IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CWP No. 21958 of 2013
Date of decision : July 11, 2018

Mohit Nanda

.... Petitioner

Versus

Punjab State Power Corporation Ltd. and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. Santosh Sharma , Advocate
for the petitioner.

Mr. Vishal Gupta, Advocate
for the respondents.

***

RAKESH KUMAR JAIN, J (oral).

The petitioner has assailed the validity of the orders dated 22.10.2012 and 11.6.2013 by which a penalty of ₹4,30,519/- has been imposed upon it on account of un-authorized use of electricity.

In brief, the petitioner is in possession of plot No. E-122, Industrial Area, Phase 7, SAS Nagar, Mohali. The petitioner is running an industry in the name and style of IBM Training Centre. The petitioner has been using the sanctioned load of 97.940 KW. The premises was inspected/checked on 30.8.2012 and ECR No. 22/31 (Enforcement Checking Register) was prepared with the comments that load of S.No. (a) is being used for Tractor parts, load of S.No. (b) is being used for making printed circuits Boards and load of S.No.(c) is being used for IBM approved training centre which is a commercial activity. The proceedings were initiated under Section 126 of the Electricity Act, 2003(hereinafter referred to as 'the Act'). The petitioner was served with the provisional assessment order against which the petitioner had filed objections. After considering the objections, the final assessment order was passed asking the petitioner to pay a sum of ₹4,30,519/- within the prescribed period. Aggrieved against the same the petitioner filed a statutory appeal under Section 127 of the Act which was dismissed by the appellate authority on 11.10.2012 hence the present petition has been filed.

The only argument raised by the learned counsel for the petitioner is that the petitioner has been held using the electricity un-authorizedly by showing the IBM Training Centre as industrial activity but according to the respondents it is a commercial activity.

Learned counsel appearing on behalf of the petitioner has relied upon the Industrial Policy of 2009 issued by the State of Punjab and has referred to the definition of IT software Clause 11.6 which reads as under:-

> "IT units refer to companies in the IT hardware. IT software and other knowledge industry units such as Biotechnology, Nanotechnology and Telecommunications etc. IT software industry includes IT software. IT services and IT Enable Services. A detailed category wise list of industries included in definition of IT industry is indicated in Annexure -I,"

He has further referred to clause 11.10 which deals with incentives in respect of electric Power which reads as under:-

> i) Power would be available to IT units/knowledge industrial units at industrial tariff irrespective of their location/zoning."

Thus, according to the petitioner, the activity in regard to clause (c) manufacture of IT software is an industrial activity and not commercial and therefore the assessment made for the alleged un-authorized use is patently erroneous. In reply, learned counsel for the respondents has referred to the instructions issued by the Punjab State Power Corporation Ltd. Dated 3.11.2011 to the effect that (i) that electricity connections to IT & IT Enable Services, Communication and Electronic Industries, Knowledge Parks and Biotechnology Industries, may be released depending upon the nature of job. There is reference to the policy dated 16.2.2009 relied upon by the petitioner and a decision has been taken that if an IT enable services/software development unit is paying excise duty then it would be deemed to be an industry and if it is paying Sales tax then it would be treated as a commercial activity. It is submitted that the petitioner is admittedly not paying the excise duty but it is exempted, therefore, it would not fall within the definition of industry in order to escape the rigors of payment of additional amount assessed by the respondents treating it to be a commercial activity. To buttress his argument, learned counsel for the respondents has referred to the decision of this Court in **M/s Capital Auto Rubber Industries Vs. Punjab State Power Corporation Ltd. and another 2016 (1) RCR) (Civil) 46.**

After hearing learned counsel for the parties and taking into consideration the aforesaid facts and circumstances, I am of the considered opinion that the argument raised by the learned counsel for the petitioner stands no where as it is based upon the policy of the year 2009 in which the subsequent clarification has been issued on 3.11.2011, relied upon by the learned counsel for the respondents, therefore there is hardly any reason to interfere.

Therefore, the writ petition is accordingly dismissed.

(RAKESH KUMAR JAIN)
JUDGE

July 11, 2018
archana

Whether speaking/reasoned **Yes**
Whether Reportable **No**