NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP No. 4699 of 2000

M/s Jayaswals Neco Limited (A Company incorporated under the Companies Act having its registered office at F-8, MIDC Industrial Area, Hingna Road, Nagpur, having its integrated steel plaint at Siltara Growth Centre Siltara, Raipur (MP) (now CG) through its General Manager

---- Petitioner

Versus

1. State of Madhya Pradesh through its Principal Secretary Energy Department, Vallabh Bhawan, Bhopal
2. State of Madhya Pradesh through its Principal Secretary Industries & Commerce Department Vallabh Bhawan, Bhopal
3. The Chief Engineer (Electrical Safety) and Chief Electrical Inspector Government of Madhya Pradesh A Block, Third Floor, Satpura Bhawan, Bhopal
4. The Executive Engineer (Electrical Safety) & Divisional Electrical Inspector, Govt. of Madhya Pradesh Raipur Division, Civil Lines Raipur (MP)
5. M.P. Industrial Development Corporation Limited through its Managing Director MPSIDC Ltd 192 Zone I, AVN Tower MP Nagar Bhopal

---- Respondents

For Petitioner	:	Shri H.S. Patel with Shri Rahul Pandey, Advocates
For State	:	Shri Manish Nigam, Panel Lawyer

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

CAV Order

05/01/2018

1. By this petition under Article 226 of the Constitution of India, the petitioner has assailed legality and validity of demand notice dated 31.7.2000 issued by the 4th respondent by which the petitioner has been required to deposit electricity duty in respect of the electricity generated and supplied by it to another industrial unit between the period from April 1998 to May 2000, amounting to Rs.12413242.69/- as electricity duty and Rs.517662.52/-

towards energy development cess. By an amendment made in the petition, the petitioner has also impugned part of exemption certificate dated 22.7.1999 to the extent it disallows exemption from payment of electricity duty, electricity sold or given to a third party or other consumer.

2. The factual matrix giving rise to present petition, relevant for adjudication of controversy involved in the petition are stated infra:

The then Government of Madhya Pradesh in the Department of Commerce and Industries issued a Notification dated 27th June 1992, providing for incentives scheme of giving certain concessions and exemption from payment of various statutory liability and taxes for a specified period to encourage establishment of Steel Plants (Blast Furnace Route) having capital investment of more than 1000 crores. The scheme provided for concession/exemption from payment of sales tax, entry tax, stamp duty as also payment of electricity duty for a period of 8 years on power generation. In order to avail the said benefit, the petitioner got itself registered with the Directorate of Industries and registration certificate was issued in his favour vide Annexure P-2, this fact being not in dispute.

The petitioner lured by the said scheme, proceeded to select the site and establish the plant. Land admeasuring 450 hectares was allotted by the Madhya Pradesh Industrial Development Corporation Limited, an undertaking of the Government of Madhya Pradesh. According to the petitioner, it made fixed capital investment including investment made on land, building, plant and machinery, electric installation, pollution control equipment, land development expense, establishment of laboratory research and administrative building and machinery and equipment, on establishment of railway siding, godown storage etc. The petitioner was granted exemption from payment of entry and sales tax. The petitioner proceeded to install his own Captive Generation Plant of the capacity of 2 x 4 MW, 250 KVA and 3 x 1250 KVA. Further case of the petitioner is that all the units had not come into being i.e. Cinter Plant, Coke oven, rolling mill etc. The power generated from Captive Generation Plant which remained un-utilized was sold to another industrial unit.

Towards grant of exemption from payment of electricity duty, a statutory notification in exercise of power under Section 3-B of the MP/CG Electricity Duty Act, 1949 (hereinafter shall be referred to as "*the Act*") was also issued by the State Government on 6th November 1992 published in MP Rajpatra dated 12th November 1992 (Annexure P-5).

The petitioner intending to avail the said exemption from payment of electricity duty for a period of 8 years under the incentive scheme published by the Government on 27th June 1992, followed by statutory notification dated 6th November 1992, referred to herein-above, applied for grant of issuance of exemption certificate which was eventually issued on 22.7.1999 (Annexure P-4). In the said certificate, however, a condition was imposed that exemption is granted in respect of power used for self-consumption.

At this stage, a dispute arose between the parties and the petitioner claiming exemption from payment of electricity duty in respect of the entire electricity generated by it, irrespective of whether it was being used for captive consumption or sold or supplied to other industrial unit, started making representation claiming full exemption on the entire electricity generated by it. The Madhya Pradesh Industrial Centre Development Corporation (Raipur) Limited vide its letter dated 27.4.2000 addressed to the Managing Director, Madhya Pradesh State Industrial Development Corporation Limited, Bhopal, wrote to give exemption form payment of electricity duty on the total unit of power generated by the petitioner. The Chief Electrical Inspector-cum-Chief Engineer of the then State of Madhya Pradesh vide letter dated 29.4.2000, however, refused to grant exemption on the entire unit of power generated by the petitioner. The petitioner then represented to the Principal Secretary in the Department of Energy, Government of Madhya Pradesh. Finally, the impugned demand notice came to be issued on 31.7.2000 compelling the petitioner to file present petition and seek relief as prayed for in the writ petition.

3. Learned counsel for the petitioner argued in extenso, contending that neither in the State Government's Notification dated 27th June 1992 nor in the statutory notification granting exemption under the Act, there is any limitation imposed in the matter of grant of exemption from payment of electricity duty in respect of power generated by the petitioner's unit with reference to self consumption or sale of supply to other industrial unit. He would submit that the object and purpose of grant of various incentives, concession and exemption including exemption from electricity duty was to provide special incentive to encourage establishment of Captive Steel Plant having capital investment of more than 1000 crores. According to learned counsel for the petitioner, there was no condition imposed in the policy and statutory notification that such exemption would be limited only to the extent of captive consumption. The petitioner, acting on the representation and promise under the scheme, altered its position to its serious detriment by establishing integrated steel plant of the required capacity and, therefore, it was not permissible for the officer and authority of the respondent-State to withdraw the same by inventing new condition which never formed part of the two notifications. To buttress his submissions, learned counsel for the petitioner relied upon the well settled legal position adumbrated by the Supreme Court in the case of **State of Punjab Vs. Nestle India Ltd and Anr.** (2004) 6 SCC 465 and subsequent decisions in the cases of **MRF Ltd, Kottayam Vs. Assistant Commissioner (Assessment) Sales Tax & Ors.** (2006) 8 SCC 702, **Mahabir Vegetable Oils Pvt. Ltd. & Anr. Vs. State of Haryana and Ors.** (2006) 3 SCC 620, **Southern Petrochemical Industries Co. Ltd. Vs. Electricity Inspector and Ors.** (Civil Appeal 2551 of 2007, decided on 15.5.2007) and other connected matters, **State of Chhattisgarh Vs. V.M. Extrusions Pvt. Ltd**. (AIR 2014 CHH 174) , **M/s SVA Steel Re-Rolling Mills Ltd Vs. State of Kerala and Ors** (AIR 2014 SC 1086) and **Lloyed Electric and Engineering Limited Vs. State of Himanchal Pradesh & Ors.** (Civil Appeal No 6838 of 2015 decided on 3.9.2015).

4. Per contra, learned counsel for the State submitted that the petitioner

cannot claim exemption from levy of electricity duty dehors the provisions of Law and contrary to the terms and spirit of statutory notification dated 6.11.1992. Learned counsel for the State argued that in so far as exemption from levy of electricity duty is concerned, it could be claimed only on the basis of statutory notification issued in exercise of power under Section 3 B of the Act and the guidelines relating to special incentives schemes issued by the State Government earlier on 27th June 1992 will not create legally enforceable right in favour of the petitioner. According to learned counsel for the State, where grant of exemption from levy of electricity duty is governed and regulated by the law, it could be claimed only to the extent permissible under the Law. The special incentive guidelines dated 27th June 1992 has to be read as confined to limitation of exemption from levy of electricity duty under statutory notification dated 6.11.1992. Learned State counsel further contended that under the statutory notification of exemption, the exemption is limited and confined only to the extent of quantity of electricity generated by the captive power plant of integrated steel plant, used for captive use i.e. self consumption and the Government never intended to provide exemption in respect of that quantity of electricity generated which has been sold or supplied to third party. He would strenuously stress upon interpretation that the very object of the statutory Notification dated 6.11.1992 was to encourage establishment of captive power plant because of scarcity of power supply in the State. The incentive was only to encourage captive use by establishing own captive power plant for in-house requirement of power by the integrated steel plant of a particular capacity and that too for a period of 8 years and nothing more. He next submitted that the statutory exemption could be claimed only in accordance with the provision of notification and the governing enactment which provides that exemption from levy of electricity duty could be claimed only upon issuance of exemption certificate. The exemption certificate issued to the petitioner clearly provides that the exemption would be available only to the extent of self consumption and not in respect of electricity generated by the power plant and sold or supplied to third party. Therefore, the exemption, contrary to the condition of statutory certificate could not be claimed as of right and the petitioner is not entitled to any relief.

5. I have considered the rival submissions made by learned counsel for the respective parties and perused the records.

6. In order to decide the controversy involved in this petition, it is necessary to examine the statutory scheme of grant of exemption from levy of electricity duty as contained in the Act. The relevant provision for grant of exemption from payment of levy of electricity duty as contained in Section 3 B of the Act is extracted as under :

> "[**3-B. Power to exempt.** - Where the State Government is of 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 such 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-
>
> (i) any distributor of electrical energy or producer in respect of the electrical energy sold or supplied to such industry for the purposes thereof;
>
> (ii) where any producer or class of producers runs the industry, in respect of the electrical energy consumed by such producer or class of producers for the purpose of such industry;
>
> (iii) any distributor of electrical energy or producer in respect of the electrical energy sold

to or used for consumption by person or class of persons and for purposes specified in the notification;

(b) cancel any such notification and again subject, by a like notification, the distributor of electrical energy or producer or class of such producers to the payment of such duty in respect of such sale, supply or consumption of electrical energy.]”

7. A reading of the aforesaid provision would reveal that the exemption from levy of electricity duty can be granted by the State upon formation of opinion as provided in the aforesaid provision by issuance of notification. The provision also unequivocally provides that exemption could be granted from payment of electricity duty either wholly or in part to any distributor of electrical energy in respect of electrical energy sold or supplied to such industry for the purpose thereof but also to any producer or class of producers running an industry, in respect of electrical energy consumed by such producer or class of producers for the purpose of such industry. Moreover, exemption from payment of duty whole or in part may also be granted to any distributor of electrical energy or producer in respect of electrical energy sold to or used for consumption by person or class of persons and for purpose specified in the notification.

8. Section 3-B of the Act is in two parts. The first part of it deals with the considerations relevant for formation of an opinion before power of exemption could be exercised, one of which is to encourage the establishment of any particular industry or class of industries in the State. The second part of the aforesaid provision as contained in clause (a), however, limits the exemption in the manner exhaustively enumerated in sub clauses (i), (ii) and (iii) thereof.

The rational and logical interpretation of the said provision, when both the parts of it, as referred to herein-above, read conjointly, would therefore mean that once bonafide opinion on consideration specified to be relevant is arrived at, even then exemption could be granted only in the manner provided in the law. Therefore, whenever a notification of exemption is issued in exercise of power under Section 3-B of the Act, it has to be interpreted in the context of the statutory limitations. Clause (a) of Section 3 B of the Act contains three sub-clauses. Sub-clause (i) provides for exemption in respect of electrical energy sold or supplied to specified industry for its purpose. This essentially would mean that exemption would be available in respect of energy which has been sold or supplied to industry specified for the purpose of exemption. The next contingency could be exemption from payment of duty granted is in respect of the electrical energy consumed by such producer or class of producers for the purpose of such industry. Words "such industries" occurring in sub-clause (i) & (ii) of Clause (a) is referable to industry or class of industries referred to in the provision contained in sub clause (i) and (ii) of the first part of Section 3 B of the Act. Sub-clause (iii) of Clause (a) of Section 3-B of the Act provides for exemption from payment of electricity duty to any distributor of electrical energy or producer in respect of electrical energy sold to or used for consumption by person or class of persons and for purposes specified in the notification.

9. The statutory notification dated 6th November 1992 issued in exercise of power under Section 3B of the Act in its opening words reads as below:

> ".....Whereas the State Government is of the opinion that, in order to encourage the establishment of private generating sets/power plants by any person, industry or class of industries in the State, it is necessary and expedient so to do in public interest;
>
> Now, therefore, 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 wholly any person, industry or class of industries who generate electrical energy by the generating sets/power plants of capacity

> as specified in column (2) of the Schedule below, from the payment of electricity duty, for a period as specified in column (3) of the said schedule subject to the following conditions.”......
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10. A bare reading of the notification would show that the object and purpose of granting exemption from levy of electricity duty was to encourage the establishment of private generating sets/power plants by any person, industry or class of industries in the State. The exemption granted is wholly to any person, industry or class of industries who generate electrical energy by generating set/power plants of capacity as specified in column (2) of the Schedule appended to notification, from payment of electricity duty for a period specified in column (3) of the Schedule subject to the condition enumerated in clause (1) to (5) specified therein. This notification will have to be interpreted rationally in the spirit of statutory scheme of exemption delineated as above. Interpreted in that manner, the petitioner would be entitled to exemption in respect of electrical energy generated by it through its generating set/power plant subject to fulfilling not only the conditions enumerated in the Notification but the conditions statutorily prescribed in Clause (a)- (i) (ii) (iii) of Section 3-B of the Act.

11. The source of power and authority to grant exemption being the provision contained in Section 3-B of the Act, by necessary implication of Law, exemption is always subject to statutory terms and conditions. Therefore, it is not enough that the petitioner established integrated steel plant with capital investment of more than 1000 crores and engaged in generating electricity by its own generating set/power plant, but in addition to that, it must also necessarily qualify in terms of provision contained in Clause (a)- (i) (ii) (iii) of Section 3-B of the Act. Therefore, it is necessary to examine whether electrical energy generated by the petitioner's power plant covered under any of three sub-clauses (i) (ii) or (iii) of Clause (a) of Section 3-B of the Act .

12. The provisions contained in Section 3-B of the Act does permit exemption from payment of duty in part or in whole not only in respect of electrical energy consumed by any particular industry or class of industries in the State but also where producer of electrical energy sells or supplies electricity to an industry in respect of which the Government has formed opinion that it is necessary to encourage establishment of such industry of class of industries. Not only this, the exemption is also permissible, either wholly or in part to a producer in respect of the electrical energy sold. Rationally so construed, the statutory scheme of exemption does not prohibit grant of exemption either wholly or in part in respect of the electrical energy merely for the reason that it has been sold, though the Government may limit grant of exemption only in respect of electrical energy produced and consumed. It has therefore to be held that where the State Government is of the opinion that in order to encourage the establishment of any particular industry or class of industries in the State, it is necessary to grant exemption, the exemption may not only be confined or limited in respect of electrical energy produced and consumed by such industry or class of industries, the establishment of which is sought to be encouraged but also energy produced by it though not fully consumed and a part of it sold to third party. It essentially would be a matter of statutory policy of exemption whether in a given case, the exemption is limited in respect of electrical energy consumed or extended even in those cases where it is produced by such industry and sold to others.

13. The statutory notification dated 6.11.1992 does not limit in all cases, exemption in respect of electrical energy produced and consumed only. The Schedule appended to the statutory notification categorizes industries for the purpose of grant of exemption which are enumerated in column (2) thereof. The categorization is based on installed capacity of the generating set/power plant. Under column (2) thereof, there are three categories specified. First category is an integrated steel plant with capital investment of more than 1000 crores established through blast furnace route and registered with Industries Commissioner under Commerce and Industries

Department Notification No.F-16-3-92-XI-B, dated 27th June 1992 anywhere in the State except district Bastar. If the installed capacity and the generating set/power plant is more than 125 KVA and installed to meet to power requirement, it is entitled to exemption from payment of energy duty for a period of 8 years from the date of commencement of generation of power by the plant/generating set. The petitioner admittedly belongs to this category.

The second category is of integrated steel plant with the same specification as specified in first category which is established in district Bastar.

The third category is of any consumer or any industry other than those mentioned in first and second category which are entitled to exemption for a period of 5 years. It is relevant to note that the third category is entitled to exemption only in respect of self consumption. This requirement of self consumption is not specified in respect of an integrated steel plant of the specification in first and second category. Therefore, by necessary implication, the requirement of self consumption to become eligible for exemption from payment of electricity duty cannot be insisted in respect of first and second category of integrated steel plant with a capital investment of more than 1000 crores established through blast furnace route situated in the State.

14. The statutory policy is therefore very clear that an integrated steel plant with capital investment of more than 1000 crores and categorized and belonging to first and second category under column (2) of the Schedule appended to statutory notification dated 6.11.1992 would be entitled to exemption from payment of electricity duty in respect of electrical energy generated by its generating set/power plant irrespective of whether the electrical energy produced by its power plant is captively consumed or sold to other party.

15. The authority who issued exemption certificate to the petitioner was obliged under the law to grant exemption certificate in terms of the statutory Notification dated 6th November 1992 without imposing any

condition of self consumption, as that would amount to take away the benefit available to the petitioner under the Notification dated 6th November 1992. The authority issuing such exemption certificate, contrary to the scheme of notification, limited the benefit of exemption in respect of electrical energy consumed by the petitioner whereas under the notification, the exemption was available by virtue of it being a specified class of industries, irrespective of whether the electrical energy developed by its generating set/power plant is captively used or sold to third party.

16. In view of the above discussions, this Court has no hesitation to hold that the petitioner was illegally deprived of the exemption granted to it in respect of electrical energy sold by it. To that extent, the exemption certificate is contrary to the statutory scheme.

17. The Government had already made it very clear by issuing Notification on 27th June 1992 that special incentive scheme would be applicable for the establishment of integrated steel plant having capital investment of more than 1000 crores which included exemption from electricity duty also as would be clear from clause (8) thereof. There also, there was no such fetter imposed that exemption would be confined only in respect of the electrical energy generated and consumed for captive use only.

18. In the result, the petition is allowed and the impugned demand notice dated 31.7.2000 (Annexure P-14) is declared illegal and is quashed. No order as to costs.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Praveen