2024:PHHC:130874

IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH.

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CWP-497-2016 (O&M).
Date of Decision: 01.10.2024.

CHIEF ENGINEER/ OPERATOR, CENTRAL ZONE, SARABHA NAGAR, PSPCL, LUDHIANA AND OTHERS

... Petitioners

Versus

THE DIVISIONAL COMMISSIONER, PATIALA DIVISION, PATIALA AND ANOTHER

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Ms. Promila Nain, Advocate, with
Ms. Isha Dhingra, Advocate,
for the petitioner/PSPCL.

Mr. Aditya Sharda, DAG, Punjab,
for respondent No.1.

Respondent No.2 ex parte.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the order dated 05.12.2014 passed by the Divisional Commissioner, Patiala Division, Patiala, in exercise of the powers conferred under Section 127 of the Electricity Act, 2003 wherein the appeal of respondent No.2-M/s Sigma

Synthetics Pvt. Ltd., has been partly accepted and the petitioner-PSPCL has been ordered to charge Unauthorized Use of Electricity amount (hereinafter referred to as 'UUE') for the period commencing from 06.06.2012 to 23.06.2012 and to recalculate and return the excess amount is paid by respondent No.2 for the case of UUE.

2 Learned counsel appearing on behalf of the petitioner PSPCL contends that respondent No.2-M/s Sigma Synthetics Private Limited is a consumer of the petitioner-Distribution Licensee and an LS category connection with a sanctioned load of 493.950 KW and a contract demand of 395 KVA has been released to it in Sunder Nagar Division. There were in fact two connections released i.e. one in favour of M/s Sigma Synthetics Private Limited bearing connection bearing Account No.SN03/00055 LS category and other in favour of M/s Sigma Polytex Private Limited bearing Account No.SN01/00062 LS category. The said connection of M/s Sigma Polytex Private Limited bearing Account No.SN01/00062 LS category was checked by the enforcement staff of PSPCL on 23.06.2012 and it was recorded that a weaving machine of another consumer was running through the DG set and was not connected anywhere with the load of Account No.SN03/00055 LS category belonging to M/s Sigma Synthetics Private Limited. It is averred that the checking officer got the signatures of Satnam Singh on the checking report and a provisional order of assessment was issued by petitioner No.4 vide memo No.1720 dated 16.07.2012 for depositing an amount of Rs.28,13,103/- under Section 126 of the Electricity Act, 2003 even though it is claimed that the said Section was not applicable.

Objections were filed by the respondent No.2-M/s Sigma Synthetics Pvt. Ltd., whereupon a final order of assessment was passed on 19.11.2012. The respondent No.2-M/s Sigma Synthetics Pvt. Ltd., preferred an appeal before Appellate Authority under Section 127 of the Electricity Act, claiming therein that the 16 KW weaving machine in dispute was purchased by M/s Sigma Polytex Private Limited (Account No.SN01/00062 LS) only on 06.06.2012 from M/s Phintex Products and that the machine was still under a trial stage and was only temporarily connected with the D.G. set. Now, even the said supply has also been dis-connected. The transaction relating to the sale and purchase of the machine had been duly incorporated in the accounts of both the firms. The applicable VAT have also been paid to the concerned authorities. It was claimed by respondent No.2-consumer that even if it is presumed that it was a case of UUE, yet, the alleged UUE is about 3.65% of the total load and as per provisions of Section 126 of the Electricity Act, 2003, the same would not be attracted since there is no 100% realization of the load of the other connection. It was claimed that there was never any excess load drawn by the respondent No.2-consumer and the consumption always remained within the permissible limits. It was also pointed out that final order of assessment had been passed mentioning that the amount had been charged due to inter connection of the load of two LS connections but no such report has been made by the checking officer and that both the units are separate and independent entities and both have never been found to be using more than 50% of the contract demand. There was hence no necessity for M/s Sigma Polytex Private Limited to use 16

KW load of SN01/00062 from that of connection bearing Account No. SN03/00055 of M/s Sigma Synthetics Pvt. Ltd. It was averred that since both the firms were making the payments of the bills which is more than the MMC, there was no benefit to use the load of other connection.

3 Petitioner-Distribution Licensee appeared before the Appellate Authority and rebutted the arguments advanced by the respondent No.2-consumer by submitting that M/s Sigma Synthetics Pvt. Ltd., was holding one LS connection bearing Account No. SN03/00055 and was also having another connection bearing Account No. SN01/00062 in the name of M/s Sigma Polytex Private Limited. The connection SN01/00062 was checked by Additional S.E. Enforcement on 23.06.2012 and it was found that one knitting machine 16 KW was installed in the premises of M/s Sigma Polytex Private Limited and that the same was being used from Account No. SN03/00055 through a changeover switch. The competent authority examined all the aspects and passed the final order of assessment after affording an opportunity of personal hearing and filing of the objections by the petitioner/PSPCL.

4 On consideration of the rival submissions advanced by the respective parties, the Appellate Authority recorded as under:-

> *"After perusing all the facts of the case, I am of the considered opinion that it is an established case of Unauthorized Use of Electricity as defined under section 126 of the Electricity Act-2003 and the department has raised the demand for overhauling the account for the period of 12 months. 1 have*

noticed that the assessing officer has erred in asserting the UUE compensation period. I am of view that the overhauling of account can only be done for a maximum period of 12 months, if the exact date of this unauthorized use could not be ascertained. In the present case the purchase invoice-no. 94 dated 6-6-2012 is genuine to be accepted for ascertaining the exact UUE Period.

Keeping in view the above, the present appeal is hereby partly accepted and it is hereby ordered to charge UUE amount for the period starting from 6-6-2012 (i.e. date of purchase of machine) to. 23-6-2012 (i.e. date of checking).

The appellant has already deposited 50% (Rs. 14.06.560/-) of total amount in dispute (i.e. Rs. 28,13,1037-) and after re-calculation, if the amount liable to, be paid by the appellant as UUE comes less than the amount already deposited by the appellant, then the balanced amount be returned appellant with immediate effect."

5 Aggrieved thereof, the present writ petition has been filed.

6 Learned counsel appearing for the petitioner/PSPCL contends that the order passed by the Appellate Authority on the appeal preferred by respondent No.2/consumer was incorrect and they have failed to appreciate the reasons cited by the petitioner-Distribution Licensee while passing the final order of assessment. The weaving machine of 16 KW was found to be installed in the premises of the M/s Sigma Polytex Private Limited and was being used from the connection of the respondent No.2-consumer M/s Sigma Synthetics Private Limited bearing Account No. SN03/00055 and

that same was being undertaken through the changeover switch. She contends that the checking officer had got the signature of respondent No.2-consumer for UUE and despite there being no denial of the use of 16 KW weaving machine in the premises of M/s Sigma Synthetics Private Limited and the supply from the adjoining premises of M/s Sigma Polytex Private Limited, the final order of assessment passed by the competent authority has been rightly modified.

7 There has been no representation on behalf of respondent 2-consumer despite the service. It is noticed that initially time was sought to file the written statement, however, the needful was not done from May 16, 2016 till 23.10.2018 despite granting last opportunity. The defence of respondent No.2 was accordingly struck off.

8 It is also noticed that counsel for respondent No.2 did not appear after 02.04.2018 and the matter was taken on 23.10.2018, 26.03.2019, 04.12.2019, 29.01.2020 as well as 18.08.2022 too. So much so that this Court had directed the Registry to inform the counsel for respondent no.2-consumer who entered appearance on 29.10.2022 and also on 18.01.2023.

9 When the matter was taken up on the next date of hearing i.e. 29.10.2022, a legal-aid-counsel was appointed to assist this Court, since there was no representation on behalf of the respondent No.2-consumer despite being informed by the Registry. The matter was thereafter adjourned to 18.01.2023 when the earlier counsel appeared and submitted that on account of a miscommunication, he could not enter appearance in the matter

on 16.05.2018. Opportunity was granted yet again to the said Advocate to file the reply and the matter was adjourned to 05.07.2023, however, even on the said date, the counsel did not appear. The matter was adjourned to 11.10.2023 and last opportunity was granted to respondent No.2 to file reply. On 11.10.2023, the counsel for respondent No.2 chose not to appear and also not to file reply. The defence of the respondent No.2 was struck off and the matter was thereafter adjourned to 31.01.2024 for arguments.

10 Even today there is no representation on behalf of respondent No.2. It seems that respondent no.2 is not interested in pursuing the present petition and therefore, respondent No.2, is ordered to be proceeded against ex parte and the matter is being decided on merits.

11 I have heard Learned counsel for the petitioner/PSPCL and the order passed by the Divisional Commissioner, Patiala Division, Patiala under Section 127 of the Electricity Act, has been perused. It is evident from a perusal of the same that the Appellate Authority has taken into consideration the invoices produced by the respondent No.2 about having purchased the weaving machine on 06.06.2012. The said documents on verification were found to be correct and genuine and were accepted for ascertaining the actual period of UUE. It was in the said circumstances that the final order of assessment was partly modified and petitioner-Distribution Licensee was directed to compute the amount w.e.f. 06.06.2012 (i.e. the date when the machine in question was purchased) and 23.06.2012 (i.e. the date when the checking was carried out and the alleged unauthorized use of electricity was reported).

12 Learned counsel for the petitioner-Distribution Licensee has not been able to dispute the invoices with respect to the purchase of the new weaving machine and the installation thereof. It is thus evident that a definite period of alleged UUE was available for computing the amount and as such, the petitioner-Distribution Licensee could not have overhauled the account for a period of 12 months prior to detection of UUE. There is no evidence that has been adduced on record on the basis whereof it can be held that the weaving machine in question had, in fact, been purchased earlier and installed prior to 06.06.2012.

13 The Appellate Authority thus has rightly directed configuration of the amount with effect from the date of purchase of machine and till the inspection was carried out on actual basis instead of overhauling the account for a period of 12 months preceding the date of inspection.

14 I find that there is no illegality or perversity in the order passed by the Appellate Authority. The present writ petition is accordingly dismissed. The order dated 05.12.2014 passed by the Divisional Commissioner, Patiala Division, Patiala, is upheld.

October 01, 2024 **(VINOD S. BHARDWAJ)**
raj arora **JUDGE**

Whether speaking/reasoned *: Yes/No*
Whether reportable *: Yes/No*