(2009) 1 ALT 54

Andhra Pradesh High Court

Case No: Writ Petition No. 4540 of 2003

Shreya Pet (P) Ltd.		APPELLANT
	Vs	
Central Power Distribution Company of A.P. Ltd. and Others		RESPONDENT

Date of Decision: Aug. 22, 2007

Acts Referred:

- Electricity (Supply) Act, 1948 - Section 78(2), 78A

Citation: (2009) 1 ALT 54

Hon'ble Judges: G.S. Singhvi, C.J

Bench: Single Bench

Advocate: N.V. Sumanth, for the Appellant; O. Manohar Reddy, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

G.S. Singhvi, C.J.
This is a petition by M/s Shreya Pet (P) Limited, which is admittedly a small-scale industrial unit, for issue of a mandamus to the respondents to extend the benefit of 25% power rebate in terms of the policy contained in G.O.Ms. No. 108, Industries and Commerce (IP) Department, dated 20.05.1996.

2. The above mentioned prayer of the petitioner is founded on the following assertions:

(1) that it is engaged in the manufacture of pet preforms;

(2) that it was provided electricity connection with effect from 26.08.1999;

(3) that it started regular commercial production from 28.10.1999;

(4) that General Manager, District Industries Center, Ranga Reddy District issued eligibility certificate dated 25.02.2000 entitling it to claim 25% rebate in power tariff for a period of three years, but the authorities of the Central Power Distribution Company of Andhra Pradesh Limited (respondent No. 1) rejected its claim vide letter No. SE/O/N/HYD/AO(R)/CRS/JAO/ 25% rebate/D. No. 780, dated 23.01.2003 on the ground that eligibility certificate was not obtained within two years from the date of release of supply and the Accounts Officer, Electricity Revenue Office, Hyderabad issued notice for deposit of additional consumption charges, and

(5) that Writ Petition No. 16275 of 2002 filed by it against the threatened disconnection of power supply on the ground of non-deposit of additional consumption charges was admitted and further proceedings were stayed on 27.08.2002.

3. In paragraphs 7 and 8 of the affidavit filed by him, Sri S.V. Subrahmanyam, General Manager (Operations) of the petitioner company, has averred as under:

7. The petitioner submits that initially the unit was established by a company by name M/s. P.K. Packaging Industries which was running corrugated boxes manufacturing unit. Supply to the said unit was released on 13.2.1998. The petitioner had taken over the properties of the said unit and changed the line of activity to the manufacture of Pet performs. For this purpose, on the petitioner''s application the service connection was transferred to the petitioner which was being run at the relevant point of time in the name and style M/s. Shreya Sacks (P) Ltd. After following the due procedure under the Companies Act, the said name was changed as M/s. Shreya Pet (P) Ltd. with effect from 14.5.1999. The earlier unit run by M/s. P.K. Packaging admittedly did not claim any rebate as evident from the letter dt.14.10.2000 addressed by the 3rd respondent to the C.E. (Comml.). As the service connection was transferred in the name of petitioner only on 26.8.1999 for all purposes it is deemed that the service was released to the petitioner only on that date. Hence, even if the alleged letter dt. 16.7.1994 of the erstwhile APSEB which required obtaining eligibility certificate within two years from the date of release of supply is relevant, the petitioner fulfills the said requirement as it obtained eligibility certificate on 25.2.2000 which is well within the period of two years as stipulated in the said letter. Indeed, the said letter dt. 16.7.1994 has no relevance in view of the fact that the G.Os. issued much subsequent to the said letter viz., G.O.Ms. No. 108, dt. 20.5.1996 and G.O.Ms. No. 11, dt. 16.1.1997 apart from T.O.O. Comml. No. 36, dt. 8.3.1999 issued by the A.P. Transco in pursuance of which the petitioner is claiming 25% rebate do not contain any time stipulation for obtaining eligibility certificate. Even if the erstwhile APSEB issued a letter in 1994, it is deemed to have been superseded by the subsequent proceedings which revised the policy relating to the grant of 25% rebate. Hence, the said ground cannot be sustained to deny the rebate to the petitioner.

8. The petitioner further submits that another ground on which the rebate has been denied viz., that the petitioner while obtaining service transfer did not pay service line/development charges. This is the most frivolous and vexatious reason as none of the

proceedings issued by the Government or A.P. Transco stipulated any condition that even in respect of a service transfer, the transferee is liable to pay service line/development charges. Even B.P.Ms. No. (Operation) Comml-1 dt. 3.4.1997 applies to the release of new connections in favour of owners of industrial units who purchased these units through the sales conducted by APSFC. The said B.P. provided that the purchaser of a new unit is entitled to the release of power without paying the arrears of C.C. charges due from the previous owners by paying service line/development charges and in these cases he is not entitled to 25% power rebate. To the knowledge of the petitioner, neither the government nor the Transco issued any proceedings barring a transferee of service connection from claiming 25% rebate on the ground of non-payment of service line/development charges. There was in fact no occasion to the petitioner to pay service line/development charges as what was involved was a mere transfer of service connection from the previous owner who did not commit any default in the payment of C.C. charges. Denial of rebate on this flimsy ground is manifestly illegal and arbitrary.

4. In the counter filed by respondent No. 3, it has been averred that the petitioner was originally incorporated in 1992 in the name of M/s. Shreya Sacks Private Limited; that its name was changed in May, 1999 as Shreya Pet (P) Limited; that prior to the petitioner, M/s. P.K. Packaging Industries was operating at the site and electricity connection released in favour of that company was transferred to the petitioner on 26.08.1999. According to the respondents, the eligibility certificate was issued to the petitioner by the General Manger, District Industries Centre on 25.02.2000 i.e. after more than two years of the commencement of production and, therefore, in terms of the decision contained in memo dated 05.11.2002, its prayer for grant of 25% power rebate was declined.

5. I have heard learned Counsel for the parties and scrutinized the records. The State Government''s power to issue directions to the Electricity Board on policy matters can be traced u/s 78-A of the Electricity (Supply) Act, 1948.

78A. Directions by the State Government.- (1) In the discharge of its functions, the Board shall be guided by such directions on questions of policy as may be given to it by the State Government.

(2) If any dispute arises between the Board and the State Government as to whether a question is or is not a question of policy, it shall be referred to the Authority whose decision thereon shall be final.

6. In exercise of that power, the Government of Andhra Pradesh issued G.O.Ms. No. 108 dated 20.05.1996 for grant of tax benefits to the newly set up industries. The G.O. envisages grant of rebate by the Board to the extent of 25% in the power bills for a period of three years from the date of commencement of commercial production. For the sake of reference, paragraphs 6.01 and 6.04 of G.O.Ms. No. 108 are reproduced below:

6. The following are the incentives under this "TARGET-2000" Scheme:

6.01) All New industrial units, whether large, medium or small other than those listed in the Annexure, to be located anywhere in the state of Andhra Pradesh, except within the Municipal Corporation areas of Hyderabad, Vijayawada and Visakhapatnam, and going into commercial production on or after November 15, 1995 are eligible for the following incentives.

6.04) Rebate in Electricity Charges:

All new industries, other than those listed in the Annexure and other than those set up ion the Municipal Corporation areas of Hyderabad, Vijayawada and Visakhapatnam, will be eligible for 25% rebate in power bills (both demand and energy) for a period of 3 years from the date of commencement of commercial production. The rebate shall be allowed by the A.P. State Electricity Board in their monthly bills. The maximum total admissible rebate for the 3 years will be Rs. 50.00 lakhs in respect of Large and Medium Industries and Rs. 30.00 lakhs in respect of small scale industries.

Note: The existing procedure of issuing eligibility certificate by the District Industries Center and admission of claim by Andhra Pradesh State Electricity Board will continue.

7. A reading of the above reproduced extracts of the G.O.Ms. No. 108 shows that the policy direction issued by the State Government to the Board is not hedged with the condition that 25% rebate in the power tariff will be available only to those industries which obtain eligibility certificate within two years from the date of release of supply. However, the respondents rejected the petitioner''s claim for rebate on the premise that the supply was released on 13.02.1998 and eligibility certificate was granted by the General Manager, District Industries Center on 25.02.2000 i.e. after a period of two years.

8. Shri O. Manohar Reddy, learned Counsel for the respondents made strenuous efforts to convince the Court that the decision taken by the respondents is in consonance with the policy contained in letter dated 16.07.1994 read with memo dated 05.11.2002. For better appreciation of this contention of the learned Counsel, letter dated 16.07.1994 and memo dated 05.11.2002 are reproduced below:

Letter dated 16.07.1994

Andhra Pradesh State Electricity
Board

Vidyut Soudha: Hyderabad - 49
Letter No. C.E. (Comml)/P02/25% rebate/
1770/75-804/94, Dt. 16.7.94

From:

The Member Secretary,
A.P.S.E. Board,
Vidyut Soudha,
Hyderabad - 49.

To

The Commissioner of Industries,
Government of Andhra Pradesh
Chirag Ali Lane, Hyderabad-1.

Sir,

Sub: 25% power rebate to new industries - Reg.

Ref: Your Lr. No. 488/Desk-10/C1/94, Dt. 18.06.1994.

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With reference to your letter cited, I have to state that the Andhra Pradesh State Electricity Board is not agreeable for granting 25% rebate for those industries which have not obtained the Eligibility Certificates within the 2 year period and it is requested that these cases be not reopened.

If the Government wants to reopen the matter, it is suggested that Government may extend the 25% rebate to consumers direct in the said 58 cases.

A list of the cases may please be sent for our records.

Yours faithfully,

Sd/-
For Member Secretary

Copy to the Principal Secretary to Government, E & F Dept., Hyderabad.

Memo dated 05.11.2002

Central Power Distribution Company of A.P. Limited

3rd Floor, Singareni Bhavan,
Red Hills, Hyderabad - 500 004.

Memo No. CE(Comml)DE(c)/ADE-1/F-25%
Rebate/D.No.2669 Dt. 5.11.2002.

Sub: LT Service - M/s Shreya Sacks (P) Ltd. - Sc. No. 87-82 - 25% Rebate -Reg.

Ref: 1. Lr. No. SE/O/N/Hyd/AOR/CRS/JAO/D.No. 806, DT. 14.10.2000.

2. Memo No. CE/Coml/DE (C)/25% Rebate/D. No. 490, Dt. 29.06.2001.

3. Lr. No. SE/O/N/Hyd/AO(R)/CRS/ JAO/D. No. 508, Dt. 04.10.2002.

As per the Boards letter dt. 16.7.1994 the industries which have not obtained eligible certificate within 2 years from the date of release of supply are not eligible for 25% rebate in the present case supply was released on 13.02.1998 and eligibility certificate was issued by DIC on 25.02.200.

The present company got the service by title transfer and did not avail new connection by paying service line charge/development charges.

In view of the above, it is clarified that M/s Shreya Sacks (P) Ltd. are not eligible for 25% power rebate.

9. I have carefully studied both the documents. In my opinion, the so-called policy contained in letter dated 16.07.1994 cannot be made basis for denying the benefit of rebate in power tariff to the industries covered by G.O.Ms. No. 108, dated 20.05.1996 on the ground that the eligibility certificate was issued after two years of releasing the connection. It is to be noted that letter dated 16.07.1994 merely communicates to the Government the Board''s disinclination to grant 25% rebate to those industries, which could not obtain eligibility certificate within two years. The Court can reasonably presume that this objection of the Board must have been considered by the State Government while issuing policy direction in terms of Section 78A of the Act. If the Board had any reservation or objection to the policy direction issued by the Government, then it could have raised a dispute in terms of Sub-section (2) of Section 78A. However, the fact of the matter is that no such dispute was raised by the Board. Therefore, the Board and officers subordinate to it cannot act in violation of the policy contained in G.O.Ms. No. 108, dated 26.05.1996, which is binding on them.

10. As a sequel to this, it must be held that Setter dated 23.01.2003 sent by the Superintending Engineer, Operation Circle, North, Hyderabad for denying the benefit of 25% rebate in power tariff to the petitioner is legally unsustainable.

11. In the result, the writ petition is allowed. The decision taken by the respondents not to extend the benefit of 25% rebate in power tariff to the petitioner is declared illegal and quashed. The respondents are directed to extend the benefit of 25% rebate in power tariff to the petitioner from the date of production i.e. 28.10.1999 for a period of three years. The petitioner shall get consequential benefits. As a sequel to disposal of the writ petition, order dated 17.03.2003 is vacated and W.P.M.P. No. 5983 of 2003 is disposed of as infructuous.