

(2004) 02 GAU CK 0017**Gauhati High Court****Case No:** WP (C) No. 2378 of 1997

Jodhpur Tea and Industries (P)
Ltd.

APPELLANT**Vs**

A.S.E.B. and Others

RESPONDENT**Date of Decision:** Feb. 18, 2004**Acts Referred:**

- Electricity (Supply) Act, 1948 - Section 49

Citation: (2005) 1 GLR 291**Hon'ble Judges:** Ranjan Gogoi, J**Bench:** Single Bench**Advocate:** S. Kejriwal, for the Appellant; H. Roy, for the Respondent**Final Decision:** Allowed

Judgement

Ranjan Gogoi, J.

The controversy in the present writ petition relates to the question as to whether the Tea Manufacturing Unit of the petitioner without a garden/plantation is to be included within Category 8 or Category 6 of the 1994 Schedule of Tariff framed by the A.S.E.B. u/s 49 of the Electricity Supply Act, 1948. The aforesaid formulation with regard to the scope of the writ petition has been made by the Court having regard to the specific reliefs prayed for in the writ petition. Though a valiant attempt has been made on behalf of the petitioner to extend the horizons of the writ petition to cover the entitlement of the petitioner for the categorisation under the subsequent Schedule of Tariffs, this Court is of the view that having regard to the prayers made, the scope and ambit of the writ petition should not be extended to the areas as contended by the writ petitioner.

2. The point formulated above, will have to be reconciled on the basis of the language used by the Board while framing Category 8 of the 1994 Schedule of Tariff. Categorisation of consumers of electricity for the purpose of payment of tariff has

been broadly made on the basis of the use to which electricity is put to by the consumer. While under the 1994 Schedule of Tariff, the criteria of applicability to bring a particular pattern of consumption within a defined category has not been spelt out, in the erstwhile tariff of 1986, there is an exhaustive enumeration of the criteria of applicability. Category 8 of the 1994 Schedule of tariff merely lays down the tariff applicable to "Tea, Coffee and Rubber" whereas under the corresponding category, i.e., Category 9 of the 1986 Schedule of Tariff, in what circumstances the supply of power for Tea, Coffee and Rubber would fall under Category 9 has been spelt out in details. However, in the 1994 Schedule of Tariff, it is clearly mentioned that the tariff prescribed is in suppression of the prevailing tariff and shall be applicable to the respective categories of consumers mentioned in the 1986 Schedule of Tariff.

The aforesaid Category 9 as included in the relevant Schedule of Tariff, 1986 may be usefully extracted hereunder :

"CATEGORY : 9

Supply for Tea, Coffee and Rubber Gardens.

1. APPLICABILITY -

Applicable to supply taken by Tea, Coffee and Rubber gardens only for their factory consumptions, Irrigation and other consumptions in the Estate."

3. Mrs. S. Kejriwal, learned counsel for the petitioner has contended that Category 8 of the 1994 Schedule of Tariff, must be understood to be paramateria with that of Category 9 of the erstwhile 1986 Schedule of Tariff. Learned counsel for the petitioner relying on an unreported judgment of this Court passed in the case of Teamafeo Private Limited v. Assam State Electricity Board and Ors. (Writ Appeal No. 248 of 1993) has submitted that a similar question as raised in the present writ petition, under the 1986 Schedule of Tariff, had arisen for consideration before the Division Bench in the above case. The Division Bench on an elaborate consideration of the contentions advanced by the rival parties and the terms of the 1986 Schedule of Tariff had come to the conclusion that a unit manufacturing tea but without a tea garden would be more appropriately classifiable under Category 6 of the 1986 Schedule of Tariff instead of Category 9. Mrs. S. Kejriwal, learned counsel for the petitioner, therefore, has contended that Category 8 of 1994 Schedule of Tariff being same and similar with the Category a of the 1986 Schedule Tariff, the issue raised in the present writ petition would stand covered by the decision of the Division Bench, as noted above.

4. Mr. H. Roy, learned counsel appearing for the respondent Board has not seriously disputed that Category 8 of the 1994 Schedule of Tariff would correspond to Category 9 of the 1986 Schedule. However, learned counsel by placing reliance the resolution dated 22.11.1996 taken by the Board has sought to contend that it has all

along been the understanding of the Board that a unit without a garden/Estate but engaged in the manufacture of tea would be classifiable under Category 9 of the 1986 Schedule corresponding to Category 8 of the 1994 Schedule. The Board had given expression to the said understanding by means of the aforesaid resolution dated 22.11.1996 to the following effect.

"Application to supply, taken by Tea, Coffee and Rubber garden and/or Industry for their Industrial, irrigation and other consumptions."

(Emphasis is mine).

5. Arguing further, Mr. Roy, contends that if the above is the manner in which the Board had understood Categories 8 and 9 of the Schedules of Tariff in question, the same should be allowed to prevail. In so far as the Division Bench Judgment in the case of Teamafeo Private Limited v. Assam State Electricity Board and Ors. is concerned, Mr. H. Roy, learned counsel appearing for the respondent Board has submitted that though the Division Bench in the aforesaid case had held otherwise, this Court must now understand Category 8 of the 1994 Schedule of Tariff in the manner expressed in Board's resolution dated 22.11.1996.

6. A perusal of the Division Bench judgment dated 10.7.1996 passed in the case of Teamafeo Private Limited v. Assam State Electricity Board and Ors. amply reveals that the Division Bench of this Court had come to the conclusion that under the 1986 Schedule of Tariff, units manufacturing tea without a tea garden is to be categorised under Category 6 and not under Category 9. The language of Category 8 of the 1994 Schedule of Tariff and Category 9 of the 1986 Schedule of Tariff, considered by the Division Bench of this Court, in view of the contents of the 1994 Schedule of Tariff as noted above, must be held to be identical and similar. If that be so, judicial discipline would require this Court to follow the decision laid down by the Division Bench even while interpreting Category 8 of the 1994 Schedule of Tariff. The resolution of the Board dated 22.11.1996 cannot have the effect of overriding the Division Bench judgment so as to enable this Court to construe the projections differently. In any case, if the Board had understood Category 8 of the 1994 tariff in a different manner, the 1994 Schedule of Tariff should have been appropriately amended and such amendment duly publicised. Not only the 1994 Schedule of Tariff remained unaltered, no material has been brought on record by the Board to show any publication of the Resolution in the same manner in which the Tariff itself was publicised. An unpublished and uncommunicated resolution expressing an intention different from the published tariff cannot be allowed to determine the liability of a consumer to payment of such different tariff, a conclusion that this Court is inclined to draw on the ratio of the law laid down by the Apex Court in the case of D.B. Raju Vs. H.J. Kantharaj and Others,

7. For the aforesaid reasons, this Court has no option but to hold that during the period when the 1994 Schedule of Tariff was in force, which this Court understands

to be up to 1998, the petitioner being a tea manufacturing unit without a garden is entitled to be included in Category 6 of the 1994 Schedule of Tariff and on that basis to all consequential reliefs as would reasonably flow to the petitioner.

8. The writ petition shall accordingly stand allowed as indicated above.