

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 784 OF 2008

1. M/s. Rukminirama Steel Rollings Pvt.Ltd.
(Melting Division), Plot No L-17,
Cuncolim Industrial Estate,
Cuncolim, Salcete-Goa 403 703.
2. Shri B. Raghvendra
Shareholder and Director,
of the Petitioner No.1 Company,
having office at
Cuncolim Industrial Estate,
Cuncolim, Salcete-Goa 403 703.
3. M/s. Karthik Alloys Ltd.,
L-6 & 7, Industrial Estate,
Cuncolim, Salcete - Goa.
4. Shri B. Srinivasa,
Shareholder and Director,
of the Petitioner No.3 Company,
having office at
L-6 & 7, Industrial Estate,
Cuncolim, Salcete - Goa.
5. M/s. Maa Durga Enterprises Ltd.
L-1, Industrial Estate,
Cuncolim, Salcete - Goa.
6. Shri Vinod Kothari
Shareholder and Director,
of the Petitioner No.5 Company,
having office at

L-1, Industrial Estate,
Cuncolim, Salcete-Goa.

7. M/s. Global Ispat Ltd.
M-19, Industrial Estate,
Cuncolim, Salcete - Goa.
8. Shri Ajay Kumar Goel
Shareholder and Director,
of the Petitioner No.7 Company,
having office at
M-19, Industrial Estate,
Cuncolim, Salcete - Goa.
9. M/s. Shradhha Ispat Pvt.Ltd.
(Steel Melting Division)
M-1, Industrial Estate,
Cuncolim, Salcete - Goa.
10. Shri Yogesh Goyal
Shareholder and Director,
of the Petitioner No.9 Company,
having office at
M-1, Industrial Estate,
Cuncolim, Salcete - Goa.
11. Shri. Balaji Rollings Pvt.Ltd.
Through its authorized signatory,
Devendra Singhla,
L-14 & 15, Industrial Estate,
Cuncolim, Salcete - Goa.
12. Shri. Devendra Singhla
Shareholder and Director,
of the Petitioner No.11 Company,
having office at L-14 & 15,
Industrial Estate, Cuncolim, Salcete - Goa.

13.M/s. Puja Ferro Alloys Ltd.

L-4, Industrial Estate,
Cuncolim, Salcete - Goa.

14.Shri Vijay Agrawal

Shareholder and Director,
of the Petitioner No.13 Company,
having office at L-4, Industrial Estate,
Cuncolim, Salcete - Goa.

15.M/s. Nicomet Industries Limited

Through its Authorized Signatory,
Shri. Kumar Gaurav,
L-5, 19, 20, Industrial Estate,
Cuncolim, Salcete - Goa.

16.Shri Kumar Gaurav,

Assistant Manager (H R and Administration),
of the Petitioner No.15 Company,
having office at L-5, 19, 20,
Industrial Estate, Cuncolim,
Salcete - Goa.

17.Goa Steel Limited

Radha Krishna Industrial Estate,
Bicholim, Goa.

18.Shri Kundan Shetye

Shareholder and Director,
of the Petitioner No.17 Company,
having office at Radha Krishna
Industrial Estate, Bicholim, Goa.

19.Pratik Alloys Private Limited,

108, Kundaim Industrial Estate,
Kundaim Goa.

20. Shri Shikhirveer Agrawal,
Shareholder and Director,
of the Petitioner No.19 Company,
having office at 108, Kundaim
Industrial Estate, Kundaim Goa.
21. Shree Ambay Forgings (P) Ltd.,
Plot No.343, Kundaim Industrial Estate,
Kundaim Goa.
22. Shri Manish Dutta,
Director of the Petitioner No.21 Company,
having office at Plot No.343,
Kundaim Industrial Estate,
Kundaim Goa.
23. Mangal Iron Private Limited.
Through its Authorized Signatory,
Shri. Naresh Sharma, E-8, Madkaim
Industrial Estate, Madkaim, Goa.
24. Shri Naresh Sharma,
Manager of the Petitioner No.23 Company,
having office at E-8, Madkaim Industrial Estate,
Madkaim, Goa.
25. Kundil Alloys Pvt.Ltd.
A-1 Kundaim Industrial Estate,
Near IDC Pump House,
N.H. 4-A Kundaim, Goa - 403115.
26. Shri Vijay Kashyap,
Shareholder and Director,
of the Petitioner No.25 Company,
having office at A-1 Kundaim
Industrial Estate, Near IDC Pump House,
N.H. 4-A Kundaim, Goa – 403 115.

27. Twenty First Century Wire Rods Ltd.
Through its Authorized Signatory,
Shri. Prittam Sharma,
Plot No. D-9/1,
Madkai Industrial Estate,
Madkai, Goa.
28. Shri Prittam Sharma,
Manager, of the Petitioner No.27 Company,
having office at,
Plot No. D-9/1,
Madkai Industrial Estate,
Madkai, Goa.
29. Karthik Induction Ltd.,
Plot No. 120/121,
Kundaim Industrial Estate,
Kundaim, Goa.
30. Shri B. Raghvendra,
Shareholder and Director,
of the Petitioner No.29 Company,
having office at Plot No. 120/121,
Kundaim Industrial Estate,
Kundaim, Goa.
31. Mandovi Metals (P) Ltd.,
200-A Kundaim Industrial Estate
Kundaim, Goa.
32. Shri Vijay Kashyap,
Shareholder and Director,
of the Petitioner No.31 Company,
having office at
200-A Kundaim Industrial Estate,
Kundaim, Goa.

- 33.Mandovi Casting (P) Ltd.,
341, Kundaim Industrial Estate,
Kundaim - Goa.
- 34.Shri Sandeep Agrawal,
Shareholder and Director,
of the Petitioner No.33 Company,
having office at
341, Kundaim Industrial Estate,
Kundaim - Goa.
- 35.Mohit Steel Industries Pvt. Limited,
342, Kundaim Indl. Estate,
Kundaim - Goa.
- 36.Shri Sandeep Agrawal,
Shareholder and Director,
of the Petitioner No.35 Company,
having office at,
342, Kundaim Indl. state,
Kundaim - Goa.
- 37.West Coast Ingots Pvt.Ltd.
Plot No.1, Kundaim Indl.Estate,
Kundaim – Goa.
- 38.Shri Harshwardhan Mittal,
Shareholder and Director,
of the Petitioner No.37 Company,
having office at,
Plot No.1, Kundaim Indl. Estate,
Kundaim - Goa.
- 39.Mohit Ispat Limited,
339/340, Kundaim Indl. Estate,
Kundaim - Goa.

40. Shri Harshwardhan Mittal,
Shareholder and Director,
of the Petitioner No.39 Company,
having office at,
339/340, Kundaim Indl. Estate,
Kundaim - Goa.

41. Goa Ispat Limited,
E-6, Madkai Industrial Estate,
Madkai, Goa.

42. Shri Harshwardhan Mittal,
Shareholder and Director,
of the Petitioner No.41 Company,
having office at,
E-6, Madkai Industrial Estate,
Madkai, Goa.

43. Shivam Ispat Private Limited,
Plot No.333/335, Kundaim Indl. Estate,
Kundaim - Goa.

44. Shri Devendra Singhla,
Shareholder and Director,
of the Petitioner No.43 Company,
having office at, Plot No.333/335,
Kundaim Industrial Estate,
Kundaim, Goa.

.... Petitioners

Versus

1. The State of Goa
Through the Chief Secretary,
Secretariat, Porvorim,
Bardez, Goa.

2. The Chief Electrical Engineer,
Electricity Department,
Government of Goa, having office
at Vidhyut Bhavan,
Panaji Goa.

... Respondents

Mr. Nitin Sardessai, Senior Advocate along with Mr. S. Fadte and Mr. S. Sardessai, Advocates for the Petitioners.

Mr. D. Pangam, Advocate General along with Mr. Pravin Faldessai, Addl. Government Advocate for the Respondents.

Coram:- M.S. SONAK &
SMT M.S. JAWALKAR, JJ.

Reserved on:- 12th December , 2019

Pronounced on:- 6th January, 2020

JUDGMENT (Per M. S. Sonak, J.)

Heard Mr. Nitin Sardessai, learned Senior Advocate along with Mr. Shivam Fadte and Mr. S. Sardessai for the petitioners and Mr. Devidas Pangam, learned Advocate General along with Mr. P. Faldessai, learned Additional Government Advocate for the respondents.

2. The petitioners are companies incorporated under the Companies Act, 1956 and the directors/managing directors of such companies.

They are all engaged in the business of manufacture of MS Ingots/Ferro Alloys/Metals, etc., which are power intensive industries mostly, located in the various industrial estates in the State of Goa.

3. The petition, as filed initially, had questioned the constitutional validity of the Goa Electricity Duty Act, 1986 (said Act) on the ground that its provisions were repugnant to the provisions of Part IX i.e. Sections 76 to 109 of the Electricity Act, 2003 (a subsequent Central Act). As a consequence, the petitioners had also urged that the notifications dated 28.05.2008 and 30.05.2012 prescribing and thereafter enhancing duty under the said Act, were also ultra vires.

4. However, later on, with the leave of this Court, this petition was amended and declaration was sought to the effect that the said Act is beyond the legislative competence of the State Legislature. Consequential reliefs for striking down the said Act and notifications issued thereunder, were also applied for. Appropriate order was also applied to seek refund of the duty collected from the petitioners from the year 2001, in pursuance of the said Act and various notifications issued thereunder.

5. At the time of final hearing, Mr. Nitin Sardesai, learned Senior Advocate appearing for the petitioners made it clear that the petitioners

were only pressing their contention that the State of Goa lacks the legislative competence to enact the Goa Electricity Duty Act, 1986 (said Act). In fact therefore, the contentions, which formed the basis for relief in terms of prayer clauses (A) and (B) of the petition, as originally filed, were not pressed. The petitioners indeed, urged only the contentions in relation to prayer clauses (B1), (B2), (B3) and (B4) of the petition, as amended and on which basis, basically, sought for reliefs in terms of these amended prayer clauses.

6. Therefore the only issue which arises in this petition is whether the Goa Electricity Duty Act, 1986 (said Act) is an Act within the legislative competence of the legislature for the State of Goa?

7. Mr. Nitin Sardesai, the learned Senior Advocate appearing for the petitioners at the very outset submits, that the issue raised in the present petition stands fully covered in favour of the petitioners by the ruling of the Constitution Bench of the Supreme Court in ***State of Andhra Pradesh v. National Thermal Power Corporation Ltd. and others – (2002) 5 SCC 203 (NTPCL)***. He therefore submits that on the basis of this ruling, the reliefs as prayed for in this petition are liable to be granted.

8. Mr. Nitin Sardesai, by way of elaboration points out that hardly any electricity is generated in the State of Goa. Therefore, the electricity generated in the States like Andhra Pradesh or Madhya Pradesh is transmitted into the State of Goa through the Southern and Western Grids. He submits that one of the most distinguishing features of electricity is that it can never be stored and therefore, its generation or production in States, other than the State of Goa, coincides almost instantaneously with its consumption by the petitioners, who are all located in the State of Goa. He submits that on account of this peculiar characteristic of electricity, there can be no distinction made between production and generation of electricity in one State and its consumption in another. He submits that when it comes to electricity, there is no hiatus between production, generation and sale of electricity on one hand and its consumption on the other. He submits that this is precisely what has been held by the Constitution Bench in the case of *NTPCL*.

9. Mr. Sardesai further submits that the Constitution Bench in *NTPCL* has in fact ruled that for the aforesaid reason any legislation which deals with sale or consumption of electricity which is produced or generated in one State but consumed in another, falls clearly within the domain of Entry 92A of List I of the VIIth Schedule to the Constitution. He submits that only the Parliament has exclusive

legislative competence in such matters and the said Act, which has been enacted by the said legislature, is ex-facie beyond its legislative competence.

10. Mr. Devidas Pangam, the learned Advocate General for the State of Goa submits that the said Act does not levy any duty or impose any tax upon the sale or generation of electricity. He pointed out that the said Act levies a duty, exclusively upon the consumption of electrical energy within the State of Goa. He submits that such a levy is totally competent, in terms of the ruling of the Constitution Bench in *NTPCL*.

11. Mr. D. Pangam submits that the ruling in *NTPCL* is being misconstrued by the petitioners, relying upon some stray observations which are sought to be read *de hors* the context in which they appear. He relies on *Union of India and others v. Dhanwanti Devi and others – (1996) 6 SCC 44* and *Royal Medical Trust and another v. Union of India and another – (2017) 16 SCC 605* to submit that even a single distinguishing fact can make a substantial difference to precedential value of a ruling. He relies upon number of rulings to submit that the said Act is well within the legislative competence of the State Legislatures. For all these reasons he submits that this petition may be dismissed.

12. Rival contentions now fall for our determination.

13. In order to evaluate the respective contentions, at the outset, it is necessary to advert to the scheme and provisions of the said Act.

14. The said Act was enacted by the Legislative Assembly of the Union Territory of Goa, Daman and Diu to provide for levy of a duty on consumption of electrical energy in the Union Territory of Goa, Daman and Diu. The said Act defines '*consumer*' in Section 2(b), to mean the owner or occupier of the premises which are for the time being connected for supply of energy with the distribution system belonging to the Government and in whose name the installation stands registered. The said Act also defines '*licensee*' in Section 2(g), to mean any person licensed under Part II of the Indian Electricity Act, 1910 (Central Act 9 of 1910), to supply energy and includes any person who has obtained the sanction of the Government under section 28 of that Act, the Central Government or the Government when it is engaged in the business of supplying energy. The said Act also defines '*person*' in Section 2(j) to mean a person consuming electrical energy.

15. Sections 3 and 4 of the said Act are concerned with '*duty on units of energy consumed*' and '*payment of duty*', since both these sections constitute charging section. The same are transcribed below

for the convenience of reference :

“3. Duty on units of energy consumed.— (1) Subject to the provisions of sub-section (2), there shall be levied and paid to the Government on the units of energy consumed, a duty at the rates specified in the Schedule.

1[Provided that the Government may, by notification in the Official Gazette, levy a duty at such other rate or rates or at a flat rate for all types of consumers but not exceeding the maximum rates as specified in the said Schedule.]

(2) No duty shall be leviable on the units of energy consumed—

(i) by the Government (save in respect of premises used for residential purposes);

(ii) in respect of a hospital, or nursing home or dispensary, each of which when not maintained for private gains;

(iii) where the energy generated is at a voltage not exceeding 100 volts;

(iv) in respect of such industrial or agricultural purposes (other than residential or office purposes) in such areas and subject to such terms and conditions and for such period as the Government may, having regard to the need and conditions of industrial and agricultural development in the areas, by general or special order, specify in that behalf:

Provided that the Government may, either prospectively or retrospectively, by notification in the Official Gazette, exclude—

(a) any areas aforesaid or any part thereof (regard being had to the price of energy prevailing therein and to the state of industrial development thereof); or

(b) any new industrial undertaking, as may be specified in this behalf by the Government in such notification; and

thereupon the provision of this clause shall not apply in those areas or part thereof or in relation to such new industrial undertakings.

4. Payment of duty.— (1) *Every person shall pay the proper duty to the Government at such time and in such manner as may be prescribed.*

Where any person fails or neglects to pay the duty, at the time and in the manner as prescribed, the Department may, without prejudice to its right to recover the amount under section 9, deduct such amount of electricity duty from the amount, if any, deposited by the consumer with the Department, after giving not less than seven days' clear notice in writing to such person, cut off the supply of energy to such person; and he may, for that purpose, exercise the power conferred on a licensee by sub-section (1) of section 24 of the Indian Electricity Act, 1910 (Central Act 9 of 1910), for recovery of any charge or sum due in respect of energy generated by such person.

(3) *Every person other than a licensee who generates energy for his own use shall pay to the Government at the time and in the manner prescribed, the proper duty payable under this Act on the units of energy consumed by him.*

(4) *Notwithstanding anything contained in the foregoing sub-sections, where the Department is satisfied that there is a bonafide mistake on the part of a person in paying the proper duty, on account of wrong meter reading or misclassification of consumption falling under any particular part or clause in the Schedule, the Department may, at any time, by order and with prior approval of the Government, waive or write off, with retrospective effect, the recovery of the amount of the duty or any part thereof due at the proper*

rate and of the amount of interest, if any, payable for delayed payment under section 9.”

(Emphasis supplied)

16. Section 5 of the said Act requires person consuming energy, etc. to keep books of account and submit returns. Section 6 deals with power of the Government to exempt payment of duty in public interest. Sections 7 and 8 deal with appointment of Inspecting Officers and their powers. Section 9 deals with recoveries. Section 10 deals with penalties. Section 11 deals with offence by companies. Section 12 deals with protection of action taken in good faith. Section 13 deals with the powers of the Government to make rules and finally Section 14 provides for certain savings. Consistent with the provisions of Section 3, the said Act provides for a schedule specifying rates of duties in respect of various clauses of the consumers referred to therein.

17. From the analysis of Sections 3 and 4 of the said Act, it is clear that the duty which the said Act levies is on the units of energy “consumed”. Such duty is levied on every person, meaning thereby every person “consuming” the electrical energy. Sub-section (3) of Section 4 of the said Act, however, provides that every person other than a licensee who generates energy for his own use shall pay to the Government at the time and in the manner prescribed, the proper duty payable under the Act on the units of energy “consumed” by him.

18. From the aforesaid, it is quite clear that the duty as contemplated by the said Act is upon the person consuming the electricity energy i.e. upon the consumer as defined under Section 2(b) of the said Act. The said Act does not levy any duty upon either the person who generates the electrical energy or sells the electrical energy by means of any inter-State sale. Therefore, the issue of legislative competence will have to be examined by focusing on the fact that the said Act levies duty only upon the consumer as defined under Section 2(b) of the said Act and does not levy any duty upon the generator of the electrical energy or the person who sells the electrical energy in pursuance of any contract of inter-State sale.

19. By now, it is well settled that source of legislative powers under the Constitution is relatable to Article 245 of the Constitution and Entries in the Seventh Schedule to the Constitution only demarcate the legislative fields of the respective legislatures and do not confer any legislative power as such (See *Indian Aluminum Company Limited and another vs. Karnataka Electricity Board and ors.* (1992) 3 SCC 580). Therefore, in deciding the question of legislative competence, the Entries in the Seventh Schedule are not required to be construed with narrow or pedantic approach. The interpretation has to necessarily be broad and liberal.

20. The entries in the Seventh Schedule only demarcate the legislative fields of the respective legislatures. If a particular legislature is found to have necessary legislative competence to enact a law, then, the question of motive is irrelevant and, there can be no plea of colourable exercise of power to tax, if the legislature is found to have the necessary legislative competence to impose the tax.

21. In fact, in *State of Gujarat and ors. vs. Akhil Gujarat Pravasi v. S. Mahamandal and ors.*, (2004) 5 SCC 155, the Hon'ble Supreme Court has held that if the State had legislative competence and authority to impose a tax, the fact that it gave an incorrect reason for exercise of such power will not derogate from the validity of the taxing statute, or the very validity of the tax which came to be imposed. Further, the legislative competence, particularly in relation to taxing statutes, is to be determined with reference to the object of the levy and not with reference to its incidence or machinery (See *Gujarat Ambuja Cements Ltd. And another vs. Union of India and another* (2005) (4) SCC 214)).

22. It is also well settled that while the Parliament has powers to make laws for the whole or any part of the territory of India, the legislatures of the State can make laws only for the State or any part thereof, unless the State is in a position to demonstrate that the same

has nexus with the territories in which such law is to operate. Normally, therefore, the legislative power of the State is to confine to the territory of a State. The subjects included in List II (State List) or in List III (Concurrent List), must, therefore, be construed as reference to the object situation within the territory of the State concerned or the objects with which the State has some territorial nexus. Territorial nexus must, however, be real and usual and the liability sought to be imposed must be pertaining to that nexus. If the nexus is sufficient, then, the existence of nexus may merely affect the policy, but not the validity of the legislation (see *State of Bombay vs. R.M.D. Chamarbaugwala and another* AIR 1957 SC 699 and *Kavalappara K. Kouchuni vs. The States of Madras and Kerala and ors.* AIR 1960 SC 1080).

23. Whenever, the question of legislative competence arises, the issue must be resolved by rule of pith and substance. Therefore, where the legislation falls within any of the entries in List II (State List), no further question arises and the provisions of Article 246 will really not operate to such a situation. Further, the incidental touching does not denude the legislative competence as held in ***Mahesh Kumar Saharia vs. State of Nagaland and ors.*** (1997) 8 SCC 176.

24. The Entries upon which the learned Counsel for the parties

focus, in the present matter, were Entries 53 and 54 of List II and Entry 92A of List I and the same are transcribed below for reference of convenience:

LIST – I (STATE LIST)

“53. Taxes on the consumption or sale of electricity.

54. Taxes on the sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods.”

LIST - I (UNION LIST)

“ 92A. Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce.”

25. In the present case, upon analysis of the provisions and scheme of the said Act, it is quite clear that the duty or the tax which the said Act levies, is upon the consumer of the electricity and neither upon the generator or producer of electricity nor upon any sale, much less any inter state sale of electricity. Accordingly, upon plain reading of the provisions of the said Act and upon applying the principles adverted to above, we are satisfied that the said Act is relatable to Entry 53 of List II (State List) and consequently, the State Legislature was quite competent to enact the same.

26. The reliance by the petitioners upon *NTPCL*, is quite misplaced. This is because the Constitution Bench, in the case of *NTPCL* was concerned with a duty imposed upon “*all sales of energy*”. Such duty was imposed not upon any consumer but such duty was imposed upon “*seller*” of electricity. Such seller, upon whom the duty was imposed, was generating electricity in the State of Andhra Pradesh and “*in pursuance to a contract of sale*” was transmitting such electricity from the State of Andhra Pradesh to electricity boards “*outside the State of Andhra Pradesh*” and “*the State of Goa*”. As noted earlier, in the present case, the said Act, imposes no duty either upon the generator of the electricity or the seller of the electricity. The said Act imposes no duty upon any sales of electricity, much less any inter State sales of electricity. The provisions of the said Act are not at all comparable to the provisions of the acts of which the constitutional validity was examined in *NTPCL*. For all these reasons, the decision in the case of *NTPCL* is of no avail to the petitioners, when it comes to questioning the constitutional validity of the said Act.

27. Besides, it is necessary to advert to what is specifically set out in paragraph 5 of the *NTPCL* ruling, in which, the Constitution Bench has made it very clear that it was not concerned with the issue of “***levy of duty on consumption***” and that the limited question which fell for consideration was whether sales of energy by *NTPCL* to several

Electricity Boards situated outside the State of Andhra Pradesh and to the State of Goa attracted the incidence of taxation under Section 3 of the Andhra Pradesh Electricity Duty Act, 1939, which was clearly an act for levy of duty “*on certain sales of electrical energy*”.

28. Paragraph 5 of the *NTPCL* ruling reads thus:

“5. A bare reading of the provision shows that duty is leviable at the prescribed rate on 'all sales of energy' effected by the licensee during the previous month at a price of more than 12 paise per unit. Duty is also leviable on all energy consumed by the licensee. There are certain categories of sales and consumption saved and excluded from what would otherwise have been dutiable. However, in the present case, we are not concerned with those exclusions, nor with levy of duty on consumption. The limited question arising for our consideration is - whether sales of energy by NTPCL, Respondent 1, to several Electricity Boards situated outside the State of Andhra Pradesh and to the State of Goa, attract the incidence of taxation under Section 3 of the Act”.

29. The petitioners, by relying upon certain stray observations in *NTPCL*, which they chose to read *de hors* the context, are not justified in urging that their case is covered by the ruling of the Constitution Bench. In fact, upon careful consideration of the ruling in *NTPCL*, it is apparent that the said ruling assists the case of the respondents rather than the petitioners.

30. It is true that the Constitution Bench in paragraphs 20 and 21 of *NTPCL* has held that though “*electricity*” is “*goods*” and the same can be transmitted, transferred and delivered, science and technology, till this day have not been able to evolve any methodology by which electrical energy can be preserved or stored. The Constitution Bench has also held that another significant characteristic of electrical energy is that its generation or production coincides almost instantaneously with its consumption as was judicially noticed in *Indian Aluminum Company Limited and another vs. State of Kerala – (1996) 7 SCC 637*. Continuity of supply and consumption starts from the moment the electrical energy passes through the meters and sale simultaneously takes place as soon as meter reading is recorded. All the three steps or phases take place without any hiatus. The Constitution Bench has also held that these peculiar properties of electricity as goods are of immense relevance when it comes to examining the challenge to a State enactment by which duty was purported to be imposed upon certain sales of electrical energy, which sales, were ultimately found to be in pursuance of the contracts for movement of electricity from one State to the other i.e. in pursuance of inter-State sales.

31. The Constitution Bench, after adverting to the aforesaid peculiar characteristic of electricity as goods then concluded that the enactments in question, to the extent, they levied a duty upon inter

State sales of electricity, were beyond the legislative competence of the State Legislatures. The Constitution Bench also held that the prohibition which is imposed by Article 286(1) of the Constitution i.e. no law of a State shall impose, or authorize imposition of, a tax on the supply of goods or services or both, where such supply takes place outside the State or in the course of the import of the goods or services or both into or the export of the goods or services or both out of the territory of India, is independent of the legislative entries in the VIIth Schedule. Such a ban would operate by its own force and irrespective of the language in which the entries of List II of VIIth Schedule may have been couched. The Constitution Bench also referred to the ruling in *Tata Iron and Steel Co.Ltd. v. S.R. Sarkar – AIR 1961 SC 65* to hold that the field of taxation of sale or purchase taking place in the course of inter-State trade or commerce, and by the amendment of item 54 of List II excluded from the competence of the State Legislatures.

32. In paragraph 30 of *NTPCL*, the Constitution Bench, after specific reference to the aforesaid peculiar characteristic of electricity as goods noted that in the cases at hand they were dealing with contracts between sellers (NTPCL) and buyers (in other States) prior to the generation of electricity. *NTPCL* generates electricity and pursuant to these contracts supplies the same from its power stations situated in the

State of Andhra Pradesh or Madhya Pradesh to the “*buyers in other States*” where it is received and consumed. It is in this context that the Constitution Bench noted that there is no hiatus between generation, sale, supply, transmission, delivery and consumption. The inter-State movement of electricity is pursuant to contracts of sale, which sale, can only be held to be “*inter State sales*”.

33. The Constitution Bench in paragraph 31 then dealt with the powers of the State Legislatures to fix the situs of sale so as to create territorial nexus attracting applicability of tax legislation. In this context, the Constitution Bench held that no State Legislation, nor any stipulation in any contract, can fix the situs of sale within the State or artificially define the completion of sale in such a way as to convert an inter-State sale into an intra-State sale or create a territorial nexus to tax an inter-State sale unless permitted by an appropriate Central legislation. Since, the Constitution bench found that the definition of “*consumer*” in Section 2(a) of the Madhya Pradesh Electricity Duty Act, 1949 had done precisely this, the Constitution Bench ruled that such determination will have to be read down as including within it only such persons who receive electricity for consumption or distribution for consumption within the State. The Constitution bench observed that without such reading down, the definition of “*consumer*” would be rendered ultra vires of Articles 286 and 269 of

the Constitution read with Section 3 of the Central Sales Tax Act, 1956.

34. From the aforesaid, it is very apparent that the observations in *NTPCL* upon which the petitioners seek to rely were clearly made in the context of a challenge to a State enactment which had levied duty upon the inter-State sales of electricity. The enactments sought to levy duty, not on consumers but upon the seller selling electricity in pursuance of inter-State contracts of sale. These observations therefore, cannot be torn out of context or applied to the challenges to the said Act, which, as pointed out earlier, impose no duty either upon the seller or upon sales, much less, inter-State sales of electricity.

35. In the case of *Dhanvanti Devi (supra)* the Hon'ble Supreme Court has itself laid down that it is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the *ratio decidendi*. According to the well-settled theory of precedents, every decision contain three basic postulates - [i] findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; [ii] statements of the principles of law applicable to

the legal problems disclosed by the facts; and [iii] judgment based on the combined effect of the above. A decision is only an authority for what it actually decides. What is of the essence in decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. The concrete decision alone is binding between the parties to it, but it is the abstract *ratio decidendi*, ascertained on a consideration of the judgment in relation to the subject matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long

recognition may mature into rule of *stare decisis*. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its *ratio decidendi*. Therefore, in order to understand and appreciate the binding force of a decision it is always necessary to see what were the facts in the case in which the decision was given and what was the point which had to be decided. No judgment can be read as if it is a statute. A word or a clause or a sentence in the judgment cannot be regarded as a full exposition of law. Law cannot afford to be static and therefore, Judges are to employ an intelligent technique in the use of precedents.

36. The aforesaid position has been reiterated in *Royal Medical Trust (supra)* in which, the Hon'ble Supreme Court, after referring to the celebrated decision in *Quinn v. Leathem, 1901 AC 495: (1900-03) All ER Rep 1 (HL)* has held that it is well settled in law that the ratio of a decision has to be understood regard being had to its context and factual exposition. The ratiocination in an authority is basically founded on the interpretation of the statutory provision. If it is based on a particular fact or the decision of the court is guided by specific nature of the case, it will not amount to the ratio of the judgment.

37. Applying the aforesaid principles, we are satisfied that the case of the petitioners cannot be said to be covered by the decision of the

Constitution Bench in *NTPCL*. Rather, we are satisfied that the provisions of the said Act, make it quite clear that the levy is not either upon the production or generation of electricity or upon the seller of electricity or upon any sales, much less inter-state sales of electricity. The said Act levies a duty only upon consumption of electricity by the consumers in the State of Goa and consequently, such a legislation, is entirely relatable to Entry 53 of List II of the VIIth Schedule to the Constitution of India and consequently intra vires legislative competence of the State Legislatures.

38. In *Vijaya Steels Limited v. Bangalore Electricity Supply Company Limited and others* – 2017 (1) *Karnataka Law Journal* 7 and in *Biocon Ltd. and others v. State of Karnataka Ministry of Law Justice and Parliamentary Affairs and others* – 2011 (5) *Karnataka Law Journal* 296, the Single Judge and a Division Bench of the Karnataka High Court, have upheld similar legislations which imposed a duty upon consumption of electricity in the State of Karnataka by reference to the ruling of the Constitution Bench in *NTPCL (supra)* and *Jiyajeerao Cotton Mills Ltd. v. State of Madhya Pradesh* – AIR 1963 SC 414. In fact, in the latter Constitution Bench judgment, as noted by the Karnataka High Court, it is held that the word “consumption” in Entry 53 of List II has a

wider meaning and the language used in the legislative entries in the Constitution must be interpreted in a broad way so as to give widest amplitude of power to Legislature to legislate and not in a narrow and pedantic sense. In the latter case the Constitution Bench was concerned with an enactment in which a taxable event was not production or generation of electrical energy but its consumption in a State.

39. In *Sterling Agro Industries Ltd. v. State of Madhya Pradesh*, a Division Bench of the Madhya Pradesh High Court upheld the *Madhya Pradesh Vidyut Shulk Adhiniyam 2012* which levied duty upon consumers consuming electricity obtained through open access from outside the State, on the ground that such a legislation, being a legislation for imposition of taxes or duties on consumption or sale, was intra vires. In doing so, the Division Bench of the Madhya Pradesh High Court made express reference to the decision of the Constitution Bench in *NTPCL (supra)* and held that the persons who receive electricity for consumption or distribution for consumption with the State would be covered under Entry 53 of List II and upto that extent, the State is competent to levy the duty.

40. In *Indian Aluminium Co. v. State of Kerala – (1996) 7 SCC 637*, the Supreme Court was concerned with the constitutional

validity of a State Act, which in pith and substance, was found to be an Act to tax the sale or consumption of electricity within the State, even though, the Act, did not specifically use the words “*sale or consumption*” of electricity. The Supreme Court, after noticing that there is no hiatus between supply and consumption of electricity held that a pragmatic and realistic approach will have to be adopted in such matters and it will have to be held that as soon as electrical energy is supplied to the consumers and is transmitted through the meter, consumption takes place simultaneously with the supply. The word “*supply*” used in charging Section 3 should, therefore, receive liberal interpretation to include sale or consumption of electricity as envisaged in Entry 53 of the State List. The *NTPCL (Supra)* makes specific reference to *Indian Aluminium Co. (supra)* to explain this very concept. However, in *NTPCL (Supra)* the said enactments were struck down because they purported to tax the inter-State sales of electricity, which subject, was clearly beyond the domain of legislative competence of the State Legislatures.

41. In the present case, as noticed earlier, we are not at all concerned with any levy upon either production, generation or sales, much less inter-State sales of electricity. In the present case, we are only concerned with the said Act which imposes levy upon consumption of electricity within State of Goa. Accordingly, the

ruling in *NTPCL* is of no assistance to the petitioners but rather, if properly construed, assists the case of the respondents.

42. Since, no other contention was raised on behalf of the petitioners, we hold that the said Act is well within the legislative competence of the State Legislature, being relatable to Entry 53 of List II, VIIth Schedule to the Constitution of India. The challenge in this petition therefore fails and this petition is required to be dismissed.

43. The Rule issued in this petition is therefore discharged. This petition is dismissed. There shall however be no order as to costs in the facts and circumstances of the present case.

SMT. M.S. JAWALKAR, J.

M. S. SONAK, J.