Steel/Iron.

2. 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.

3. 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.

4. Mr. Rajesh Shankar, learned counsel appearing for the Board submitted that the Petitioner had executed an agreement on December, 2006 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.

5. 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.

6. Admittedly, the Petitioner has been running factory since, 1996 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 on 29.12.2006 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.

7. 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.

8. 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 Clause 14 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.

9. 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.

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