BEFORE THE APPELLATE TRIBUNAL FOR ELECTRICITY
APPELLATE JURISDICTIION, NEW DELHI

Appeal No. 95 of 2006

Dated this 16th day of October 2006

Present : **Hon'ble Mr. Justice E Padmanabhan, Judicial Member**
Hon'ble Mr. H. L. Bajaj, Technical Member

1. Chhattisgarh Krishi Vaniki Samaj
SM-46, Padmanbhpur, Durg (C.G.) and

2. Mool Chand Jain
HIG-157, Padmanbhpur, Durg (C.G) ... Appellants

Versus

1. Chhattisgarh State Electricity Board
Dangania, Raipur (C.G.) and

2. Chhattisgarh State Electricity Regulatory Commission
Civil Lines, G. E. Road, Raipur (C.G.) ... Respondents

Counsel for the Appellants : Mr. Satyawan Agrawal, Advocate and
Mr. M. C. Jain, Advocate

Counsel for the Respondents : Ms. Suparna Srivastava, Advocate for CSEB
Mr. M. G. Ramachandran, Advocate for CSERC

J U D G M E N T

1. This appeal has been preferred by the appellants herein, challenging the order of the second respondent Regulatory Commission in so far as it has included growing of trees in agricultural land under the commercial schedule and to hold that the growing of tree crops like eucalyptus, Subabul, Jatropha (Ratanjot), Khamhar, Teak, Mauzium and Bamboo etc. is agricultural and the electricity consumption charges for the said crops falls under agricultural tariff LV-3 and not under the LV-2 (non- domestic) and grant such further and other relief as the fact of the case warrants.

2. Heard Mr. Satyavan Aggarwal and Mr. M.C. Jain, advocates appearing for the appellant and Ms. Suparana Srivastava appearing for the first respondent and Mr. M.G. Ramachandran for the second respondent Regulatory Commission.

3. By Tariff Order dated 22.3.2006, the second respondent, the Regulatory Commission included plantation under the head LV-2 (non-domestic) w.e.f. 1.7.2005, which according to the appellants, the same has caused tariff shock by the manifold increase in tariff. The

appellant claiming that their entire operation falls under the category of agriculture, sought for review of the tariff order dt. 15.6.2005 in a review petition No. 24 of 2005 (M). The review petition came to be rejected by the second respondent Regulatory Commission by order dated 22.3.2006 as in the view of the commission there is no error apparent on the face of the record warranting of review of the tariff order passed on 15.6.2005.

4. Challenging the same, the present appeal has been preferred by the two appellants. The first appellant is a registered association of agriculturists engaged in the cultivation of tree crops like eucalyptus, Subabul, Jatropha (Ratanjot), Khamhar, Teak, Mauzium and Bamboo etc. Tree crops have been grown by the appellants on the agriculture land as classified by the Land Revenue Department of the State Government and they are raising tree crops which is an agricultural operations like ploughing and tilling of soil, applying fertilizers to the soil, transplantation of nursery to the agriculture fields, irrigating the plants , sowing the plants in the agriculture fields etc.

5. The State Government has encouraged such tree plantation which has resulted in cultivation of crores of tress, tree plantation on barren agricultural land in the state of Chhatisgarh, provides for employment

to landless villagers apart from being protecting the environment. Financing banks, NABARD, Income tax and sales tax authority etc. have treated such operation as agriculture, charge interest at the concessional rates besides granting exemption from taxation as well.

6. The raising of tree crops has already been held to be an agricultural activity by the Hon'ble Supreme Court in C.I.T. Vs. Raja Vinay Kumar Sahas Roy reported in AIR 1957 SC 768. That being so, the inclusion of plantation as a commercial activity and categorizing under the said tariff is arbitrary, illegal, suffers with error apparent on the face of the record, that it is contrary to national and state policy, that the tariff fixed is confiscatory in nature, that there is no rational basis for determination of such a high tariff, that there is no justification to deny agricultural tariff to the members of the appellant Association and identically placed, which they have been enjoying and that the refusal to review the order is an illegality. Mr. Satyawan Aggarwal advocate appearing for appellant submitted detailed arguments.

7. Per contra Mr. M.G. Ramachandran and Mrs. Suparana Srivastava appearing for the respondents contended that the Regulatory Commission has correctly included plantation in the commercial tariff as the products of such plantation is for a commercial use only, that

there is no illegality in the tariff order categorizing plantation under the commercial category, that the Supreme Court had occasion to decide the identical issues in Maheshwari Fish Seed Farm Vs. Taminadu Electricity Board and Another reported in 2004 (4) SCC 705, that a single Judge of the Karnataka High Court in W.P. 12742 of 12991 had occasion to consider the tariff fixed in respect of horticultural activities like growing of plants in controlled humidity and temperature and that the rejection of review petition, is not liable to be interfered in this appeal.

8. The learned counsel appearing on either side placed reliance on various pronouncements referred by them. The points that arise for consideration in this appeal are:

A. Whether the exclusion of tree crops- plantation from LV-3- agricultural tariff and inclusion of the same in LV-2 non domestic tariff and placing such operation at a higher tariff, is liable to be interfered in this appeal?

B. Whether raising of tree crop of eucalyptus, Subabul, Jatropha (Ratanjot), Khamhar, Teak, Mauzium and Bamboo etc. is a agricultural operation? and whether supply of power to such crops is to be included in LV-3 agricultural tariff?

C. To what relief the appellant is entitled to?

9. With respect to the tariff order in question, the relevant portion of the tariff order passed by the second respondent Regulatory Commission in respect of LV-2 and LV-3 are extracted for ready reference:

"LV-2 NON-DOMESTIC

1. *applicability: This tariff is applicable to light and fan and power to shops, show rooms, business houses, offices, educational institutions (except ITIs, Works shops and laboratories of Engineering College/ Polytechnics), public buildings, town halls, clubs, meeting halls, places of public entertainment, circus, hotels, cinemas, railway stations, private clinics and nursing homes, X-rays plants, Diagnostic centres, pathological labs, fisheries, aqua-culture, seri-culture, dairy, hatcheries, printing presses, milk chilling centres, poultry farms, cattle breeding farms, nurseries, plantations, mushroom growing, carpenter and furniture makers, juice centres, hoarding and advertisement services, public libraries and reading rooms, typing institutes, internet cafes, STD/ISD PCOs, FAX/photocopy shops, tailoring shops, photographers and color labs, laundries, cycle shops, compressor for filling air, Single phase toy making industry, nickel plating on small scale, restaurants, eating establishments, guest houses, marriage houses, marriage gardens, welding transformer and lathe machines for repair works and service, book binders, petrol pumps and service stations, lifts and other appliances in shopping centres and offices.*

LV-3 L.T. AGRICULTURE

1. applicability: This tariff is applicable to Agricultural pump connections, chaff cutters, winnowing machines, sugarcane crushers used on agriculture land, lift irrigation pumps of State Government or its agencies; water drawn by agriculture pumps used by labour, cattle, birds including poultry and farm houses in the same premises of agriculture farms for drinking purposes only."

10. Neither in LV-2 nor in LV-3 either by specification or by indication, the commission has indicated what is agriculture and what is excluded from agricultural operation either by setting out an inclusive definition or by appropriate indication. This is fairly stated so, at the hearing. Looking at LV-3, it is obviously clear that the said tariff is for agricultural pump connections. While plantation have been included in LV-2 (non-domestic), which is controversy to the addressed.

11. The word 'plantation' have been set out thus in Concise Law Dictionary by P. Ramanatha Ayyar:

" The ordinary signification of the term "Plantation" is a farm. These terms are nearly synonymous. A plantation is a place planted; land brought under cultivation; ground occupied by trees or vegetables, which have been planted".

12. In Ramanatha Ayyar Advanced Law Lexicon, the expression " Plantation" have been given the following meaning:

" ***The ordinary signification of the term "Plantation" is a farm. These terms are nearly synonymous. A plantation is a place planted; land brought under cultivation; ground occupied by trees or vegetables, which have been planted".***

13. The learned counsel appearing for both the respondents sought to rely the recent pronouncement of Supreme Court reported in Maheshwari Fish Seeds Farm Vs. Tamilnadu State Electricity Board and anothers 2004 (4) SCC 705 and contended that the expression 'agriculture' will not include pisciculture and further contended that plantation will not fall under the expression of agriculture. In the said pronouncement, the provisions of Tamil Nadu Revision of Tariff Rates on Supply of Electrical Energy Act 1978 was the subject matter of consideration. While construing the provisions of the Act and Notification their Lordships of the Supreme Court had occasion to consider whether pisiculture is agriculture and the said pronouncement is an authority only in that respect. Far from supporting the respondents, the said pronouncement advance the contentions advanced by the appellants.

14. In the course of discussions, the Supreme Court while following the pronouncement in C.I.T. Vs. Benoy Kumar Saha Roy AIR 1957 SCC 768 and the Supreme Court held thus:

" The Court held that the term 'agriculture' has been defined in various dictionaries both in the narrow sense and in the wider sense. In the narrow sense agriculture is cultivation of the field. In the wider sense it comprises all activities in relation to land including horticulture, forestry, breeding and rearing of livestock, dairying, butter and cheese-making, husbandry etc. Whether the narrow or the wider sense of the term 'agriculture' should be adopted in a particular case depends not only upon the provisions of the various statues in which the same occurs but also upon the facts and circumstances of each case. The definition of the terms in one statute does not afford a guide to the construction of the same term in one statute and the sense in which the term has been understood in the several statutes does not necessarily throw any light on the manner in which the term should be understood generally.

10. The principles which are deducible from CIT Vs. Benoy Kumar and relevant for our purpose are set out as under:

1. The primary sense in which the term agriculture is understood is ager (i.e. field) and cultura (i.e. cultivation), that is, the cultivation of the field and if the term is understood only in that sense, agriculture would be restricted only to cultivation of the land in the strict sense of the term meaning thereby, tilling of land, sowing of the seeds, planting and similar operations on the land. They would be the basic operations and would require the expenditure of human skill and labour upon the land itself. There are, however, other operations which have got to be resorted to by the agriculturist and which are absolutely necessary for the purpose of effectively raising the produce from the land. They are

operations to be performed after the produce sprouts from the land....The latter would all be agricultural operations when taken in conjunction with the basic operations described above, and it would be futile to urge that they are not agricultural operations at all.

2. The subsequent secondary or incidental operations must be in conjunction with and in continuation of the products raised on the land i.e. the basic operations amounting to agriculture.

3. The term ' agriculture' cannot be confined merely to the production of grain and food products for human beings and beasts but must be understood as comprising all the products of the land which have some utility either for consumption or for trade and commerce and would also include forest products such a timber, sal and piyasal trees, casuarinas plantations, tendu leaves, horranuts etc.

4. The mere fact that an activity has some connection with or is in some way dependent on land is not sufficient to bring it within the scope of the term and such extension of the term 'agriculture' is unwarranted. The term ' agriculture' cannot be dissociated from the primary significance thereof which is that of cultivation of the land and even though it can be extended both in regard to the process of agriculture and the products which are raised upon the land, there is no warrant at all for extending it to all activities which have relation to the land or are in any way connected with the land. The use of the word agriculture in regard to such activities would certainly be a distortion of the term.

11. It is, therefore, clear that agriculture, for our purpose, need not be kept confined in its meaning to the production of grain and food products for consumption of human beings alone; it can be

extended as comprising within its meaning all the products of the land involving human labour but then it is the producing capacity of the land which must necessarily be found as involved in any activity to amount to agriculture."

15. The said pronouncement of the Supreme Court relied upon by Mr. M.G. Ramachandran in Maheshwari Fish Seed Farm Vs. T.N. Electricity Board and anothers reported in 2004 (4) SCC 705 is an authority which it has decided and not what can legally be deduced from there, In this respect, the pronouncement of supreme Court in Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd. Reported in 2003 (2) SCC 111, as to point of precedent, the Supreme Court held thus:

" 59. A decision, as is well know, is an authority for which it is decided and not what can logically be deduced there from. It is a also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision."

16. The judgment of the Karnataka High court in WP No. 127 42 of 1991 has no application to the case on hand as the learned judge had occasion to consider the placement of horticultural nursery in tariff schedule LT-3 Karnatka Electricity Board Tariff 1990 which finds a specific place in the said tariff and held it is not arbitrary.

17. With respect to the present case, it is pointed out that the term 'agriculture' cannot be confined merely to the products of grain or food products, but it will also include products of some utility either for consumption or for trade and commerce and would also include forest objects such as timber, sal and piyasul trees, casuraina plantation etc. In this respect it is useful to quote the pronouncement of the Supreme Court in the same Maheshwari Fish Seeds Farm Vs. T.N. Electricity Board and anothers, wherein it has been held thus:

> "*The term ' agriculture' cannot be confined merely to the production of grain and food products for human beings and beasts but must be understood as comprising all the products of the land which have some utility either for consumption or for trade and commerce and would also include forest products such a timber, sal and piyasal trees, casuarinas plantations, tendu leaves, horranuts etc.*
>
> *The mere fact that an activity has some connection with or is in some way dependent on land is not sufficient to bring it within the scope of the term and such extension of the term 'agriculture' is unwarranted. The term ' agriculture' cannot dissociated from the primary significance thereof which is that of cultivation of the land and even though it can be extended both in regard to the process of agriculture and the products which are raised upon the land, there is no warrant at all for extending it to all activities which have relation to the land or are in any way connected with the land. The use of the word agriculture in regard to such activities would certainly be a distortion of the term.*

It is, therefore, clear that agriculture, for our purpose, need not be kept confined in its meaning to the production of grain and food products for consumption of human beings alone; it can be extended as comprising within its meaning all the products of the land involving human labour but then it is the producing capacity of the land which must necessarily be found as involved in any activity to amount to agriculture."

18. The Andhra Pradesh High Court in Meenakshamma Vs. Commissioner of Wealth Tax AIR 1967 AP 189,191 held thus:

> *"The word 'agriculture' means the performance of operations like tilling of land, sowing of the seeds or planting in order to raise products of some utility and the nature of the products raised on the land is immaterial. The word 'agriculture' means of or pertaining to agriculture, connected with husbandry or tillage of the ground"*

19. In the absence of any explanatory statement and definition clause or any statutory provision specifying or indicating as to what is agriculture or what is excluded from agriculture, the view of the second respondent Regulatory Commission cannot be sustained. The view that raising of trees is not an agricultural operation, cannot be sustained. Had there been exclusion of such an activity at least by implication in the tariff notification, this difficulty might not have arisen but in this case when such a difficulty has arisen,

the benefit of vagueness of tariff and want of specific definition or identification, benefit has to be given to the appellants.

20. The appellants have also applied for electricity connection for agriculture purposes and there is no dispute. The learned counsel for the respondent pointed out that various Regulatory Commission have treated, growing of trees as a commercial operation. Be that so, the same will not advance the case of the respondents as each tariff order has a statutory efficacy and each has to be construed independently as has been notified by the Regulatory Authority, who notifies the tariff.

21. It was brought to our notice, in the subsequent tariff period there has been substantial slashing of tariff with respect to the cultivation of trees, and the same has been included in the tariff for agriculture. This would establish the justification with which the appellants have approached to this Appellate Tribunal.

22. In the result, points 1 & 2 are answered in favour of the appellant holding that what the plantation of trees carried on, on their land, is 'agricultural' and the same should find place or included in Tariff LV-3 and not in LV-2 and for their consumption of electricity, tariff

should be as such. In the result the appeal is allowed with respect to the tariff year in question. The appellant will be liable to pay consumption of electricity charges with respect to their agricultural operation of raising plantation of trees under tariff entry LV-3 only and not under LV-2.

23. As the tariff year has already lapsed, instead of ordering refund of the excess amount already collected, we direct the first respondent Board to adjust the excess amount collected towards future consumption charges commencing from 1st January, 2007 onwards.

24. The appeal is allowed in the above terms and the parties shall bear their respective costs.

Pronounced in the open court on this 16th day of October, 2006.

(Mr. H. L. Bajaj)
Technical Member

(Mr.Justice E Padmanabhan)
Judicial Member