

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE PRANAY VERMA

WRIT PETITION No. 26921 of 2021

BETWEEN:-

**M/S S.R. FERRO ALLOYS (FAD) THR. PRIYANKA
PORWAL D/O SHRI RAJENDRA KUMAR PORWAL,
AGED ABOUT 27 YEARS, OCCUPATION: SERVICE
PLOT NO. 101-104 INDUSTRIAL AREA
MEGHNAGAR (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI VIVEK DALAL - ADVOCATE)

AND

- MADHYA PRADESH PACHIM KSHETRA VIDYUT**
- 1. VITARAN COMPANY LTD. BHOPAL (MADHYA PRADESH)
SUPERINTENDING ENGINEER MADHYA**
 - 2. PRADESH PASCHIM KSHETRA VIDYUT VITRAN
COMPANY LTD. JHABUA (MADHYA PRADESH)**

.....RESPONDENTS

(RESPONDENT NO.1 BY SHRI PRASANNA PRASAD - ADVOCATE)

.....
Reserved on : 21.02.2023

Pronounced on : 10.04.2023
.....

*This petition having been heard and reserved for orders, coming
on for pronouncement this day, the court passed the following:*

ORDER

1. By this petition preferred under Article 226 of the Constitution of India the petitioner has prayed for a direction to the respondents to grant it benefit of Retail Supply Tariff Order 2019-2020 dated 17.08.2019 with effect from 07.03.2018 and for directing them to pay the amount of Rs.7,12,22,280/- which was illegally disallowed to it for the period 07.03.2018 to August, 2019 with interest from the date of accrual i.e. 07.03.2018.

2. As per the petitioner, it is a partnership firm and has installed its plant at Industrial Area, Meghnagar, District Jhabua for manufacturing of Ferro Alloys. It has obtained a fresh connection for supply of electricity and has entered into a high tension agreement dated 24.02.2018 for a contract demand of 6500 KVA on 33 KV Line. The Madhya Pradesh Electricity Regulatory Commission has framed tariff for the year 2019-20 vide a Tariff Order under which it has specified rebate for new HD connections which is based upon certain conditions. Under its relevant clauses new HD connections are entitled for rebate of Rs.1/- or 20% per unit (whichever is lower) in energy charges up to the year 2021-22 from the date of the new connection which in the case of the petitioner is 07.03.2018 as per the agreement dated 24.02.2018. The petitioner being entitled for rebate under the Tariff Order submitted a letter on 28.08.2019 to Managing Director of respondent No.1 Company claiming the benefits but did not receive any response. It

again submitted a similar letter to respondent No.1 on 25.09.2019 and to respondent No.2 on 05.10.2019. However, respondent No.2 by its letter addressed to Superintendent Engineer of respondent No.1 has computed the period of rebate to which the petitioner is entitled from 17.08.2019 instead of 07.03.2018. The petitioner, aggrieved by aforesaid letter, vide its letter dated 08.11.2019 to respondent No.2 requested consideration of its case for grant of rebate but no response was received hence the present petition has been filed.

3. Reply has been filed by the respondents submitting that the Tariff Order 2019-2020 came into operation from 17.08.2019 hence cannot be given any retrospective effect and the benefit claimed by the petitioner thereunder can be given to it only prospectively. As per the relevant Clause of the Tariff Order a consumer who will enter into agreement for availing power from the licensee after its issuance will get rebate for his new connection from the date of connection. The connection of the petitioner had been disconnected on 17.02.2016 and its re-connection has been made on 07.03.2018 hence petitioner is not entitled for any rebate since new connection on permanently disconnected premises shall only be eligible for such rebate if the application for new service connection in such premises is received not before expiry of six months from the date of permanent disconnection. As per the relief clause of the petition, the petitioner is claiming refund of Rs.7,12,22,280/- which is a money claim hence a Writ Petition claiming the said relief is not

maintainable.

4. The learned counsel for the parties have reiterated the submissions as have been made by them in their pleadings which are primarily based upon the construction of the relevant clause of the Tariff Order 2019-2022.

5. I have heard the learned counsel for the parties and have perused the record.

6. The Retail Supply Tariff Order for the financial period 2019-2020 which contains the relevant Clause HV-3(e) has been relied upon by both the learned counsel for the parties. The same reads as under :-

***“Rebate for new HT connections :** A rebate of Rs.1/Unit or 20% whichever would be less is applicable in energy charges for new connection for the consumption recorded. The rebate shall be allowed upto FY 2021-22 from the date of connection for such new projects for which agreements for availing supply from licensee are finalized during and after FY 2016-17.*

Provided that no rebate shall be applicable for connections obtained by virtue of change in ownership in existing connection or by reconnection.

Provided also that new connection on the permanently disconnected premises shall only be eligible for such rebate, if, the application for new service connection on such premises is received not before the expiry of six months from the date of its permanent disconnection.

The consumer availing this rebate shall not be entitled for the rebate of incremental consumption under clause (d) above.”

7. A perusal of the aforesaid clause reveals that it allows rebate up to financial year 2021-22 from the date of connection for such new projects for which agreements for availing supply from licensee are

finalized during and after financial year 2016-17. Thus, the date from which the rebate is allowed is from the date of connection for the new project and the other requirement is that the agreement for availing supply from licensee was finalized during and after financial year 2016-17. The clause nowhere states that rebate would be allowed from the date the Tariff Order came into operation or for agreements finalized after the same coming into operation. A plain and simple reading of the clause unmistakably shows that the same is retrospective in nature and is not prospective as it includes therein connections for new projects taken under agreements finalized after 2016-17. The very fact that it encompasses therein agreements finalized in or after 2016-2017 is in itself sufficient to demonstrate that the same is retrospective in nature. It includes financial year 2016-2017 even though the same has come into operation on 17.08.2019 i.e. after a period of almost two and a half financial years. Had it not been the intention of making it retrospective in nature, then the same would not have been made applicable to agreements finalized during and after financial year 2016-17 and it would have specifically stated that it would be applicable only in respect of agreements finalized on and from the date of the same coming into operation. The contention of learned counsel for the respondents that the Tariff Order is hence prospective and not retrospective in nature hence cannot be accepted. It hence has to be necessarily held that the rebate to be granted to the petitioner under the

Tariff Order would be with effect from the date of connection of its new project i.e. 07.03.2018 and not 17.08.2019 i.e. the date of coming into operation of the Tariff Order.

8. Under the second proviso to Clause (e) as aforesaid new connection on permanently disconnected premises shall be eligible for the rebate if application for new service connection on such premises is received not before expiry of 6 months from the date of permanent disconnection. It is not disputed by the respondents that the earlier connection of the petitioner on the premises had been disconnected on 17.02.2016 and the new connection was granted on 07.03.2018, i.e. after 2 years from the date of disconnection. Nothing has been brought on record by the respondents to show that application for new service connection was made by the petitioner even before expiry of 6 months from the date of its permanent disconnection. The petitioner has specifically contended that it is entitled for the rebate even as per the second proviso to Clause (e) which fact has not been specifically denied by the respondents who have not even pleaded that application for new electricity connection was made by the petitioner within 6 months from the date of its previous disconnection. The pleadings of respondents in the return on the contrary suggest that their stand is that application for new electricity connection was made by the petitioner after a period of 6 months from the date of its earlier permanent disconnection hence it is not entitled for rebate under Clause (e) of the Tariff Order in view of

its second proviso which from its true reading is wholly misconceived.

9. Learned counsel for the respondents has placed reliance on the decision of the Hon'ble Supreme Court in **Suganmal V/s. State of M.P. AIR 1965 SC 1740** and upon an order dated **11.11.2019** passed in **W.P. No.16273/2018 (Ajmera Steel Private Limited) through Rajkumar Ajmera V/s. M.P. Pashim Kshetra Vidyut Vitran Company**) by this Court to contend that a Writ Petition for refund of money is not maintainable and for that relief it is only a Civil Suit before the competent Civil Court which would be maintainable and since the relief claimed for by the petitioner in the petition is for refund of a specified sum to it, the petition is not maintainable.

10. The subject matter of the instant petition is primarily claiming the relief of rebate of Tariff Supply Order 2019-2020 w.e.f. 07.03.2018 i.e. the date of electricity connection and not 17.08.2019 i.e. the date of coming into operation of the same as has been held by the respondents. The consequential relief prayed for by the petitioner is for refund of amount of rebate which it would be entitled to in case primary relief as claimed by it is granted. The basic question for determination in this petition has been as regards the date of eligibility of the petitioner to claim rebate under the Tariff Order and consequential relief for refund of the amount is wholly dependent upon answer to the same. In view of pleadings of the parties and the dispute involved in this petition it cannot be said that it has been filed by the petitioner only for refund of

a particular amount independently claiming any other relief. The objection as raised by learned counsel for the respondents as regards maintainability of the petition is hence over ruled.

11. As a result of the aforesaid discussion, the petition deserves to be and is hereby allowed. The respondents are directed to grant benefit of Retail Supply Tariff Order 2019-20 dated 17.09.2019 to the petitioner w.e.f. 07.03.2018 i.e. the date on which new electricity connection was granted to it. The respondents are further directed to calculate the amount of rebate to which the petitioner is entitled under the Tariff Order for the period from 07.03.2018 to 17.08.2019 and to remit the same to it within a period of three months from today along with interest @ 6% per annum on and from 07.03.2018 up to the date of payment.

(PRANAY VERMA)
JUDGE

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