

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (C) No.6819 of 2008Order reserved on: 11-4-2018Order delivered on: 8-5-2018

1. Jindal Steel & Power Limited, A Company incorporated under the Companies Act, having its Registered Office at O.P. Jindal Marg, Hissar (Haryana) & Works at Post Box No.16, Kharsia Road, Raigarh – 496 001 (C.G.)
2. Arvind Dave, S/o Jagdish Lal, aged about 40 years, Share Holders & Manager (F&A) of Jindal Steel & Power Limited, Post Box No.16, Kharsia Road, Raigarh – 496 001 (C.G.)

---- Petitioners

Versus

1. State of Chhattisgarh, through the Secretary, Department of Energy, Mantralaya, Dau Kalyan Singh Bhawan, Raipur (C.G.)
2. Appellate Authority-cum-Special Secretary, Department of Energy, Government of Chhattisgarh, Mantralaya, Dau Kalyan Singh Bhawan, Raipur (C.G.)
3. Chief Electrical Inspector, Government of Chhattisgarh, 32/437, First Floor, Byron Bazar, Raipur – 492001 (C.G.)

---- Respondents

For Petitioners: Mr. Ashish Shrivastava and Miss Medha Shrivastava, Advocate.

For Respondents / State: -
Mr. Ratan Pusty, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. AgrawalC.A.V. Order

1. Jurisdiction of this Court under Article 226 of the Constitution of India has been invoked by the petitioner Company registered under the provisions of the Indian Companies Act, 1956, calling in question legality, validity and correctness of the order dated 28-6-2008 by which the petitioner's appeal has been rejected and the petitioners also seek to call in question the impugned recovery /

demand notice dated 9-12-2005 by which a demand of ₹ 1,64,69,790/- has been raised against the petitioner Company towards auxiliary consumption and also the demand notice dated 2-3-2006.

2. The aforesaid challenge has been made on the following factual backdrop: -

2.1) Petitioner No.1 had set up a captive power plant of 265.70 MW at its Steel Plant at Raigarh to meet its power requirement. The said power plant of petitioner No.1 comprises with three units, Power Plant – I, Power Plant – II and Power Plant – III which in turn, comprise with 9 TG sets generating power at 11 KV each.

2.2) The petitioner new industrial unit was granted exemption from electricity duty under Section 3-B of the Chhattisgarh Electricity Duty Act, 1949 (for short, 'the Act of 1949') on 29-7-2000 exempting the petitioner Unit for ten years from payment of electricity duty from the date of commissioning, as the petitioner Unit is a new industrial unit. It is the case of the petitioner Company that it has consumed the electricity generated from TG-7 which was admittedly exempted from payment of electricity duty and as the auxiliary consumption was made by TG sets 1, 3, 5 & 6 and exemption from paying electricity duty of TG sets 1, 3, 5 & 6 had already expired, the petitioner Company was paying electricity duty in terms of the Act of 1949 for the said other TG sets. It is the further case of the petitioner Company that the system of power plant of petitioner No.1 is so designed that except for TG-7 all other TGs are in parallel with the Grid of the CSEB. TG-7 caters to house load of

petitioner No.1 and also to the auxiliary requirements of TGs 1, 3, 5 & 6, which are part of Unit I of the power plant of petitioner No.1. Thus, in effect an auxiliary bus has been created in the system of the petitioner. The entire set up / arrangement has been made with the knowledge and technical approval of the CSEB and the office of the Electrical Inspector of the Government of Chhattisgarh. Further case of the petitioner is that the system of auxiliary bus has been designed in the system with the sole purpose that in the event a grid failure occurs for the Grid experiences any fluctuations or disturbances, the TGs 1, 3, 5 & 6 of petitioner No.1 do not stop altogether and the TG sets at least keep on running at a minimum power supplied by TG-7. TG-7 is designed to take care of the auxiliary requirements of the TGs 1, 3, 5 & 6 of Unit I of the power plant of the petitioner Company which is duly accepted by the respondents in their counter affidavit.

2.3) It is the further case of the petitioners that on 9-12-2005, respondent No.3 issued the impugned demand notice demanding ₹ 1,64,69,790/- arrears of electricity duty pertaining to the period from December, 2001 to March, 2005 in respect of the TG sets whose exemption period had expired stating that respondent No.2 totally ignored the fact that the power sought to be taxed was being generated by TG-7, which was clearly within the exempted period of ten years at the relevant point of time. The aforesaid notice was replied by the petitioners and inspection was carried out and again, on 2-3-2006 another demand notice was issued directing to pay electricity duty on auxiliary consumption of TG sets whose exemption has expired leading to filing of appeal under Rule 13 of

the Chhattisgarh Electricity Duty Rules before respondent No.1 and the said appeal was dismissed by the impugned order dated 28-6-2008. Feeling aggrieved and dissatisfied with the order rejecting the appeal and questioning that order, this writ petition has been preferred.

3. Return has been filed by the respondents / State justifying the levy and stating that exemption to TG-7 is admittedly still in force and the petitioner Company has deliberately attempted to avoid payment of electricity duty under the garb of, by constructing a 'pool' and has been supplying the electricity to the auxiliary pool by TG-7 to TGs 1, 3, 5 & 6, but since the exemption period for TG-7 is still in force and the exemption period for TGs 1, 3, 5 & 6 granted has already expired, hence, any electricity consumed by auxiliary equipments of TGs 1, 3, 5 & 6, though attached in the form of 'auxiliary bus', the electricity supplied by TG-7 shall still be liable for payment of electricity duty under the law. The exemption granted in respect of generating unit cannot be extended nor any benefit thereof in respect of the consumption of electricity, which was consumed through other equipments in regard to which the granted exemption period has already expired, can be given. Therefore, the appeal has rightly been dismissed and demand has rightly been raised and thus, the writ petition has no force and deserves to be dismissed.
4. Mr. Ashish Shrivastava ably assisted by Miss Medha Shrivastava, learned counsel appearing for the petitioners, would submit that levy of electricity duty on the auxiliary consumption by TGs 1, 3, 5 & 6 from TG-7 i.e. the generating set is not only arbitrary and illegal

but also without any authority of law and is in serious contravention of the provisions of Section 3 of the Act of 1949. The electricity duty sought to be levied on auxiliary consumption is not available under the provisions of Section 3 of the Act of 1949. It is further submitted that respondent No.2 has failed to appreciate that it is not necessary that auxiliary power to a generating set has to be sourced from the same generating set. There is no technical bar in providing auxiliary power to a generating set from other sources of power. Petitioner No.1 was supplying auxiliary power to various TG sets by installing auxiliary bus after seeking approval from respondent No.3 and no objection was raised by respondents at the relevant time and hence, they are estopped from taking a contrary stand at this stage. It was also submitted that the contention of the respondents that if auxiliary equipment of a generating set gets power from other sources continuously then it cannot be called auxiliary consumption of that equipment and same is totally erroneous and contrary to the definition of auxiliary consumption provided in the Central Electricity Commission (Terms and Conditions of Tariff) Regulation 2004. Mr. Shrivastava has relied upon the tariff order dated 13th June, 2006 issued by the Chhattisgarh State Electricity Board for the year 2006-07 in which it has been recommended that electricity on auxiliary consumption in the CSEB generating stations should be waived as the consumer will be charged electricity duty twice. Lastly, he would submit that the respondents have lost sight of the settled legal position that petitioner No.1 is entitled to arrange its affairs in a manner such that the least amount of duty is payable, provided that it is technically

possible and permissible. He relied upon the judgments of the Supreme Court in the matters of McDowell and Co. Ltd. v. CTO¹, Union of India v. Azadi Bachao Andolan and another², CIT v. Waltfort Share and Stock Brokers Pvt. Ltd.³ and Vodafone International Holdings BV v. Union of India⁴ to buttress his submissions.

5. Refuting the arguments on behalf of the petitioners, Mr. Ratan Pusty, learned Government Advocate appearing for the State/ respondents, would submit that auxiliary consumption of TG sets is separately charged under the Act of 1949 as per the rate shown against item 5(b) of the table, which, in turn, prescribes the rate of duty at 8% per unit charge and each Turbo Generating set has its own auxiliary equipment. He would further submit that auxiliary equipments of TGs 1, 3, 5 & 6 and TG-7 are, in fact, auxiliary equipments to their respective main TGs. TGs 1, 3, 5 & 6, which are in themselves generating sets, cannot be treated as auxiliary equipments of TG-7. TG-7 is entitled for exemption only in respect of auxiliary consumption of TG-7 only and any supply made by such TG-7 for auxiliary consumption of other TG sets, which are not part of new industrial unit, is beyond the privilege of exemption and is in fact, a misuse of exemption. He would also submit that electricity duty paid by the petitioners on the incident of generation and sale of electricity in terms of Part-A of Section 3 of the Act of 1949 cannot be compared to incident of consumption, much less, auxiliary consumption in respect of which duty is leviable under Part-B of

1 (1985) 3 SCC 230

2 (2004) 10 SCC 1

3 (2010) 8 SCC 137

4 (2012) 6 SCC 613

Section 3 of the Act of 1949 as per the rate shown against item 5(b) of the table. The incident of duty is auxiliary consumption of target TG sets 1, 3, 5 & 6, no matter from what source they make such consumption i.e. whether from their own source or from a different source. The petitioners can enjoy exemption from payment of electricity duty only subject to conditions enumerated in the exemption notification Annexure P-3 and as per the conditions enumerated in the notification regarding exemption, it is clear that such exemption was granted to captive generating station which was to be established for new industrial unit only with respect to consumption of electrical energy by the new industrial units established by the petitioner Company. Exemption was to start from the date of commencement of generation which was to continue for a period of ten years. TGs 1, 3, 5 & 6, which were already existing on the date of grant of exemption in respect of TG-7, do not come within the meaning of new industrial unit. The new industrial unit for which TG-7 was established, which is more vividly described in the affidavit dated 24-3-2018 filed by the State vide Annexure D-6, is only entitled for exemption. Hence, the auxiliary consumption made by TGs 1, 3, 5 & 6 are liable for electricity duty and thus, TGs 1, 3, 5 & 6 are liable to pay electricity duty. TG-7 is entitled for exemption for the consumption made by TG-7 only and the new industrial unit for which TG-7 was established. He would rely upon the decision of the Supreme Court in the matter of **Swaroop Vegetables v. State of Uttar Pradesh**⁵.

6. I have heard learned counsel for the parties and considered their

5 (1983) 4 SCC 24

rival submissions made herein-above and went through the records with utmost circumspection.

7. The Madhya Pradesh Electricity Duty Act, 1949 was enacted as an anti-inflationary measure to provide for the levy of duty on sale or consumption of electrical energy and in order to augment the revenue of the Province for meeting essential expenditure, it is considered advisable to levy a duty on the sale of electrical energy. Section 2(di) defines the producer means "Producer means, subject to such rules as may be made by the State Government for registration of generators, a person who generates electrical energy at a voltage exceeding hundred volts and, in the event of generation of electrical energy by a hire of generator, the owner of generator shall be deemed to be the producer."
8. Section 3 of the Madhya Pradesh Electricity Duty Act, 1949 (for short, 'the Act of 1949') provides levy of duty on sale or consumption of electrical energy, which reads as under:

"(1) subject to the exceptions specified in Section 3A, every distributor of electrical energy and every producer shall pay every month to the State Govt. at the prescribed time and in the prescribed manner a duty calculated at the rates specified in the Table below on the units of electrical energy sold or supplied to a consumer or consumed by himself for his own purposes or for purposes of his township or colony, during the preceding month."
9. Section 3A of the Act of 1949 is exception to Rule 3 of the Chhattisgarh Electricity Duty Rules, 1949, whereas Section 3B is power of the State Government to exempt the industrial establishment or any industries from payment of electricity duty. Section 3B of the Act of 1949 reads as under:

"Where the State Government is of the opinion that-

- (i) in order to encourage the establishment of any particular industry or class of industries in the State; or
 - (ii) having regard to the particular circumstances of any industry or class of industries; or
 - (iii) in order to extend facilities to such persons or class of persons and for purposes as the State Government may, by notification, specify; it is necessary or expedient so to do in public interest, it may, by notification and subject to such conditions, if any, as it may specify in the notification,
- (a) exempt from payment of duty in whole or in part....."

10.The Madhya Pradesh Electricity Duty Act, 1949 suffered amendment by the Madhya Pradesh Electricity Duty (Amendment) Act, 1995 with effect from 1-4-1995 and in Section 3 of the Act of 1949, Part B was inserted which reads as under: -

Part-B

Electrical energy sold, supplied or consumed for the purposes as shown below:—

S.No. (1)	Purpose (2)	Rate of duty as (3)
1.	xxx xxx xxx	xxx xxx xxx
2.	xxx xxx xxx	xxx xxx xxx
3.	xxx xxx xxx	xxx xxx xxx
4.	xxx xxx xxx	xxx xxx xxx
5.	For other industries not covered under above categories,— (a) Industries receiving electricity at low tension tariff: (i) xxx xxx xxx (ii) xxx xxx xxx (iii) xxx xxx xxx (iv) xxx xxx xxx (b) Other industries	 xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx 8%
6.	xxx xxx xxx	xxx xxx xxx
7.	xxx xxx xxx	xxx xxx xxx

Explanation.-For the purposes of this section,—

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) xxx xxx xxx

(d) xxx xxx xxx

(e) For the consumption of Power Plant Auxiliaries, the rates of electricity duty shall be such as shown against item (5) (b) of the table.

11. From the above-stated provision, it is quite vivid that electricity duty shall be payable for consumption of power plant auxiliaries as per item 5(b) of the Table (Part-B) of Section 3 of the Act of 1949 brought in force with effect from 1-4-1995.

12. It is well settled law that for availing benefits under an exemption notification, the conditions have to be strictly complied with. It is also well settled law that conditional exemption can be granted and if the exemption is available on certain conditions, such conditions have to be strictly complied with.

13. In the matter of State of Rajasthan and another v. J.K. Udaipur Udyog Ltd. and another⁶, the term "exemption" has been defined by Their Lordships of the Supreme Court and it has been held as under:

"25. An exemption is by definition a freedom from an obligation which the exemptee is otherwise liable to discharge. It is a privilege granting an advantage not available to others. An exemption granted under a statutory provision in a fiscal statute has been held to be a concession granted by the State Government so that the beneficiaries of such concession are not required to pay the tax or duty they are otherwise liable to pay under such statute. The recipient of a concession has no legally enforceable right against the Government to grant of a concession except to enjoy the benefits of the concession during the period of its grant. This right to enjoy is a defeasible one in the sense that it may be

6 (2004) 7 SCC 673

taken away in exercise of the very power under which the exemption was granted."

14. In the matter of Grasim Industries Ltd. and another v. State of M.P. and another⁷, relying upon Union of India v. M/s. Wood Papers Ltd.⁸, Their Lordships of the Supreme Court held as under:

"5. ... It is settled position of law that exemption notification particularly in a fiscal matter has to be strictly construed and the person claiming its benefit is obliged to satisfy the Court that his claim was covered by the exemption notification. The notification has to be read in its entirety and not in parts."

15. In the matter of State of Jharkhand and others v. Ambay Cement and another⁹, it has been held by the Supreme Court that exemption provision in the statute should be construed strictly and has expressed their opinion as under:

"24. In our view, an exception or an exempting provision in a taxing statute should be construed strictly and it is not open to the court to ignore the conditions prescribed in the industrial policy and the exemption notifications.

25. In our view, the failure to comply with the requirements renders the writ petition filed by the respondent liable to be dismissed. While mandatory rule must be strictly observed, substantial compliance might suffice in the case of a directory rule.

26. Whenever the statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to severe consequences, such requirement would be mandatory. It is the cardinal rule of interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way. It is also settled rule of interpretation that where a statute is penal in character, it must be strictly construed and followed. Since the requirement, in the instant case, of obtaining prior permission is mandatory, therefore, non-compliance with the same must result in cancelling the concession made in favour of the grantee, the respondent herein."

7 AIR 2000 SC 66

8 AIR 1991 SC 2049

9 AIR 2005 SC 4168

16. Likewise, in the matter of Eagle Flask Industries Ltd. v.

Commissioner of Central Excise Pune¹⁰, Their Lordships of the Supreme Court clearly held that in order to avail the benefit under exemption notification, conditions have to be strictly complied with.

Paragraph 6 of the report states as under:

"6. We find that Notification No. 11/88 deals with exemption from operation of Rule 174 to exempted goods. The notification has been issued in exercise of powers conferred by Rule 174A of the Rules. Inter alia, it is stated therein that, where the goods are chargeable to nil rate of duty or exempted from the whole of duty of excise leviable thereon, the goods are exempted from the operation of Rule 174 of the Rules. The goods are specified in the Schedule to the Central Excise Tariff Act, 1985 (in short "the Tariff Act"). The proviso makes it clear that where goods are chargeable to nil rate of duty or where the exemption from the whole of the duty of excise leviable is granted on any of the six categories enumerated, the manufacturer is required to make a declaration and give an undertaking, as specified in the form annexed while claiming exemption for the first time under this notification and thereafter before the 15th day of April of each financial year. As found by the forums below, including CEGAT, factually, the declaration and the undertaking were not submitted by the appellants. This is not an empty formality. It is the foundation for availing the benefits under the notification. It cannot be said that they are mere procedural requirements, with no consequences attached for non-observance. The consequences are denial of benefits under the notification. For availing benefits under an exemption notification, the conditions have to be strictly complied with. Therefore, CEGAT endorsed the view that the exemption from operation of Rule 174, was not available to the appellants. On the facts found, the view is on terra firma. We find no merit in this appeal, which is, accordingly, dismissed."

17. In the present case, the petitioner Company made an application for grant of sanction of drawing for establishment of new 1x24 MW TG set (TG-7) including the new industrial unit for supply of electricity to the petitioner's new industrial unit, before the Chief Electrical Inspector on 26-6-2003, which was granted by the said

10 (2004) 7 SCC 377

authority after due scrutiny approving the drawing. Thereafter, completing formalities regarding new electrical installation, the Chief Electrical Inspector granted temporary permission for establishment and running of part of 1x24 MW Turbo Generator on 16-3-2004. Thereafter, the petitioner Company submitted application to the Chief Electrical Inspector for exemption from electricity duty for 1x24 MW (Sl.No.1456) on 7-10-2003. The said application filed by the petitioner seeking electricity duty exemption states as under: -

JSPL/RGH/ELEC/2003/

Date: 07.10.2003

The Chief Electrical Inspector,
Govt. of Chhattisgarh,
36/437, 1st Floor, Baran Bazar,
Fabbwara Chowk,
Near Chhattisgarh Degree College,
RAIPUR (CHHATTISGARH)

Subject: Regarding exemption for Electricity Duty for 24
MW TG#7. Sl.No. 1456 Make BHEL.

Reference: Your Charging Permission Letter no. N-3/10/
3001/13/187/CEI/Raipur/Dated 30/06/2003.

Dear Sir,

We are enclosing herewith a prescribed form "92/1", duly filled and signed, seeking exemption from Electricity Duty as per Chhattisgarh Govt. Energy Dept. Raipur notification No. 2370 dated 25.06.2002.

As our investment is more than Rs. 550 Crore, you are requested to issue an electricity duty exemption certificate for 15 years i.e. for 15/10/2003 to 4/10/2018 for our 24 MW TG set.

Thanking you,

Yours faithfully,
for Jindal Steel & Power Ltd.,

Sd/-
(P.K. Chaturvedi)
Vice President (Electrical)

Encl: 1) CSEB test certificate for MWH meter
 2) Form "92/1" seeing for electricity duty exemption duly filled.

FORM 92/1

ELECTRICITY DUTY EXEMPTION FOR GENERATING SET / POWER PLANT

1. Name of producer and address Jindal Seel & Power Limited,
 Kharsia Road, Raigarh
 (Chhattisgarh) Pin – 496 001
2. Type of industry Integrated steel Plant
3. Generator name Plate details
 - a) Make BHEL
 - b) Serial Number 1456
 - c) Manufacturing year 2003
 - d) Capacity 24 MW
 - e) Rated Voltage & 11KV, 1574 63 Amp.
 current
4. Installed Energy meter detailed
 - a) Make SEMS
 - b) Serial Number 00022
 - c) Multiplying factor 2000
 - d) Initial reading 1220.7
5. NAME OF Electrical N-3/10/3001/13/187/CEI/
 Inspector office and Raipur/Dated 30/06/2003
 charging permission
 letter no.

 Starting date of 15/10/2003
 generation

for Jindal Steel & Power Ltd.,

Sd/-
 (P.K. Chaturvedi)

Vice President (Electrical)”

18. The Chief Electrical Inspector after due scrutiny, granted exemption by order dated 17-8-2014 for payment of electricity duty only for a period of ten years from the date of commencement of generation by the Captive Generating Station established for new industrial unit as per the notification dated 29-7-2000. The said notification states as under: -

“No.5328-F, 13-55-XIII-2000—In exercise of the powers conferred by Section 3-B of the Madhya Pradesh Electricity Duty Act, 1949 (No. X of 1949), the State Government hereby exempts from the payment of electricity duty for the period of 10 years, from the date of commencement of generation by the Captive Generating Station, established for new industrial units, the electrical energy consumed by such new industrial units established by M/s. Jindal Steel and Power Limited, Raigarh.”

19. Thus, exemption from payment of electricity duty was granted by the above-stated notification to the new industrial unit (1 x 24 MW – referred as TG-7). The details of said industrial unit has been given in Annexure D/6 – additional affidavit filed which state as under: -

कार्यालय मुख्य विद्युत निरीक्षक, छत्तीसगढ़ शासन, 36/437 प्रथम मंजिल, बैरन बाजार,
फक्वारा चौक, शासकीय छत्तीसगढ़ महाविद्यालय के पास, रायपुर,

क्रमांक/नि-3/10/3001/तेरह/ 187 /मुविनि/रायपुर/दिनांक 30/06/2003

प्रति,

मेसर्स जिन्दल स्टील एण्ड पावर लिमिटेड,
खरसिया रोड,
पोस्ट बॉक्स नम्बर, 16,
रायगढ़, जिला-रायगढ़,

विषय:- निम्नलिखित उच्चदाब विद्युत स्थापनाओं को चालू करने की अस्थाई अनुमति ।

1. 1×24 मेगावाट, 11 के०व्ही०टी०जी०सेट-7, मेक बीएचईएल/सीरियल नम्बर-1456,
2. 1×3 एमवीए, 11/3.3 केवी, यूएटी-4 ट्रांसफार्मर मेक-वोल्टाम्प/सीरियल नम्बर-6715
3. 1×2.5 एमवीए, 11/.433 केवी, एसएटी-3 ट्रांसफार्मर मेक-वोल्टाम्प/सीरियल नम्बर 6714/2
4. 1×2.5 एमवीए, 11/.433 एसएटी-4 ट्रांसफार्मर मेक-वोल्टाम्प/सीरियल नम्बर 6714/1,

5. 1×2.5 एमवीए, 11/.433 केवी, क्लिन-4 ट्रांसफार्मर मेक-वोल्टाम्प/ सीरियल नम्बर-6662
6. 3×57.815 केवीए, 415/70 के०व्ही०डी०सी०, ईएसपी, ट्रांसफार्मर एफबीसी-3 मेक-एडोर पॉवरट्रान, सीरियल नंबर-1327-01-03-2003, 1328-01-03-2003 एवं 1329-01-03-2003,
7. 2×680 किलोवाट, 3.3 के.व्ही. सीडब्ल्यू पम्प मोटर 11 एवं 12, मेक-सीजीएल, सीरियल नम्बर-2002110/1 एवं 2002110/2,
8. 2×225 किलोवाट, 3.3 केवी, बायरल फीड पम्प 1 एवं 2 एफबीसी-3 मेक-सीजीएल, सीरियल नम्बर-2002080/1 एवं 2002080/2,
9. 2×175 किलोवाट, 3.3 केवी. एफडी फैन मोटर 1 एवं 2 एफबीसी-3 मेक-बीएचईएल, सीरियल नंबर-42068 ए 401-11-01 एवं 42068 ए 4 01-11-02
10. स्वीच बोर्ड 11 केवी, जीबी-5 16 पैनल बोर्ड,
11. स्वीच बोर्ड 3.3 केवी, यूएटी-4, 9 पैनल बोर्ड,
12. स्वीच बोर्ड 3.3 के०व्ही० सीडब्ल्यू एण्ड सेन्टेक स्वीच गेयर 14 पैनल बोर्ड,
13. स्वीच बोर्ड 3.3 के.व्ही., एक्सटेंशन इन 2 पैनल इन सीटी-4 पैनल बोर्ड (6 पैनल)
14. स्वीच बोर्ड 11 केवी, वन पैनल एक्सटेंशन इन 27 मेगावाट टी०जी०, बस (7 पैनल)

भारतीय विद्युत अधिनियम, 1910 एवं उसके अन्तर्गत बनाये गये भारतीय विद्युत नियम, 1956 के नियमों के पालन करने की शर्त पर विषयांकित उल्लेखित विद्युत स्थापना को नियम 63 के अन्तर्गत चालू करने की अस्थाई अनुमति प्रदान की जाती है।

सही/-

आर०के० जायसवाल
कार्यवाहक, मुख्य विद्युत निरीक्षक,
छत्तीसगढ़ शासन, रायपुर,

20. Taking note of the above-mentioned facts brings me to the next point to be adverted which is taxable event, whether generation of electrical energy or consumption of electrical energy/sale of electrical energy. Section 3 of the ED Act, 1949 is a charging provision. It provides for levy of duty on sale or consumption of electrical energy, which reads as under:

"(1) subject to the exceptions specified in Section 3A, every distributor of electrical energy and every producer shall pay every month to the State Govt. at the prescribed time and in the prescribed manner a duty calculated at the rates specified in the Table below on the units of electrical energy sold or supplied to a consumer or consumed by himself for his own purposes or for purposes of his township or colony, during the preceding month."

21. A careful perusal of the charging provision for electricity duty as

contained in Section 3 of the ED Act, 1949 would show that every distributor and every producer of electrical energy is required to pay electricity duty at the rate prescribed and specified in the Table below on the units of electrical energy in following cases:

- (i) Sell or supply to the consumer, or
- (ii) Consumption by himself for his own purpose or for the purpose of his township or colony etc as the case may be;

Thus, the taxing event would be the sale or consumption by the producer or the distributor as the case may be.

22. The constitutional validity of Section 3 of the Central Provinces and Berar Electricity Duty Act, 1959 as amended by the Madhya Pradesh Taxation Law (Amendment) Act, 1956 came to be considered before the Division Bench of the Madhya Pradesh High Court in case of J.C. Mills, Gwalior v. State of M. P.¹¹ in which it has been held that the producer is one who generates electrical energy, whether for his own consumption or for supplying to others.

Paragraph five of the report states as under:

"5. The point to note is that under the amended Act, it is not merely "a distributor" that is liable, but a producer also. To make the matter still clearer, the statute has defined "producer" as one who generates electrical energy, whether for his own consumption or for supplying the others. Conversely, the "consumer" is one, who used up power produced by another and bought by him, or produced by himself for his own consumption. In the latter event, the producer is himself the consumer a very common happening in every walk of life, including the use of electrical power."

In the later part of paragraph five, Their Lordship aptly held as under:

11 AIR 1959 MP 365

"Where it comes from is altogether immaterial for this purpose. It may come from power plant owned by the consumer himself, or it may come from a power plant owned by somebody else, in which latter event, the consumer may be paying a price. While taxing the consumer for the electrical energy supplied to him for consumption, the State is not concerned with the place of its origin.."

23. The aforesaid decision of the Madhya Pradesh High Court was assailed before the Supreme Court (**Jayajeerao Cotton Mills Ltd., Birlanagar, Gwalior v. State of M.P.**¹²). The Constitution Bench considering Section 3A of the C.P. Berar Electricity Duty Act as amended by Act No.7 of 1956 (Section 3A of that Act which is pari materia provision to Section 3 of the ED Act, 1949), it has been held that the generation of the electrical energy by the producer is not the taxable event but its sale or consumption would be taxing event. The relevant paragraph states as under:

"6. It is difficult to see the levy of duty upon consumption of electrical energy can be regarded as duty of excise falling within Entry 84 of List 1. Under that Entry, what is permitted to Parliament is levy of duty of excise on manufacture or production of goods (other than those excepted expressly by that entry). The Taxable event faith respect to a duty of excise is "manufacture" or 'production'. Here the taxable event is not production or generation of electrical energy but its consumption. If a producer generates electrical energy and stores it up, he would not be required to pay any duty under the Act. It is only when he sells it or consumes it that he would be rendered liable to pay the duty prescribed by the Act. The Central Provinces and Berar Electricity Act was enacted under Entry 48B of List 11 of the Government of India Act, 1935."

24. Similarly, in the matter of **Swaroop Vegetables Products Industries v. State of U.P. and others**¹³, the Supreme Court has held that taxing event being the consumption of energy, the source form which electricity is acquired is altogether irrelevant from the

12 AIR 1963 SC 414

13 (1983) 4 SCC 24

standpoint of liability imposed under the Act and observed as under: -

“4. ... On a plain reading of Section 3(1)(c) it is evident that duty has been levied on the energy consumed by a person from his own source of generation without anything more. There is no rider or qualification engrafted in Section 3(1)(c) or Section 4(1) (c). The fact that the user of electricity from his own source of generation purchases electricity from some other source as well, is an altogether irrelevant factor from the stand point of the liability imposed by the said provisions. Be it realized that duty is levied on the consumption of energy. The taxing event is the consumption of energy. The source from which the electricity is acquired is altogether irrelevant. A person having his own source of energy who also purchases energy from another source indicated in Section 3(1)(a) will be covered by Section 3(1)(a) to the extent he purchases electricity from such a source, and will be equally covered by Section 3(1)(c), insofar as he consumes energy from his own source of generation. He will be covered by both the provisions read conjointly. The same reasoning applies in the context of clauses (a), (b) and (c) of Section 4(1). There is no rational basis for exonerating a person from payment of duty merely because he has his own source of generation and he also purchases electricity from some other source. In fact it will be irrational to do so and it would give rise to an anachronism. ...”

25. Thus, taxable event for levy of electricity duty is consumption of energy, is now well settled.

26. Reverting to the facts of the present case, it is quite vivid that the petitioner Company has a captive power plant of 265.70 MW at its Steel Plant to meet its power requirement. The said Power Plant comprises three units, Power Plant-I, Power Plant-II and Power Plant-III which in turn, comprise 9 TG sets generating power at 11 KV each and exemption from payment of electricity duty of Power Plant-I for TGs 1, 3, 5 & 6 has already come to an end, however electricity duty exemption for TG-7 was operative for ten years by notification dated 29-7-2000 from the date of commencement of its

generation. The petitioners' contention is that TG-7 is designed to take care of auxiliary power consumption of TGs 1, 3, 5 & 6 of Power Plant-I for which auxiliary power consumption has also been provided without protest by the respondent authorities, therefore, electricity duty on auxiliary consumption of TGs 1, 3, 5 & 6 is not payable. This plea is based on the fact that the Act of 1949 is blissfully silent on the source of auxiliary consumption and has not specified from which source the power should come for auxiliary consumption.

27. Clause 14(iv) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 defines 'Auxiliary Energy Consumption' as under: -

“(iv) 'Auxiliary Energy Consumption' or 'AUX' in relation to a period means the quantum of energy consumed by auxiliary equipment of the generating station and transformer losses within the generating station, and shall be expressed as a percentage of the sum of gross energy generated at the generator terminals of all the units of generating station.”

28. The Chhattisgarh Electricity Duty (Amendment) Act, 1995, Part-B, item No.5(b) of the Table read with Explanation (e) provides that for the purpose of consumption of Power Plant Auxiliaries, the rates of electricity duty shall be 8%. Thus, auxiliary consumption of TG set is separately charged as per the rate shown against item No.5(b) of the Table that is 8%.

29. In power plant, while generating set generates electricity, a fraction of power generated is consumed by power generating equipments / auxiliaries of the generating set such as fans, motors etc., and in the process of production of power, there will be some self

consumption of power by the generating set itself that is called auxiliary power consumption. There are different auxiliaries in power generating sets / generating stations like pump, fan, mill, compressors, DG set etc., as they require electricity to run. Thus, the auxiliary power consumption is the amount of power consumed by auxiliary equipment, which helps in running of power generating set and thus, auxiliary consumption of generating sets means energy conserved by its auxiliary equipment.

30. The exemption from electricity has been granted to the new industrial unit as mentioned in D-06 and to be consumed by that new industrial unit established by the petitioner and that exemption and its conditions are to be construed strictly and exemption from payment of electricity duty can be enjoyed by the petitioner subject to conditions enumerated in the said exemption notification.
31. Undisputedly, exemption from electricity duty with respect to TGs 1, 3, 5 & 6 had already come to an end. However, TG-7 was enjoying exemption from electricity duty and TGs 1, 3, 5 & 6 were getting electricity from TG-7 for its auxiliary consumption. As per the conditions enumerated in the notification regarding exemption, it is clear that such exemption was granted to captive generation station which was to be established for new industrial unit only with respect to consumption of electrical energy by new industrial units established by the petitioner and TGs 1, 3, 5 & 6 which were already existing on the date of grant of exemption in respect of TG-7 do not come within the meaning of new industrial unit in terms of exemption notification and auxiliary consumption made by TGs 1, 3, 5 & 6 is not subject to exemption from electricity duty and is liable to

electricity duty. The petitioner is entitled to exemption from electricity duty for TG-7 and new industrial unit, if any. The auxiliary consumption made by TGs 1, 3, 5 & 6 is not entitled for exemption from electricity duty. Installation of auxiliary bus with the approval of the respondent authority cannot be a ground to claim exemption from electricity duty. Thus, the Chief Electrical Inspector and the appellate authority are absolutely justified in charging electricity duty from the petitioner.

32. The judgments relied upon by learned counsel for the petitioners namely McDowell and Co. Ltd. (supra), Azadi Bachao Andolan's case (supra), Waltfort Share and Stock Brokers Pvt. Ltd.'s case (supra) and Vodafone International Holdings BV (supra) contending that every person is entitled to arrange his affairs so as to avoid taxation making legal arrangement is not applicable to the facts herein-above in view of the finding arrived and are clearly distinguishable to the facts of the present case.
33. As a fallout and consequence of the above-stated discussion, the writ petition deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge