

**TAMIL NADU ELECTRICITY REGULATORY COMMISSION  
CHENNAI**

**Constituted under Section 82(1) of the Electricity Act, 2003  
(Central Act 36 of 2003)**

**PRESENT :**

**Thiru S. Kabilan** - **Chairman**  
**Thiru R. Rajupandi** - **Member**  
**and**  
**Thiru K. Venugopal** - **Member**

**M.P. NO. 44 of 2008**

**Dates of hearing 5-12-2008, 2-1-2009, 1-4-2009, 22-4-2009,  
16-6-2009, 6-1-2010, 10-2-2010 and 25-2-2010.**

**Date of Order:18-3-2010**

**In the matter of a petition under Section 62 (1d) and 62 (6) of the  
Electricity Act, 2003**

Scope International Private Ltd.  
Europe Building, 1<sup>st</sup> Floor  
Haddows Road, Nungambakkam  
Chennai-600 006.

..... Petitioner  
Counsel for Petitioner  
Thiru T. Poornam

Vs

1. The Chairman  
Tamil Nadu Electricity Board  
N.P.K.R. Maligai, 144 Anna Salai  
Chennai-600 002.
2. The Superintending Engineer  
Chennai Electricity Distribution Circle (Central)  
Tamil Nadu Electricity Board  
Chennai-600 034.
3. The Secretary to Government  
Government of Tamil Nadu (Energy Department)  
Fort St. George  
Chennai

Respondents  
Counsel for Respondents  
Thiru H.S. Mohamed Rafi

M.P. No.44 of 2009 came up for hearing before the Commission on 25<sup>th</sup> February 2010. The Commission upon perusing the above petition and connected records and upon hearing both sides passes the following

## **ORDER**

### **1. Prayer**

The prayer is to direct Respondent 2 (SE / EDC (Central)) to re-classify petitioner from HT Tariff III to HT Tariff I as per ITES Policy 2005 of Government of Tamil Nadu and to refund excess amount collected, as per Clause 9.4 of ITES Policy of 2005 with interest at bank rate.

### **2. Facts of the case**

The petitioner is a net Foreign Exchange earner and provides ITES under IT Policy 2002 and is a 100% export oriented unit under the Software Technology Park Scheme of Government of India. Petitioner in letters dated 6-8-2007 and 12-12-2007 requested Respondent 2 to reclassify them from HT III tariff to HT I tariff w.e.f. 17-11-2005. As there is no response, petitioner is constrained to file this petition.

### **3. Contentions of the Petitioner:**

- a) Petitioner is entitled to concessional tariff pursuant to Cl.9.4. of ITES Policy 2005.
- b) Respondent 2 is bound to give effect to ITES Policy 2005 under which petitioner is entitled to concessional tariff.
- c) Respondents 1 and 2 have not disputed petitioner's entitlement to pay the energy charges at concessional rate under ITES Policy 2005. The Respondents are therefore estopped from denying the benefit of concessional tariff to petitioner.

- d) Petitioner is entitled to concessional tariff with retrospective effect from 1-2-2001, the date on which petitioner commenced business as ITES producer.
- e) Respondents are obliged in law to give effect to policy of Government of Tamil Nadu which has promised power tariff concession to ITES providers such as petitioner.

#### **4. Contentions of Respondent Board**

- a) Regulatory Commission has issued the Tariff Order, dated 15-3-2003. As per the said Tariff Order, HT Industrial tariff I A is applicable to all the industrial establishments and registered factories which includes tea estates, textiles, fertilizers, steel plant, heavy water plant, chemical plants, software industries, maintenance, training and service institutions and Railway traction. However IT Enabled services are not included under HT Tariff I A (Industrial). Further it is submitted that as the above tariff order is a statutory order and as the Information Technology Enabled Services ITES are not included in the Tariff Order, HT SC No.2280 of M/s. Scope International (P) Ltd., the petitioner herein with sanctioned demand of 3000 KVA is charged under HT Tariff III. Hence Information Technology Enabled Services is not eligible for HT Tariff I A.
- b) In the letter of the Commission dated 20-3-2008, it has been stated as follows:-
  - i) The Tariff Order of the Commission issued on 15-3-2003 is currently in force.
  - ii) As per the orders of the Commission, Software, Industries, Information Technology Industries set up in IT Parks or in stand alone locations including Software Training Institutes, maintenance and servicing units and hardware units are eligible for Industrial Tariff.
  - iii) IT Enabled services are not eligible for Industrial Tariff.

- iv) IT Policy 2002 did not provide for Industrial Tariff to IT Enabled Services. The relevant provision under Fiscal Incentive under 6.1.1. of IT Policy 2002 are extracted below:

*“All Software Industries Including Services and Training Institutes in Information Technology will be entitled to “Industry” status. Such units shall be eligible for all concessions and incentives applicable to Industries.”*

*“Government will provide continuous power supply for Low Tension units as per LT Tariff III C and for High Tension units as per HT Tariff I A to Information Technology Industries whether set up in Information Technology Parks or in stand alone location and also ensure quality of power as required by the Industry.”*

*“For the purpose of power tariff, IT maintenance and servicing units and hardware units will be treated as Industries and not Commercial consumers and electricity tariff as applicable to industrial consumers will be charged.”*

- v) ITES Policy 2005 of the Government of Tamil Nadu provides for extension of Industrial tariff to IT Enabled Services but this is yet to be given effect to by the Commission since the Tariff Order of 2003 has not been revised so far.

If in the meantime the Government desires to subsidise the IT Enabled Services, they may take recourse to Section 65 of the Act which reads as follows:

*“If the State Government requires the grant of subsidy to any consumer or class of consumers in the tariff determined by the State Commission under Section 62, the State Government shall, notwithstanding any direction which may be given under Section 108, pay, in advance and in such manner as may be specified, the amount to compensate the person affected by the grant of subsidy.”*

- c) No counter-affidavit has been filed by the 3<sup>rd</sup> Respondent GOTN in spite of adjournments granted on 5-12-2008, 2-1-2009, 1-4-2009, 22-4-2009, 16-6-2009, 6-1-2010 and 10-2-2010.

**5. Findings of the Commission:**

- 5.1. As already stated by the Commission in its letter dated 20-3-2008 as reproduced in para 7 of the counter-affidavit of Respondent Board as extracted above, the IT Policy 2002 referred to by the petitioner did not provide for industrial tariff to IT Enabled Services.
- 5.2. ITES Policy 2005 of Government of Tamil Nadu is yet to be given effect to by the Commission since the Tariff Order 2003 has not been revised so far.
- 5.3. This issue can be taken up at the time of next tariff revision.

**6. Direction**

MP No.44 of 2008 is dismissed. However, it is open to the petitioner to present their case when the fresh tariff petition before the Commission which is now under the consideration of the Commission is taken up for hearing.

**7. Appeal**

An appeal against this order lies to the Appellate Tribunal for Electricity as per Section 111 of the Electricity Act 2003 within a period of 45 days.

(Sd.....)  
**(K. VENUGOPAL)**  
**Member-II**

(Sd.....)  
**(R. RAJUPANDI)**  
**Member-I**

(Sd.....)  
**(S. KABILAN)**  
**Chairman**

**/ True Copy /**

**Assistant Secretary**  
**Tamil Nadu Electricity**  
**Regulatory Commission**