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**\* IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Judgment delivered on: 6<sup>th</sup> May, 2015*

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**W.P.(C) 4526/2015**

M/S SIGNET CORPORATION ..... Petitioner

Represented by: Mr. Aseem Mehtrotra,  
Advocate.

Versus

BSES RAJDHANI POWER LTD. .... Respondent

Represented by: Mr. Deepak Pathak and  
Mr. Raghav Chadha, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE SURESH KAIT**

**SURESH KAIT, J. (Oral)**

**W.P.(C) 4526/2015**

1. Vide the present petition, the petitioner seeks directions thereby quashing the Order No.SO2530002150010 dated 07.04.2015 issued by the respondent.

2. Mr. Aseem Mehrotra, learned counsel appearing on behalf of the petitioner submits that the petitioner is having industrial licence No.18289 dated 17.04.2000 and M/s Infocom Network Limited (INL) is having a factory licence bearing No.FL1110009937 dated 22.04.2014 issued by the Factory Licensing Department of the Municipal Corporation of Delhi (MCD), whereby it is established that both, the petitioner and INL, are engaged in industrial activities.

3. Learned counsel further submits that the petitioner had let out ground floor of its premises, i.e. A-83, Okhla Industrial Area, Phase-II, New Delhi -110020 to INL on account of shortage of space at A-86, Okhla Industrial Area, Phase-II, New Delhi-110020. Accordingly, INL also commenced its industrial activity of data processing at the aforementioned premises of the petitioner.

4. Learned counsel submits that the respondent was raising electricity bills on a monthly basis for the subject premises on SIP tariff and the petitioner was making payment regularly. Thereafter, on 15.12.2014, a joint team of the respondent visited the subject premises and prepared a report. Based upon which the impugned order dated 07.04.2015 was passed by the respondent, whereby stated that the consumer/petitioner did not submit valid factory licence to establish that only industrial activity is being carried out at the premises in question. Accordingly, the respondent opined that connection sanctioned for industrial category was being used unauthorisedly for non-domestic purpose.

5. Mr.Mehrotra submits that the respondent did not consider the licences issued in favour of the petitioner and INL, however, passed the impugned order losing sight thereof, which is in violation of principles of natural justice.

6. Mr. Deepak Pathak, learned standing counsel appearing on behalf of the respondent on advance notice submits that the impugned order has been passed under Section 126 of the Electricity Act, 2003, and the

appellate remedy under Section 127 of the Act is available to the petitioner. Therefore, the present petition is not maintainable.

7. To support his contention, learned counsel for the respondent has relied upon the case bearing W.P.(C) No.60/2007, titled as '**Ashish Malhotra Vs. N.D.M.C.**' decided by this Court on 15.01.2007.

8. Learned counsel for the petitioner though not disputes the aforementioned contention of the respondent counsel regarding availability of appellate remedy in the Act, however, submits that in the present case, if the petitioner approaches the Appellate Authority, then it has to pay the 50% of the assessed amount and thereafter only appeal will be considered by the said Authority. Whereas the impugned order passed by the respondent is *prima facie* illegal and in violation of the principles of natural justice.

9. To support his case, learned counsel for the petitioner has relied upon the case of **State of Tripura Vs. Manoranjan Chakraborty & Anr., (2001) 10 SCC 740**, whereby the Supreme Court held as under:-

*“1. The High Court had by the impugned judgment struck down the provisions to Section 20(1) and Section 21(2) of the Tripura Sales Tax Act which had provided that no appeal/revision against an order would be entertained by the prescribed authority/Commissioner unless the amount of tax assessed or the penalty levied is paid, discretion being given to the authority for permitting payment of not less than 50 per cent of the tax assessed or the penalty levied.*

*2. The aforesaid Sections 20(1) and 21(2) along with the relevant provisos read as follows:*

*“20. Appeal. (1) Any dealer objecting to an order of assessment or penalty passed under this Act, may, within thirty days from the date of the service of such order, appeal to the prescribed authority against such assessment or penalty:*

*Provided that no appeal shall be entertained by the said authority unless, he is satisfied that the amount of a tax assessed or the penalty levied has been paid;*

*Provided further that the authority before whom an appeal has been filed may, for reasons to be recorded in writing, direct the appellant to pay any lesser amount which shall not be less than fifty percent of the tax assessed or fifty percent of the penalty levied and, on payment of the amount so directed, entertain the appeal.*

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*21. (2) In the case of any order other than an order to which such-section (1) applies, passed by any person appointed under sub-section (1) of section 4 to assist him, the Commissioner may, either of his own motion or on a petition by a dealer for revision, call for the record of any proceeding under this Act in which any such order has been passed and may make such enquiry or cause such enquiry to be made, and subject to the provisions of this Act, may pass such orders thereon, not being an order prejudicial to the dealer, as he thinks fit.*

*Provided that no petition for revision by a dealer shall be admitted by the Commissioner unless at least fifty percent of the amount of tax assessed, or as the case may be, fifty percent of the amount of penalty levied has been paid by the dealer where order against which revision is filed relates to assessment of tax or imposition of penalty.”*

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*4. For the reasons contained in the said decision, we hold that the impugned provisions are valid. It is, of course, clear that if gross injustice is done and it can be shown that for good reason the court should interfere, then notwithstanding the alternative remedy which may be available by way of an appeal under Section 20 or revision under Section 21, a writ court can in an appropriate case exercise its jurisdiction to do substantive justice. Normally of course the provisions of the Act would have to be complied with, but the availability of the writ jurisdiction should dispel any doubt which a citizen has against a high-handed or palpable illegal order which may be passed by the assessing authority.”*

10. Normally, of course the provisions of the Act would have to be complied with, but the availability of the writ jurisdiction should dispel any doubt which a citizen has against a high-handed or palpable illegal order, if passed by the authority. If gross injustice is done and it can be shown that for good reasons the Court should interfere, then notwithstanding the alternative remedy which may be available by way of an appeal under Section 127 of the Act, a writ court can in an appropriate case exercise its jurisdiction to do substantive justice.

11. Perusal of the impugned order reveals that the respondent has opined that the consumer did not submit valid factory license to establish that only industrial activity is being carried out at the premises in question.

12. However, the petitioner has placed on record industrial licence No.18289 dated 17.04.2000 and factory licence bearing

No.FL1110009937 dated 22.04.2014, which are at pages 24 and 25 of the petition, issued in favour of the petitioner and INL respectively by the MCD, which clearly show that both of them are engaged in industrial activities. The said licenses have not been considered in the impugned order.

13. Learned counsel for the petitioner has fairly conceded that if the Assessing Officer re-examines the issue in the light of the factory licences as noted above, the petitioner is ready to deposit an amount of Rs.10,00,000/- within one week without prejudice to the rights and contention of the parties.

14. Keeping in view the above discussion and the assurance given by the counsel for the petitioner, impugned order dated 07.04.2015 is hereby set aside.

15. Accordingly, the petitioner is directed to deposit a sum of Rs.10,00,000/- with the respondent within one week from today and thereafter, appear before the Assessing Officer on 15.05.2015 along with requisite documents.

16. The Assessing Officer is directed to pass a fresh order after considering the documents filed by the petitioner.

17. With the above observations, the instant petition stands allowed.

18. I hereby make it clear that if the petitioner still feels aggrieved with the decision of the respondent, he may challenge the same before the appropriate Forum.

19. It is further clarified that the observations made in this order shall not come in the way of an independent assessment of the merits of the case by the Assessing Officer.

**CM No. 8194/2015 (for stay)**

With the disposal of the petition itself, the instant application has become *infructuous*. The same is accordingly dismissed.

**SURESH KAIT  
(JUDGE)**

**MAY 06, 2015**  
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