

HIGH COURT OF CHHATTISGARH, BILASPUR**WP No. 1694 of 2003**

- The Associated Cement Companies Limited, Jamul Cement Works, Jamul, District Durg (CG), through Tapas Ranjan Mohanty, S/o Bala Krishna Mohanty, aged about 37 years, (Deputy Manager Accounts) Jamul Cement Works, Jamul, District Durg (CG)

---- Petitioner**Versus**

1. Chief Electrical Inspector, Government of Chhattisgarh, 36/437, First Floor, Byron Bazar, Fouwara Chowk, Raipur (Chhattisgarh)
2. Tehsildar, Durg (Chhattisgarh)
3. State of Chhattisgarh, through Secretary, Department of Electricity, D.K. Mantralaya Bhawan, Raipur (Chhattisgarh)
4. State of Madhya Pradesh, through Chief Engineers (Electrical safety) and Chief Electrical Inspector, A Block, 3rd Floor, Satpura Bhawan, Bhopal (M.P.)

---- Respondent

For Petitioner : None.

For Respondent/State : Shri Avinash Singh, Panel Lawyer.

For Respondent No.4 : Shri Sachin Singh Rajput, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****22/11/2018 :**

1. No-one appears for the petitioner, however, the matter is taken up for disposal with the assistance of learned State Counsel for the reason that it is listed in the separate list of cases which are more than 10 years old to be disposed of by 31st January, 2019.

2. The petitioner would call in question the order dated 23.5.2002 (Annexure-P/12) and the Revenue Recovery Certificate (Annexure-P/14) by which the petitioner has been directed to deposit electricity duty to the tune of Rs.6,87,505/-.
3. The petitioner has cement factories in the State of Haryana as also in Jamul, District Durg in the State of Chhattisgarh. On 15.3.95, the petitioner wrote to the Chief Electrical Inspector, Government of Haryana requesting issuance of No Objection Certificate for shifting Diesel Generating Set (for short 'DG Set') for installation at Jamul Cement Works. The petitioner also wrote to the Chief Engineer (Commercial), M.P.E.B., Jabalpur on 28.3.1995 seeking permission for installation of the said DG Set. The MPEB granted permission on 9.6.95 vide Annexure-P/4. The petitioner informed the MPEB about completion of installation of DG Set vide its letter dated 26.10.1995 (Annexure-P/5). Thereafter the petitioner was granted permission to operate the DG Set on 30.12.95.
4. The Chief Electrical Inspector, Government of Chhattisgarh, issued a show cause notice to the petitioner that it had sought exemption from payment of electricity duty from 2.1.96 to 1.1.2001, however, opening meter reading of the DG Set would record 24340.4 unit of electricity already generated by the DG Set. Therefore, why the electricity duty on the said amount of electricity generated through the DG Set be not recovered. The petitioner replied to the said notice informing that the DG Set was not in operation at Jamul prior to 2.1.96, therefore, electricity duty is not payable. The petitioner's reply was not found satisfactory, therefore, an order was passed vide Annexure-P/9

directing the petitioner to deposit electricity duty of Rs.6,87,495/-. The petitioner has filed a document (Annexure-P/11), which is a letter addressed to the Chief Electrical Inspector, Government of Haryana, Chandigarh seeking issuance of necessary letter indicating that final reading of the DG Set when it was operational at Surajpur in the State of Haryana was 24220.0, however, no separate certificate has been filed with the Writ Petition.

5. Based on the above facts, the petitioner has contended that the DG Set being made operational on 2.1.96, it is not liable to pay electricity duty and the first meter reading of 24340.4 was the energy generated while the DG Set was operational in the State of Haryana.
6. The petitioner has not established by producing any document authenticating the meter reading when the DG Set was stopped functioning in the State of Haryana. Effort made by the petitioner to procure such evidence by writing letter to the Chief Electrical Inspector, Government of Haryana vide Annexure-P/11 has not yielded any result because in the said communication, the petitioner requested the Haryana authorities to issue necessary letter evidencing that when the DG Set was in use at Surajpur at Haryana, the final reading was 24220.0. The authorities in the State of Haryana have neither issued any letter in petitioner's favour nor sent any communication to its counterpart in the State of Chhattisgarh meeting out the request made by the petitioner. It is also to be seen that the petitioner's contractor informed the Deputy Chief Engineer, MP Electricity Board, Jabalpur vide Annexure-P/5 on 26.10.95 that installation of the DG Set has been completed. Thus, after its

installation on 26.10.95, the DG Set appears to be put to use because there is no information by the petitioner either to the M.P. Electricity Board or to the State of M.P. or the State of Chhattisgarh as to the actual date when the DG Set was made functional. In the absence of any proof that the DG Set was carrying reading at 24220.0 when it stopped working in the State of Haryana, it is to be treated that after the installation was complete on 26.10.95, the DG Set was immediately operational, therefore, as on the date the document (Annexure-P/6) was issued, the initial reading was 24340.4.

7. When the petitioner is avoiding to pay the electricity duty on the ground that no electricity was generated when the said DG Set was not operational prior to 2.1.96, burden lay on him to have proved such facts by producing the document/certificate issued by the concerned Department/Board in the State of Haryana which the petitioner has not been able to produce, therefore, in the absence of any clinching proof of petitioner's submission, the Writ Petition deserves to be and is hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve