

12.12.2024
Item No.7
KS
Ct. No.7

W.P.A. 1659 of 2009

C.E.S.C. Limited & Anr.

Vs.

**The Appellate Authority and Deputy Chief Engineer,
CRM Cell & Ors.**

Mr. Om Narayan Rai, Ld. Sr. Adv.
Mr. Debanjan Mukherjee
Mr. Aditya Sarkar

.....For the Petitioners

Mr. Sujit Sankar Koley

.....For the Appellate Authority

Mr. Sufi Kamal
Ms. Shireen Hossain

.....For the Respondent No.3

1. This writ petition is at the instance of C.E.S.C. Limited and is directed against an order dated November 11, 2008 passed by the Appellate Authority under Section 127 of the Electricity Act, 2003.
2. The Assessing Officer – II passed a final order of assessment dated 5th May, 2008 assessing the amount to be paid by the respondent no.3 herein on account of unauthorized use of electricity. The Assessing Officer arrived at the figure by taking into account the period of unauthorized use of electricity to be 365 days and 10 hours per day.
3. Being aggrieved by such order of the Assessing Officer, the private respondent preferred an appeal under Section 127 of the Electricity Act, 2003. The Appellate Authority after setting aside the final order of

assessment dated 5th May, 2008 directed the authority to regenerate the bill taking into consideration the connected load 8.50 KW number of days 240 instead of 365 days and running hours as 6 instead of 10 hours.

4. Mr. Rai, learned senior advocate appearing for the petitioner places reliance upon Section 126(5) of the 2003 Act and submits that if the period during which the unauthorized use of electricity that has taken place cannot be ascertained, such period shall be limited to a period of 12 months immediately preceding the date of inspection.
5. He further submits that the Assessing Officer rightly took into consideration the period of unauthorized use of electricity to be 365 days and the finding of the appellate authority that such period was of 240 days is without any basis.
6. Mr. Rai, learned senior advocate further submits that the inspection report shows that the factory used to run for 10 hours per day and the appellate authority failed to take note of such inspection report while directing the bill to be regenerated by taking into account the running hours to be 6 hours instead of 10 hours. Mr. Rai, learned advocate further refers to Section 3 (35) of the General Clauses Act, which defines “months” to mean a month reckoned according to the British Calendar.

7. Learned advocate on behalf of the respondent no.3 submits that the assessee in the written objection filed before the Assessing Officer has specifically stated that the factory did not run for more than 6 hours in a day and in a month it cannot be more than 20 days.
8. He submits that in the absence of any material to show that the factory run for more than the period as stated by the private respondent in the written objection, the Appellate Authority was justified in holding that the factory run for 240 days in a year and 6 hours per day.
9. Learned advocate appearing for the Appellate Authority supported the order passed by the appellate authority.
10. Heard the learned advocates for the parties and perused the materials placed.
11. After going through the order passed by the Assessing Officer, this Court finds that the Assessing Officer took note of the report of the Engineer wherein the days of operation was taken as 365 days and the working hours as 10 hours per day. The Assessing Officer also noted the objection raised by the private respondent herein in the written objection. However, the Assessing Officer while passing the final order of assessment did not assign any reason for rejection of the contention of the private respondent that the factory did not run for more than 20 days in a month and more than 6 hours a day.

12. The Assessing Officer in the order has arrived at a finding of fact as to the period during which the factory was being run without assigning any reason for rejection of the stand taken by the consumer in that regard. The Appellate Authority, on the other hand, relied on the contention of the assessee in the written objection without giving any reason for non-consideration of the report of the authorized engineer.
13. The Appellate Authority being the final authority in the hierarchy of authorities to adjudicate on facts, to the mind of the Court, the said authority while setting aside the impugned order ought to have arrived at a positive finding of fact as to the period during which the factory was run. The appellate authority ought to have also taken into consideration whether there was any weekly off day in respect of the factory in question while arriving at the period for which the factory was being run.
14. This Court finds that the Appellate Authority failed to discharge its duty in this regard for which the order of the Appellate Authority calls for interference.
15. Accordingly, the order of the Appellate Authority dated November 11, 2008 is set aside and quashed. The Appellate Authority is directed to reconsider the matter in the light of the observations made hereinbefore after giving an opportunity of hearing to the private respondent herein/assessee as well as the authorized

representative of the licensing company and to dispose of the appeal by passing a reasoned order. The Appellate Authority shall communicate the reasoned order to the parties immediately thereafter. The entire exercise shall be completed within a period of eight weeks from the date of receipt of server copy of this order.

16. The parties are directed to produce all the relevant documents and evidence in support of their claims before the Appellate Authority, since the matter is of the year 2008. The writ petition stands disposed of with the above order and direction.
17. Since, no affidavits have been called for, the allegations contained in the writ petition shall not be deemed to have been admitted.
18. It will be well-open to the parties to raise all claims before the authority both on facts as well as in law.
19. There shall be, however, no order as to costs.
20. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(HIRANMAY BHATTACHARYYA, J.)