17th November, 2022
(AK)
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W.P.A 4056 of 2022

Khitish Chandra Biswas
Vs.
CESC Limited and others

Mr. Bidyut Kr. Halder
Mr. Indranil Halder
...for the petitioner.

Mr. Om Narayan Rai
...for the CESC Limited.

Learned counsel for the petitioner contends that neither the Appellate Authority under Section 127 of the Electricity Act, 2003 nor the Assessing Officer, while making the final order of assessment, took into consideration the relevant factors which were required to be adverted to while deciding the amount assessed.

It is submitted that although several grounds of challenge were taken by the petitioner and enumerated in the order of the Appellate Authority itself, none of the said grounds were dealt with while deciding the appeal, thereby rendering the appellate court's order untenable in law.

Learned counsel appearing for the CESC Limited contends, by placing reliance on the final order of assessment annexed at pages-18 and 19 of the writ petition, that all due considerations as per law were factored in by the Assessing Officer and, accordingly, the final assessment was arrived at.

That apart, it is pointed out that the Assessing Officer, while making the final order, clearly recorded that the petitioner had admitted to unauthorized use of electricity and had prayed for consideration of the penal amount, which indicates clearly that there was no dispute with regard to the unauthorized use of electricity.

Learned counsel for the CESC Limited further contends that the challenge before the present writ court is constricted to a very limited range.

The Appellate Authority, it is submitted, was not required to deal with each of the grounds taken by the petitioner individually in his order.

Since all the grounds have been quoted in the order itself and dealt with and considered by the Appellate authority, the order challenged herein was passed well within the limits of law.

It is further contended that the Appellate Authority merely affirmed the order of the Assessing Officer while making the final order of assessment, which elaborately lays down the basis on which such assessment was made and cannot be faulted in law.

Heard learned counsel appearing for the parties. It is evident from the final order of assessment, which was challenged before the Appellate Authority, that the Assessing Officer recorded in no uncertain terms that the petitioner had admitted to unauthorized use of electricity and had prayed for consideration of the penal amount.

The petitioner has not alleged any instance of wrong recording of such findings and /or challenged such findings before the assessing Officer, which the petitioner was duty bound as per law to do in case any challenge was taken to the propriety of the facts recorded.

Hence, the question of unauthorized use of electricity stood final on the admission of the petitioner and neither the Assessing Officer nor the Appellate Authority could be faulted for coming to the conclusion that they have.

Inasmuch as the period in hours, load factor, etc. are concerned, all factors enumerated in Section 126 (5) and 126(6) of the 2003 Act as well as Clause 5.1 of the Regulation no.55 of the WBERC being the Electricity Supply Code of 2013 were taken into account by the Assessing Officer while arriving at the final conclusion.

In fact, the Assessing Officer, conceding to the request of the petitioner, had revised the period-in-question from 365 days, which is the stipulated period in law, to 335 days for the purpose of the assessment.

Such revision, in fact, enured to the benefit of the petitioner and it could very well be the stand of the CESC Limited before the Appellate Authority that the same was not justified.

However, since no such ground has been taken in counter challenge by the CESC Limited, such question cannot be gone into.

The sum and substance of the matter is that although the Appellate Authority did not individually deal with each of the grounds taken by the petitioner in the appeal, all such grounds were set out and sufficient reasons were given both by the Appellate Authority and the Assessing Officer while making the final order of assessment, for arriving at their conclusions.

In fact, since the petitioner could not furnish any other document to controvert his admission at the final assessment stage and/or to rebut the conclusions reached by the Assessing Officer or the Appellate Authority, I find no irregularity and/or jurisdictional error in the impugned order of the Appellate Authority.

Accordingly, WPA 4056 of 2022 is dismissed on contest without any order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)