Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4250 OF 2013

Pidilite Industries Limited,
a company registered under the provisions of the Companies Act, 1956 and having its registered office at Regent Chambers, 7th Floor, Jamnalal Bajaj Marg, Nariman Point, Mumbai 400 021.

...Petitioner

~ versus ~

1. **The State of Maharashtra,**
through the Ministry of Industries, Energy and Labour Department, Mantralaya, Mumbai 400 032

2. **Maharashtra State Electricity Distribution Company Limited,**
a company owned by State of Maharashtra having its registered office at Prakashgad, 5th Floor, Bandra (East), Mumbai – 400 051 and having divisional office c/o Circle Officer, Vishrambaug, Sangli 416 415.

3. **The Chief Engineer (Elc.),**
Public Works Department having its office at Bandhakam Bhavan, 3rd Floor, Merzaban Road, Fort, Mumbai – 400 001

4. **THE ELECTRIC INSPECTOR, INDUSTRY, ENERGY AND LABOUR DEPARTMENT,**
Bhavani Mandap, Paga Building, Kolhapur.

5. **THE ELECTRIC INSPECTOR, INDUSTRY, ENERGY AND LABOUR DEPARTMENT,**
PMT Commercial Building – 1, 3rd Floor, Swargate, Pune.

6. **VINYL CHEMICALS (INDIA) LIMITED,**
a company registered under the provisions of the Companies Act, 1956 and having its registered office at Regent Chambers, 7th Floor, Jamnalal Bajaj Marg, Nariman Point, Mumbai 400 021. **...RESPONDENTS**

APPEARANCES

FOR THE PETITIONER	**Mr Prakash Shah**, *with Jas Sanghavi & Yash Prakash, i/b PDS Legal.*
FOR RESPONDENT NO. 1-STATE	**Mr AI Patel, Addl GP**, *with PG Sawant, AGP.*
FOR RESPONDENT NO. 2-MSEDCL	**Mr Rakesh Singh**, *i/b MV Kini & Co.*

CORAM : G.S.Patel & Gauri Godse, JJ.

DATED : 30th September 2022

ORAL JUDGMENT (*Per GS Patel J*):-

1. Notice was issued by an earlier order of 2nd July 2013. Since then, both Maharashtra State Electricity Distribution Company Limited (**"MSEDCL"**) and the State of Maharashtra have filed their Affidavits in Reply.

2. Hence, Rule. Rule returnable forthwith. By consent, the Petition is taken up for final disposal.

3. The facts lie in a narrow compass. The Petitioner, Pidilite Industries Limited **("Pidilite")** is a well-known manufacturer of adhesives and similar products, many of them under the '**FEVICOL**' brand. For our purposes today, what is important is the joinder of the 6th Respondent, Vinyl Chemicals (India) Limited ("**Vinyl Chemicals**"). This is a distinct legal and juristic entity. Vinyl Chemicals had a plant at Mahad, in Raigad District. Until 31st March 2007, this unit was not owned, controlled or otherwise operated by Pidilite. Pidilite has industrial manufacturing units in various parts of the country, including various districts in Maharashtra.

4. In 1996 and 1998, there came to be introduced policies exempting electricity duty leviable *inter alia* under the Bombay Electricity Duty Act 1958 when power was generated through what were called non-conventional sources, and which we now know of as "green energy". Pidilite set up 14 windmill power generators in Satara district. These fell within the command area or jurisdiction of

Respondent No. 5, that is to say, Energy and Labour Department of the Government of Maharashtra, Satara Division. Pidilite also had similar windmill generating facilities in Sangli, Kolhapur District. These fell within the jurisdiction of the Kolhapur Division of the Energy & Labour Department of the Government of Maharashtra. Pidilite exported the power generated by its windmills to various other industries. Vinyl Chemicals was one such, and used Pidilite-generated power at its Mahad unit. Pidilite used to sell its green energy windmill-generated power to Vinyl Chemicals for use at its Mahad plant. Pidilite would supply or bank this windmill-generated power to the MSEDCL grid, and Vinyl Chemicals would use MSEDCL-issued credit notes to draw on this power.

5. Up to 31st March 2007, there was actually no controversy that Pidilite was exporting/selling power to Vinyl Chemicals. Consequently, duty on electricity was payable until that date. There was also the Maharashtra Tax on Sale of Electricity Act 1963. Therefore, similarly, for the period up to 31st March 2007, there was tax payable on the "sale of electricity" by Pidilite to Vinyl Chemicals.

6. A scheme of demerger came to be sanctioned by this Court. The effective date of that scheme of demerger was 1st April 2007. Under that scheme of demerger, Vinyl Chemicals' Mahad plant was hived off and stood transferred and vested in Pidilite itself.

7. Pidilite continued supplying power to the unit at Mahad, but this was no longer an 'export' or a 'sale' since the Mahad plant now belonged to Pidilite itself with effect from 1st April 2007. In other words, Pidilite's Captive Power Plants (the windmills) were supplying electricity to Pidilite itself for use at its plant in Mahad. This has been the position since 1st April 2007.

8. The submission by Mr Shah is therefore simplicity itself. He does not dispute that there was a sale to Vinyl Chemicals up to 31st March 2007. Effective 1st April 2007, however, he submits there can be no sale. It is purely internal consumption. If there is no sale, then there is no question of a tax on the sale of electricity and duty is also not payable. That is the entirety of Mr Shah's case before us.

9. It is also not in dispute that from 2001 Pidilite had in place several wind energy wheeling and banking agreements with the MSEDCL. These incorporated the terms of sale and supply of energy inter alia to Vinyl Chemicals. Pidilite filed periodic returns with the Energy and Labour Department as required under the applicable rules. Some of the energy generated by Pidilite was diverted to MSEDCL under these banking arrangements. There were also credit notes issued by MSEDCL in regard to the power that Pidilite generated, and these were used by Vinyl Chemicals against payment of its electricity dues for its Mahad use.

10. On 10th March 2008, Pidilite informed MSEDCL about the demerger. It requested that the necessary changes be made in the records. We pause here briefly to note a submission made by the State Government in its Affidavit in Reply that "MSEDCL has not approved the demerger". That submission on Affidavit has only to be stated to be rejected. It is not for MSEDCL to approve or not approve a scheme of demerger sanctioned by this Court.

11. On 19th November 2009, MSEDCL told Pidilite that its request for a change of name, that is to say, changing the name of the recipient of the power generated by the windmill from Vinyl Chemicals to Pidilite was approved in principle.

12. On 29th December 2009, the 4th Respondent, the Electric Inspector of the Energy and Labour Department wrote to Pidilite alleging that electricity that Pidilite generated had been "sold to a third party" but that Pidilite had not paid the electricity duty and tax on this sale of electricity. That authority therefore raised a demand on Pidilite in the amount of Rs. 34,69,701/- on account of electricity duty and further demand of Rs. 9,25,454/- on the alleged tax. Now this covered the period from 2001 to 2007. On 15th January 2010, the same authority wrote again to Pidilite to pay an aggregate amount of Rs. 39,32,327/- also on account of alleged electricity duty and tax arrears. There was no break-up nor any period. Then there was another demand under a letter of 18th January 2010 for Rs. 43,94,955/- (similar to the one made in December 2009).

13. Pidilite replied by its letters of 22nd February 2010 and pointed out the facts. At that time, there was an argument raised that Vinyl Chemicals was an associate company, but this is not a point that is being pressed before us today.

14. On 5th March 2010, the Energy and Labour department once again reiterated its demand for Rs. 39,32,327/- and in default threatened further action. Pidilite replied on 24th March 2010 reiterating its stand and now demanding a personal hearing. On 5th April 2010, the 4th Respondent (Electric Inspector, Kolhapur) summoned the Petitioner to a hearing and asked for the necessary papers. That date was required was to be postponed. Instead of intimating a fresh date of hearing, the 4th Respondent Electric Inspector raised another demand on 7th May 2010 in an aggregate amount now of Rs. 1,82,92,924/-, including interest of Rs. 29,33,040/- on account of payment for these claims for electricity duty and tax. Again, there was no breakup. There were no details. Pidilite denied its liability to make this payment of the demand for the interest. On 19th May 2010, Pidilite's representative met the 4th Respondent, the Electric Inspector. On that very day, the Electric Inspector reiterated the demand and gave a supposed breakup of the levy of electricity duty and tax on sale of electricity.

15. Interestingly, the noting was that there were objections from the Comptroller and Auditor General's Office (**"CAG"**) in that regard. It is well settled that a mere noting by the CAG does not and cannot by and of itself justify a demand.

16. The breakup showed that the 4th Respondent, the Electric Inspector Kolhapur, had for the period January 2004 to March 2007, clubbed the units generated by Pidilite with the units generated by Vinyl Chemicals itself from its own plants although these had separate metering points. On 25th August 2010, the

Electric Inspector, Kolhapur made a demand in the aggregate amount now of Rs. 2,12,25,964/- and in default threatened recovery proceedings.

17. Pidilite came to this Court in Writ Petition No. 7864 of 2010. An Affidavit in Reply was filed. On 6th May 2011, the Electric Inspector called upon Pidilite to pay electricity duty and tax of Rs. 77,47,948/- for the period January 2001 to January 2009.

18. Then by a letter of 23rd April 2010, the Electric Inspector, Kolhapur informed the Pidilite for the first time of an Amnesty Scheme inviting Pidilite to avail of it. This allowed for a 50% rebate on the interest claim and Pidilite was asked to pay Rs. 27,45,800/- and Rs. 3,87,137/- being the electricity duty and the tax on the purported sale of electricity. The third component was an amount of Rs. 25,90,757/- being 50% of the interest demanded. The aggregate demand came to Rs. 57,23,694/-.

19. By its order of 25th April 2012, the Division Bench of this Court disposed of the Pidilite's Writ Petition by directing the Electric Inspector to consider Pidilite's representation afresh.

20. Consequently, on 9th May 2012 Pidilite's representatives appeared before the Electric Inspector and filed written submissions. By his letter of 20th May 2012, the Electric Inspector once again called on Pidilite to pay Rs. 57,23,694/-. He pointed that the Amnesty Scheme window was only available till 30th June 2012.

21. The date of the hearing was rescheduled to 15th June 2012. At this point, Pidilite was therefore in a dilemma. On the one hand, there was Pidilite's case that the entire demand or at least a significant part of it was wrongly raised and could not have been demanded. On the other hand, there was this opportunity with a rapidly closing window of the Amnesty Scheme. Seeking therefore to put an end to all this, and despite its contentions that it had taken in writing, by an email of 29th June 2012 Pidilite informed the Electric Inspector that it intended to avail of the benefit of the Amnesty Scheme. Pidilite asked the Electric Inspector to issue a revised demand only for the period of 31st March 2007. As we have noted earlier, this is entirely consistent with Pidilite's stand, where it does not (even today) oppose in principle the demand up to 31st March 2007 but it wholly refutes the correctness of the demand from 1st April 2007, the effective date of the sanctioned demerger.

22. By a letter of 29th June 2012, the Deputy Director of MSEDCL informed the Electric Inspector about Pidilite's willingness to avail of the benefit of the Amnesty Scheme and requested the Electric Inspector to provide all assistance to Pidilite.

23. On 30th June 2012, Pidilite actually tendered two cheques in the amount of Rs. 42,84,270/- towards electricity duty and 50% interest for the period up to 31st March 2007 and Rs. 5,71,236,00/- towards the tax on sale of electricity together with a 50% interest for the period up to 31st March 2007. What the Electric Inspector, Kolhapur did thereafter is extremely strange. On 30th June 2012, the Electric Inspector actually refused to accept the cheques. He endorsed the letter while rejected Pidilite's cheques.

24. Meanwhile, Pidilite tendered payment for electricity duty and tax in respect of the power generated at and exported from Satara with 50% interest only as allowed under the Amnesty Scheme to the 5th Respondent, the Electric Inspector at Swargate, Pune. Respondent No. 5, the Swargate-based Electric Inspector accepted the payment in respect of the dues relating to the Satara windmills, with a 50% interest rebate. Those dues were up to 31st March 2007 as noted above.

25. While the 5th Respondent at Swargate accepted the payment for export to the same unit at Mahad (but from the Satara windmills) and only up to 31st March 2007, the 4th Respondent at Kolhapur took a diametrically opposite stand.

26. We come now to 5th July 2012, when the Electric Inspector Kolhapur told Pidilite that the demand was Rs. 57,23,614/- but since Pidilite had paid only Rs. 48,55,506/-, the amount was not accepted. Now the Electric Inspector Kolhapur demanded Rs. 86,15,542/- before 31st December 2012.

27. This correspondence with the 4th Respondent went on from July 2012 with Pidilite disputing the 4th Respondent's demand and the 4th Respondent continuing to insist on payment. The Amnesty Scheme was extended up to 31st December 2012. The situation now was this. The Electric Inspector at Swargate had accepted Pidilite's payment for the duty with 50% interest and the tax with 50% interest for the Satara units' dues up to 31st March 2007. For the same period, but in respect of the Sangli units under the jurisdiction of the Electric Inspector at Kolhapur, a completely conflicting stand was taken. Both Respondents Nos. 4 and 5 are officers of the Energy and Labour Department of the Government of Maharashtra. Both are operating under the same statute, the very same policies and the very same Amnesty Scheme.

28. By November 2012, there came about a new scheme and the Electric Inspector Satara informed Pidilite about it. This was called the Vidyut Shulk Abhaya Yojana. The Electric Inspector Kolhapur said that Pidilite now had to pay an amount of Rs. 60,05,917/- and the scheme was available till 31st December 2012.

29. Pidilite desired to avail of this scheme and reiterated its stand where it did not dispute the levy for the period up to 31st March 2007 but entirely refuted the levy after 1st April 2007.

30. On 29th December 2012, within the period of the revised scheme or Amnesty Scheme, Pidilite tendered two cheques for Rs. 42,84,270/- and Rs. 5,71,236/- representing the duty and tax demands up to 31st March 2007 for the Sangli units to the Electric Inspector at Kolhapur. Strangely, and now for the *second* time, the Electric Inspector, Kolhapur refused to accept these cheques but only made an endorsement. He followed this up with a communication two days later that since Pidilite evidently did not wish to avail of the new scheme, it was now to pay an amount of Rs.

90,68,416/-. This was broken up as follows: electricity duty Rs. 27,45,800/-; interest Rs. 52,21,715/-; tax on sale of electricity Rs. 3,87,137/-; and interest on tax of sale of electricity Rs. 7,13,764/-.

31. Mr Patel gives us a handwritten statement of the amounts that are now said to be due up to 31st March 2007 and interest both on the electricity duty and on the tax of sale of electricity. This tabulation is reproduced below:

Item	Period	Amount
Electricity Duty	Up to March 2007	22,63,733/-
Interest	Up to March 2007	35,90,351/-
		58,54,084/-
Tax on Sale	Up to March 2007	2,93,793/-
Interest	Up to March 2007	4,72,868
		7,66,661
Total		**66,20,745/-**

32. Even in this, there is still no consideration of the 50% waiver or Amnesty Scheme for the tax. The entire tax, though up to 31st March 2007 at 18% per interest is yet being demanded even under the statement.

33. On any reading of these facts, the 4th Respondent, the Electric Inspector, Kolhapur, had no right to refuse the valid tender made by Pidilite in respect of the Sangli units — and made not once, but twice. The refusal to accept the tender is, to begin with, commercially incomprehensible. He could very well have accepted the tender and done so on a without prejudice basis leaving it open to raise any further claim that the department may have had. But the refusals have a consequence in law. Once a valid tender is made and is refused, then there would be no question of the payee seeking interest for a period after the date of the tender. It is for this reason that Mr Patel's statement today correctly restricts the interest demanded up to 31st March 2007. But even that is only a half-way measure. We do not see how Pidilite can be deprived of both the Amnesty Schemes that were available to it and which it availed of within time by making valid tender. That it availed of the schemes is clear from the fact that under both schemes it actually made valid tender of 50% interest. There is no question, therefore, of the Electric Inspector, Kolhapur now asking for 100% of the interest even up to 31st March 2007.

34. The prayers in the Writ Petition at page 36 to 38 read thus:

> "(a) this Hon'ble court be pleased to issue a Writ of Certiorari or writ in the nature of Certiorari or any other appropriate writ, direction or order under Article 226 of the Constitution calling for the records of the case relating to the said notices 05th November 2012, 11th November 2012 and 21st November 2012 and 31st December 2012 and after going through the legality, propriety and validity thereof, be pleased to quash and set aside the Notice dated 31st December 2012;
>
> (b) this Hon'ble Court be pleased to issue Writ of Mandamus, or a writ, order or direction in the nature of Mandamus, or any other appropriate writ, order or direction under Article 226 of the Constitution of India ordering and directing the Respondent Nos. 1 to 4 to forthwith (i) revoke, cancel and/or withdraw the said notices 05th November 2012, 11th November 2012 and 21st November 2012 and 31st December 2012 issued under the

> provisions of the said the Bombay Electricity Duty Act, 1958, the said the Bombay Electricity Duty Rules 1962 and Maharashtra Tax on Sale of Electricity Act; 1963; (ii) accept the payment of Rs. 48,55,506.00 in full settlement of the Petitioner's liability in respect of electricity duty, tax on sale of electricity and interest for consumption of electricity at Mahad Unit; and (iii) forbear from demanding any duty or tax from the Petitioner's for consumption of electricity at Mahad Unit post 1st April, 2007;

35. We make rule absolute in these terms but a further clarification or order will be necessary. We accept Mr Shah's statement that within a period of ten days from today Pidilite will make payment to the 4th Respondent, the Electric Inspector, Kolhapur, of the following amounts due against sale of electricity for the period up to 31st March 2007 from the Sangli units:

- **(a)** Electricity duty of Rs. 22,63,733/-;
- **(b)** 50% of the interest demand of Rs. 35,90,351, i.e., Rs. 17,95,175.50/-;
- **(c)** Tax on sale of electricity up to 31st March 2007 in the amount of Rs. 2,93,793/-;
- **(d)** 50% of Rs. 4,72,868/- being the interest on tax on sale of electricity, i.e., Rs. 2,36,434/-

36. The 4th Respondent is directed to accept the payment.

37. Mr Patel says that some provision must be made for interest from 31st March 2007 onwards. That might have been possible had Pidilite not availed of the amnesty schemes and failed to make valid tender. The submission is unacceptable and is contrary to the concept of "amnesty". The submission is, therefore, rejected. The fault in not having the tender accepted and the money paid to the Government is solely due to the entirely wrong, arbitrary and unlawful action of the 4th Respondent. We leave it open to the Maharashtra Government to recover any such interest after 31st March 2007 from the 4th Respondent, the Electric Inspector at Kolhapur. He is solely responsible for this state of affairs. If that officer is no longer in service, it may be recovered from his dues or in a manner permitted by law.

38. Rule is made absolute in these terms.

39. There will be no order as to costs.

(Gauri Godse, J) **(G. S. Patel, J)**