

CWP No.8348 of 2014

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.8348 of 2014
Date of decision:16.09.2015**

M/s Capital Auto Rubber Industries ...Petitioner
Versus
Punjab State Power Corporation Limited and another ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. R.K.Dogra, Advocate,
for the petitioners.

Mr. Amit Aggarwal, Advocate,
for the respondents.

Rakesh Kumar Jain, J.

The petitioner was allotted Plot No.E-92, Phase-VIII, S.A.S. Nagar, Mohali, measuring 1000 sq. yds. on 05.05.2000 by the Punjab State Electronics Development and Production Corporation Limited (hereinafter referred to as the “Corporation”) for manufacturing electronic items. The Corporation further clarified vide its letter dated 29.01.2002 that the permission to manufacture the item contained in the Letter of Intent No.ECP/ELTOP/2K/383 dated 05.05.2000 is for “Rubber Components for Electronic Industry” instead of “Electronic Items”. The petitioner was having a sanctioned load of 57.420 KW. It constructed first floor for expansion of its business and got permission from the Corporation vide letter dated 08.06.2009 for letting out a portion of 3000 sq. ft. to M/s Logic

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Software with the conditions that the operation of the proposed unit shall be in the field of Information Technology, Information Technology Enabled Services, electronic, communication/telecommunication services or Bio-Technology and the proposed lessee shall use the built up space strictly for the similar purpose for which the permission to rent out the built up space is granted by the Corporation to the original allottee.

It is alleged that a Circular No.42/2011 dated 03.11.2011 was issued by the respondents to the effect that “*(i) that electricity connections to IT & IT Enabled Services, Communication and Electronics Industries, Knowledge Parks & Biotechnology Industries, may be released depending upon the nature of job. Service providers, even if services tax is exempted, should be covered under 'NRS' category and electricity connection to those units which are liable to pay excise duty may be covered under 'Industrial Tariff' and (ii) Further, PSERC has clarified that the categorization of IT enabled services/software development units is to be redetermined in lieu of provisions specified in CC 9/2009. Further action to overhaul the accounts needs to be taken accordingly*”.

It is alleged that the petitioner now, in order to increase the sanctioned load and to transfer electricity load from MS to LS, applied for the change of nature of connection from MS to LS with the respondents on 30.08.2012 by submitting an application and agreement form provided in Section 6 of the Electricity Supply Instruction Manual. The tariff was calculated as per Section 14 of the Electricity Supply Instruction Manual and the respondents raised a demand of ₹1,81,860/- as security for the

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enhanced load. The petitioner deposited ₹1,81,860/- on 11.09.2012. Thereafter, the respondents again raised a demand of ₹2,47,680/- on account of enhanced load of 200 KW, which was also deposited by the petitioner. It is alleged that the petitioner let out the premises to M/s Logic Software after seeking due permission from the Corporation and the said tenant is doing the business of manufacture and development of software. It is alleged that on 10.10.2012, the Enforcement Department of the respondents visited the petitioner and issued inspection report, stating therein that the electricity connection is being misused. Thereafter, on the basis of the recommendation in the inspection report, the respondents served a provisional order of assessment passed under Section 126 of the Electricity Act, 2003 (hereinafter referred to as the "Act") to the petitioner on 11.02.2013 for a sum of ₹9,52,397/-. The petitioner disputed the assessment by filing objections on 14.03.2013 but the respondents, while rejecting the objections, passed the final order of assessment on 21.03.2013, asking the petitioner to pay the aforesaid amount within 7 days. This order was challenged by the petitioner by way of a statutory appeal before the ADC, S.A.S. Nagar, Mohali, being the Appellate Authority, under Section 127 of the Act on 21.05.2013, after depositing 50% of the demanded amount i.e. ₹4,76,200/- vide receipt dated 22.04.2013. The Appellate Authority, vide its order dated 13.08.2013, dismissed the appeal, upholding the final order of assessment and hence, the present writ petition has been filed.

It is argued by learned counsel for the petitioner that the

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petitioner had let out a part of its premises, allotted to it by the Corporation, after seeking due permission from the Corporation and has been illegally slapped with the demand of the amount in question, on the ground that its tenant is indulged in commercial activities instead of manufacturing activities.

After notice, the respondents have filed the reply in which it is alleged that the petitioner was allotted electricity connection under 'industrial category' for its sole consumption but it had concealed from the respondents the fact of having a tenant i.e. M/s Logic Software, an I.T. Firm, in its premises, which not only led to the change in the nature of electricity consumption but also unauthorized usage of electricity by the petitioner. It is also averred that it was categorically provided in the circular dated 03.11.2011 that "service providers, even if service tax is exempted, should be covered under 'NRS' category and electricity connection to those units which are liable to pay excise duty even if exempted from payment of excise duty may be covered under 'industrial tariff'. It is stated that the petitioner was entitled to electricity connection under the NRS category due to consumption of electricity by its tenant, i.e. an IT firm, rather than under 'industrial category' and because of the usage of industrial connection by M/s Logic Software, being contrary to the commercial circular No.42/2011 dated 03.11.2011, the respondents had issued provisional notice No.1240 dated 11.02.2013 for ₹9,52,357/- and after affording reasonable opportunity to clarify its stand, the final order of assessment was passed, which has been upheld in appeal.

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Counsel for the petitioner has also referred to a notification dated 21.06.2013, attached as Annexure P-11, to which counsel for the respondents has submitted that it has no effect on the case in hand because the final order of assessment was passed much earlier before the amendment took place in the regulation called the Punjab State Electricity Regulatory Commission (Electricity Supply Code and related Matters) (4th Amendment) Regulations, 2013.

The petitioner has also filed the replication to deny the averments made in the written statement.

After hearing learned counsel for the parties and perusing the available record, I am of the considered opinion that the petitioner does not have a right to ask for quashing of the final assessment order as well as the appellate order passed under the Act. There is no dispute that the petitioner was allotted industrial plot and it was clarified in letter dated 29.01.2002 that the petitioner is to manufacture “Rubber Components for Electronic Industry” instead of “Electronic Items” and permission was granted by the Corporation to the petitioner for renting out the built up space on the first floor to M/s Logic Software, subject to the condition that the lessee would use the built up space strictly for the similar purpose for which the permission to rent out the built up space is granted by the Corporation to the original allottee. The petitioner has though got the load enhanced, yet it has been found by the inspection staff that the tenant has been consuming the electricity for commercial purposes and as a result thereof, while relying upon the Circular No.42/2011 dated 03.11.2011, the penalty has been

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imposed. It has been found as a fact that during the enforcement checking of the department, non-industrial work/commercial work was being done in the plot in question and, thus, it was held that the petitioner was unauthorizedly using the electricity.

I am not at all impressed with the argument raised by learned counsel for the petitioner that the Circular No.42/2011 dated 03.11.2011 was not within its knowledge, though the said circular is on the website of the respondents.

In view of the aforesaid facts and circumstances, I do not find any merit in the present writ petition and hence, the same is hereby dismissed, though without any order as to costs.

September 16, 2015
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(Rakesh Kumar Jain)
Judge