



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
4th & 5th Floors, Singareni Bhavan, Red Hills, Hyderabad - 500004

O.P. No.61 of 2012

Dated: 16.01.2013

Present

Sri A.Raghotham Rao, Chairman
Sri C.R.Sekhar Reddy, Member
Sri R.Ashoka Chari, Member

Between

M/s Lanco Kondapalli Power Ltd.,
Plot No. 4, Softsol Building, Software Units Layout,
HITEC City Madhapur, Hyderabad - 500 081.

.... Petitioner

And

Andhra Pradesh Power Coordination Committee & others ... Respondents

This petition coming up for hearing on 22.12.2012 in the presence of Sri C.Gunaranjan, Advocate for the petitioner and Sri P.Shiva Rao, Advocate for the respondents, the Commission passed the following:

O R D E R

The respondent in the main petition filed this memo to defer the hearing of the case by projecting the following grounds:

- (i) The present petition was filed by the petitioner with a claim of MAT for the year 2009 to 2012. On a similar issue relating to MAT claimed by the petitioner for the years 2006 to 2009, the Discoms have preferred Civil Appeals before the Hon'ble Supreme Court vide SLP No. 28634 of 2012 & Civil Appeal Nos. 6061 of 2012 & 6138 of 2012 against the orders of the Appellate Tribunal passed in Appeal No. 113 of 2012, wherein

the orders of this Commission passed in I.A. No.140 of 2011, this Commission passed orders directing the respondents to pay MAT to the petitioner. But the respondents took a stand that by the effect of Section 80 I.A. of Income Tax Act, i.e., 100% exemption of tax (tax holiday) for first 10 years, there is no liability of MAT to the petitioner and consequently the respondents (DISCOMS) are not liable to reimburse the same.

- (ii) As the said issue is now pending before the Hon'ble Supreme Court, having the appeal admitted, no purpose will be served to pass orders by this Commission in this O.P. No. 61 of 2012. Further, as per the settled position of the Law that was decided by the Hon'ble Supreme Court in West Coast paper Mills case in 2004, the decision of Tribunal / Court once challenged in Appeal and the Appeal is admitted, the order under Appeal cannot be used to act upon for similar claim of other years. The Apex Court further held that grant of Interim Order or not, is immaterial. Hence, the hearings of the above case may be deferred.
- (iii) The DISCOMs are also advised to take steps for getting this matter transferred to the Hon'ble Supreme Court to tag with Civil Appeal Nos. 6061 of 2012, 6138 of 2012 and SLP (Civil) 28634 of 2012 in the interest of justice. Necessary action is being taken accordingly.

2. The case of the petitioner in main O.P. projected in his reply is briefly as follows:

- (i) The Hon'ble Supreme Court has not stayed the operation of the judgment of Hon'ble Appellate Tribunal and on other hand it has directed the respondents to pay the MAT after Commission quantifies the same. Mere admission of appeal shall not anyway affect the findings and conclusion drawn by

the Tribunal. Though MAT being recurring claim, the Hon'ble Supreme Court cautiously did not stay the same, therefore the respondents are precluded from contending that the present petition should not be adjudicated pending the appeal.

- (ii) When there is no specific order or direction restraining the Commission from proceeding with hearing of the present petition, nothing prevents this Commission to proceed with the matter. The judgment cited by the respondents has no application to the facts of the present case. The said judgment nowhere says that when an issue is ceased of before the Hon'ble Supreme Court by admitting the appeal, no courts should entertain such claims for succeeding years. Placing reliance on the said judgment is totally misconceived.
- (iii) No prejudice would be caused to the respondents if the Commission proceeds with the matter and decides the issue on merits. The Commission in the previous proceedings has already decided that the MAT is payable and now it is only the quantum that is to be assessed.
- (iv) Hence, the Commission may be pleased to proceed with the hearing of the matter and pass appropriate orders in the interest of justice.

3. Now, the point for consideration is, "whether the respondent in main O.P. is entitled to defer the matter as prayed for?"

4. The learned advocate for the respondent in main O.P. has filed a memo to defer the matter of MAT for 2009-12 on the ground that a similar matter is pending before the Hon'ble Supreme Court. He further argued that in O.P. No.18/2009 this Commission has awarded MAT for three years i.e., 2006 to 2009 and rejected for the years 2001 to 2005 on the ground of limitation and on that an appeal was preferred to ATE and ATE set aside the

entire order condoning the delay and awarded MAT for all the years and against that order appeal had been preferred before the Hon'ble Supreme Court and the same is pending before the Hon'ble Supreme Court. He requested the Commission to defer the matter till the disposal of the said petition.

5. On the other hand, the learned advocate for the petitioner in main O.P. argued that there is no need to defer the matter and if really the respondents want the matter to be heard by the Hon'ble Supreme Court along with matter pending before the Hon'ble Supreme Court, they can move an application before the Hon'ble Supreme Court to transfer the matter to be heard along with the matter pending before the Hon'ble Supreme Court. He also further argued that there is no provision to defer the matter and that there is no stay granted to stall the hearing of the matter by the Commission pending disposal of the appeal before the Apex Court. He argued that the matter filed by the petitioner in main O.P. has to be proceeded with.

6. This petition has been filed to award MAT for the years 2009-10 to 2011-12. The respondents have sought to defer the consideration of the same on the ground of the pendency before the Hon'ble Supreme Court of the appeal, preferred by him in the above said matter O.P. No. 18/2009.

7. The petitioner herein filed O.P.18/2009 claiming MAT for the years 2001 to 2009. The Commission passed an order on 13.06.2011 granting MAT from 2006 to 2009 and rejected 2001 to 2005 on the ground that the claim is barred by limitation. Against that Order the petitioner preferred appeal no. 128/2012 and the petitioner filed I.A.207/2011 for a consequential relief. The Hon'ble ATE directed the Commission to pass consequential order. The Commission passed consequential order in IA 140/2012 on 20.03.2012. Against that order the respondent preferred appeal No.133/2012. The Hon'ble ATE allowed appeal no. 128/2012 and dismissed appeal No. 133/2012. Against the said judgement the respondents preferred

appeal No. 6038/2012 and 6138/2012 to the Hon'ble Supreme Court. In C.A.No.6138/2012, the Hon'ble Supreme Court directed the Commission to quantify the amount for the years 2006 to 2009 and also directed the respondents to pay 50% and bank guarantee for 50% to the petitioner.

8. The respondents now filed the above memo to defer the matter till the disposal of the matter before the Hon'ble Supreme Court.

9. The leaned advocate for the respondent also relied upon a ruling reported in 2004 LAWS (SC) 47. In this it was held that

In the aforementioned cases, this Court failed to take into consideration that once an appeal is filed before this Court and the same is entertained the judgment of the High Court or the Tribunal is in jeopardy. The subject matter of the lis unless determined by the last Court, cannot be said to have attained finality. Grant of stay of operation of the judgment may not be of much relevance once this Court grants special leave and decides to hear the matter on merit.

This decision dealt with the enforcement of the order passed by the Court, to the effect that the same cannot be enforced when an appeal is pending before the Hon'ble Supreme Court, even if stay is not granted. The ratio of the judgment therein is that the very filing of the appeal before the Apex Court and entertaining of the same, by the Hon'ble Supreme Court has the effect that the judgment of the Hon'ble High Court or the Tribunal is in jeopardy and that the order of the High Court or the Tribunal cannot be executed. This principle is not applicable to the facts of the instant case, since issues in that case are un-connected with the issues regarding this case pending before the Hon'ble Supreme Court. If really the petitioners want to stall the proceedings, they can move the Apex Court to transfer this matter from the file of the Commission to the file of the Hon'ble Supreme Court to be heard along with appeal pending before the Apex Court.

10. In the light of the above said discussion, we are of the considered opinion that the memo filed by the respondent in main O.P. is not having any merits and the same is liable to be rejected.

11. In the result the memo filed by the respondent in main O.P. is rejected and the main matter can be proceeded with further steps.

This order is corrected and signed on this 16th day of January, 2013.

Sd/-
(R.Ashoka Chari)
Member

Sd/-
(C.R.Sekhar Reddy)
Member

Sd/-
(A.Raghotham Rao)
Chairman