

GAHC010029712019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/955/2019

M/S. BLUEBERRY INDUSTRY
A PROPRIETORSHIP FIRM HAVING ITS REGISTERED OFFICE AT VILLAGE-
TATIMARA, CHANDRAPUR, DIST. KAMRUP (M), ASSAM, REP. BY ITS
PROPRIETOR, NAMELY SRI KAMAL DEKA,
AGED ABOUT 42 YEARS,
SON OF KANAK CHANDRA DEKA,
RESIDENT OF LAKSHMI NAGAR, NEAR PUNJAB NATIONAL BANK,
GUWAHATI - 781005, DIST. KAMRUP (M), ASSAM.

VERSUS

THE ASSAM POWER DISTRIBUTION COMPANY LTD AND 8 ORS.
REP. BY ITS CHAIRMAN, HAVING ITS OFFICE AT BIJULI BHAWAN,
PALTANBAZAR, GUWAHATI, KAMRUP (METRO), ASSAM, PIN - 781001.

2:THE CHAIRMAN

ASSAM POWER DISTRIBUTION COMPANY LTD. HAVING ITS OFFICE AT
BIJULI BHAWAN

PALTAN BAZAR
GUWAHATI
KAMRUP (METRO)
ASSAM
PIN - 781001.

3:THE MANAGING DIRECTOR

ASSAM POWER DISTRIBUTION COMPANY LTD. HAVING ITS OFFICE AT
BIJULI BHAWAN

PALTAN BAZAR

GUWAHATI
KAMRUP (METRO)
ASSAM
PIN - 781001.

4:THE CHIEF GENERAL MANAGER (D)

ASSAM POWER DISTRIBUTION COMPANY LTD. HAVING ITS OFFICE AT
BIJULI BHAWAN

PALTAN BAZAR

GUWAHATI
KAMRUP (METRO)
ASSAM
PIN - 781001.

5:THE DEPUTY GENERAL MANAGER (TI)

ASSAM POWER DISTRIBUTION COMPANY LTD. A HAVING ITS OFFICE AT
BIJULI BHAWAN

PALTAN BAZAR
GUWAHATI
KAMRUP (METRO)
ASSAM
PIN - 781001.

6:THE ASSISTANT GENERAL MANAGER (TI)

ASSAM POWER DISTRIBUTION COMPANY LTD. HAVING ITS OFFICE AT
BIJULI BHAWAN

PALTAN BAZAR
GUWAHATI
KAMRUP (METRO)
ASSAM
PIN - 781001.

7:THE DEPUTY MANAGER (TI)

ASSAM POWER DISTRIBUTION COMPANY LTD. HAVING ITS OFFICE AT
BIJULI BHAWAN

PALTAN BAZAR
GUWAHATI
KAMRUP (METRO)
ASSAM
PIN - 781001.

8:THE AREA MANAGER INDUSTRIAL REVENUE COLLECTION AREA-I

ASSAM POWER DISTRIBUTION COMPANY LTD. HAVING ITS OFFICE AT
BIJULI BHAWAN

PALTAN BAZAR
GUWAHATI
KAMRUP (METRO)
ASSAM
PIN - 781001.

9:THE SUB-DIVISIONAL OFFICER/ENGINEER

APDCL (LAR)
BAMUNIMAIDAM
GUWAHATI-21

Advocate for the Petitioner : MR A D CHOUDHURY

Advocate for the Respondent : SC, APDCL

WP(C)/860/2019

M/S. SYNPACK FINANCE PVT. LTD AND ANR.
REP. BY ITS DIRECTOR
SRI SANJAY KUMAR CHHABRA
HAVING ITS REGD OFFICE AT OHIO SHOPPING MALL COMPLEX
SITUATED AT 2ND FLOOR
MG ROAD
GUWAHATI
ASSAM
PIN- 781001

2: SANJAY KUMAR CHHABRA
DIRECTOR OF M/S SYNPACK FINANCE PVT LIMITED
S/O- SRI DHAN KUMAR JAIN
R/O- 4TH FLOOR ICICI BANK BUILDING
OHIO SHOPPING MALL COMPLEX
MG ROAD
FANCY BAZAR
DIST- KAMRUP(M)
GUWAHATI- 781001

VERSUS

THE STATE OF ASSAM AND 9 ORS
REP. BY THE ADDITIONAL CHIEF SECRETARY TO THE GOVT OF ASSAM
DEPTT OF POWER (E)
HAVING HIS OFFICE AT STATE SECRETARIAT
CAPITAL COMPLEX
DISPUR
GUWAHATI
KAMRUP (M)
ASSAM
PIN- 781006

2:THE APDCL
REP. BY ITS CHAIRMAN
HAVING ITS OFFICE AT BIJULI BHAWAN
PALTAN BAZAR
GUWAHATI
KAMRUP (M)
ASSAM
PIN- 781001

3:THE CHAIRMAN
APDCL
HAVING ITS OFFICE AT BIJULI BHAWAN
PALTAN BAZAR
GUWAHATI
KAMRUP (M)
ASSAM
PIN- 781001

4:THE MANAGING DIRECTOR
APDCL
HAVING ITS OFFICE AT BIJULI BHAWAN
PALTAN BAZAR
GUWAHATI
KAMRUP (M)
ASSAM
PIN- 781001

5:THE CHIEF GENERAL MANAGER(D)
APDCL(LOWER ASSAM REGION)
HAVING ITS OFFICE AT BIJULI BHAWAN
PALTAN BAZAR
GUWAHATI
KAMRUP (M)
ASSAM
PIN- 781001

6:THE DEPUTY GENERAL MANAGER(TI)
APDCL
HAVING ITS OFFICE AT 4TH FLOOR

BIJULI BHAWAN
PALTAN BAZAR
GUWAHATI
KAMRUP (M)
ASSAM
PIN- 781001
7:THE ASSTT GM(TI)
APDCL(LOWER ASSAM REGION)
HAVING ITS OFFICE AT BIJULI BHAWAN
PALTAN BAZAR
GUWAHATI
KAMRUP (M)
ASSAM
PIN- 781001

8:THE DEPUTY MANAGER (TI)
APDCL
HAVING ITS OFFICE AT BIJULI BHAWAN
PALTAN BAZAR
GUWAHATI
KAMRUP (M)
ASSAM
PIN- 781001

9:THE AREA MANAGER
INDUSTRIAL REVENUE COLLECTION AREA-I
APDCL
HAVING ITS OFFICE AT BIJULI BHAWAN
PALTAN BAZAR
GUWAHATI
KAMRUP (M)
ASSAM
PIN- 781001

10:THE SUB DIVISIONAL OFFICER/ ENGINEER
ULUBARI ELECTRICAL SUB DIVISION
APDCL(LOWER ASSAM DIVISION)
HAVING ITS OFFICE AT BIJULI BHAWAN
PALTAN BAZAR
GUWAHATI
KAMRUP (M)
ASSAM
PIN- 781001

11:THE ASSAM ELECTRICITY REGULATORY COMMISSION
REP. BY ITS SECRETARY
HAVING ITS OFFICE AT ASEB CAMPUS
DWARANDHAR
GS ROAD
SIXMILE
GUWAHATI
KAMRUP(M)

ASSAM
PIN- 781022

Advocate for : MR. H. BURAGOHAIN
Advocate for : SC
APDCL appearing for THE STATE OF ASSAM AND 9 ORS

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

14.03.2023

Heard Shri S Deka, learned counsel for the petitioner in WP(C)/955/2019 and Shri H Buragohain, learned counsel for the petitioners in WP(C)/860/2019. Also heard Shri KP Pathak, learned Standing Counsel, Assam Power Distribution Company Ltd. (APDCL).

- 2.** On a broad consensus arrived at by the parties in the Bar, both these writ petitions are being disposed of at the admission stage.
- 3.** At the outset, it is, however, made clear that the disposal is on a technical ground and without touching the *inter-se* merits of the dispute.
- 4.** The petitioner in WP(C)/955/2019 is running a processing and packaging unit of perishable items, like milk and milk products. It has challenged an order dated 02.02.2019 whereby a provisional assessment order dated 18.12.2018 for an amount of Rs. 16,52,486.65, as penalty, was confirmed and the same was demanded from the petitioner on the allegation that the petitioner had unauthorizedly consumed electricity beyond the sanctioned load capacity of 338 KW.

5. The petitioner no. 1 in WP(C)/860/2019 is a private limited Company along with one of its Director as the petitioner no. 2. The petitioner no. 1-Company deals with constructions and maintenance of Shopping Malls. Likewise the petitioner in the first writ petition i.e., WP(C)/955/2019, the petitioners herein have put to challenge a speaking order dated 19.01.2019 passed by the APDCL pursuant to a remand by this Court in WP(C)/8712/2018 vide order dated 19.12.2018. By the speaking order, the representation of the petitioners was rejected which was filed against the assessment for an amount of Rs.19,96,854.98.

6. Shri Deka, learned counsel as well as Shri Buragohain, learned counsel for the petitioners have submitted that there is a jurisdictional error in making the assessment by which the relevant factors have been ignored and overlooked and the assessment has been made on extraneous and irrelevant factors. The learned counsel for the petitioners have urged that the assessment has been made on a wrong premise which based on standby machines which could not have been used simultaneously with the machine ordinarily used.

7. On the other hand, Shri Pathak, learned Standing Counsel has disputed the aforesaid proposition and has submitted that the assessment has been done by fully adhering to the Rules and Regulations. The learned Standing Counsel has also drawn the attention of this Court to Section 127 of the Act of 2003 which provides for an appeal in case of grievance against an assessment order. He further submits that all the aforesaid points and grounds raised in this writ petition can very well be taken into consideration by the aforesaid authority, including the jurisdictional issue.

8. Both the learned counsel for the petitioners have responded by contending that if the Appellate Authority independently reconsiders the matter by giving proper

opportunity, including personal hearing, the submissions made by the learned Standing Counsel may be accepted wherein the petitioners would prefer their appeals. However, the petitioners have expressed a predicament that in these cases, the requirement of statutory deposit was relaxed to the extent of 25% which the petitioners have done. The fact of deposit has also been endorsed by Shri Pathak, learned Standing Counsel.

9. In view of the aforesaid facts and circumstance and the agreement reached between the parties, instead of entering into the merits of the dispute, this Court is of the opinion that Section 127 of the Act of 2003 lays down an exhaustive form for redressal of its grievance in the form of an appeal.

10. In that view of the matter, both the writ petitions stand closed by giving liberty to the petitioners to approach the Appellate Authority within a period of 30 days from today.

11. It is, however made clear that since the deposit, as directed by his Court, was made earlier, no fresh deposit would be insisted upon the petitioners at the time of filing of the appeal. However, at the time of its admission, the petitioners shall pray for further exemption in which case, the said prayer would be considered by the Appellate Authority in accordance with law. It is further provided that if the appeal, as directed above, is preferred within this period of 30 days, the same shall be taken up for consideration and disposed of expeditiously and preferably within a period of 90 days from such date of receipt.

12. The Appellate Authority shall also give the petitioners an opportunity of hearing so as to enable the petitioners to present their cases without any prejudice.

13. The writ petitions are, accordingly disposed of.

JUDGE

Comparing Assistant