

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

**RSA No.6483 of 2017 (O&M)
Date of Decision.12.03.2019**

M/s National Ispat Udyog

...Appellant

Vs

UHBVNL and another

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sushil Jain, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

C.M. No.16719-C of 2017

For the reasons stated in the application, delay of 144 days in filing of the appeal is condoned.

Application is allowed.

RSA No.6483 of 2017

The present appeal is directed against the provisional assessment issued by the respondents-defendants, resulting into demand of ₹7,62,268/-.

As per the provisions of Section 145 of the Electricity Act, 2003 jurisdiction of the Civil Court is barred in respect of matters where assessing authority/officer referred to under Section 126 & appellate authority under Section 127 of the Electricity Act is appointed. Provisions of Section 126 of 2003 Act deals with provisional assessment and the same reads as under:-

“126. Assessment.-

1. If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records

maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorised use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.

2. The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

3 The person, on whom an order has been served under sub-section (2), shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment, of the electricity charges payable by such person.

4. Any person served with the order of provisional assessment may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him:

5. If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorised use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.;

6. The assessment under this section shall be made at a rate equal to twice the tariff applicable for the relevant category of services specified in sub-section (5).

Explanation:- For the purposes of this section,--

a. "assessing officer" means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;

b. "unauthorised use of electricity" means the usage of electricity--

i. by any artificial means; or

ii. by a means not authorised by the concerned person or authority or licensee; or

iii. through a tampered meter; or

iv. for the purpose other than for which the usage of electricity was Authorized ; or

v. for the premises or areas other than those for which the supply of electricity was authorised”

It is a case of provisional assessment made under the provisions of aforementioned Act. In such circumstances, pendency of reference before the Division Bench of this Court would not come to rescue of the appellant, therefore, concurrent finding of fact cannot be said to be suffering from illegality and perversity.

At this stage, Mr. Jain submitted that the appellant may be given a chance to avail alternative remedy. In case any application is filed along with application for condonation of delay taking the benefit of pendency of civil suit within a period of one month from the date of receipt of certified copy of this order, the same shall be decided in accordance with law.

The appeal stands disposed of in the above terms.

(AMIT RAWAL)
JUDGE

March 12, 2019

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No