**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

202 **CWP-8353-2014 (O&M)**
Date of decision: 06.11.2024

M/S KALSI WAREHOUSING CORPORATION, VILLAGE NIMBUAN, TEHSIL DERABASSI, DISTT. S.A.S. NAGAR, MOHALI

.........PETITIONER

VERSUS

PUNJAB STATE POWER CORPORATION LIMITED AND OTHERS

........RESPONDENTS

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

Present:- Mr. Puneet Jindal, Sr. Advocate with
Ms. Malvi Aggarwal, Advocate
for the petitioner.

Mr. Aditya Sharda, DAG, Punjab,
for respondent No.2.

Mr.A.S. Chadha, Advocate
for respondents No.1 and 3 to 5.

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VINOD S. BHARDWAJ , J. (Oral)

Challenging the orders dated 01.01.2014 and 15.03.2013 passed by the respondents imposing penalty for using LS electricity connection (Industry Category) instead of N.R.S. Category, the present writ petition has been filed.

2. Learned senior counsel for the petitioner contends that the petitioner-partnership firm is owner of 5.06 acres of land, situated in Village Nimbua, Tehsil Dera Bassi, District SAS Nagar Mohali. The said land was agricultural. The petitioner-partnership firm applied to the department of Town and Country Planning, Punjab for change of the land use for warehousing purposes, which was granted on 18.07.2008. Clearance from the Punjab Pollution Control Board for establishing a Warehouse was also

obtained under the Air (Prevention & Control of Pollution) Act, 1981 as well as Water (Prevention & Control of Pollution) Act, 1974. The description of the property was specifically mentioned as "godown air condition" in all the statutory forms and approvals. After taking the necessary sanctions and permissions from the competent authorities for using the premises an air conditioned warehouse, the petitioner submitted an application to the respondent-Distribution Licensee for release of electricity connection in the premises under LS (Industrial Category). All the details with respect to the electricity consumption, including the equipment installed therein, was furnished and declared by the petitioner-partnership firm. The establishment of three A.C. Plants of 20KW capacity each, was also disclosed. There was, thus, no concealment of any pact of any nature on the part of the petitioner-firm in making the correct disclosure not only about the nature of activities being undertaken but also about the equipment installed, at the time of submission of 'A' & 'A' form.

3. On consideration of the said application, the respondents-Distribution Licensee sent an intimation of acceptance vide letter dated 04.07.2008, whereupon the requisite service connection charges, as demanded, were also paid by the petitioner-firm. The premises in question was subsequently leased out by the petitioner-firm to Torrent Pharmaceuticals Limited, vide Lease Deed dated 01.09.2008 for a period of five years, which continued till the time, when the present petition was filed.

4. The object of leasing out the said property was for stocking and storing pharma products and medicines of Torrent Brand that were to be manufactured in their unit situated at Baddi, Himachal Pradesh. The petitioner confirmed to pay at the energy consumption charges regularly.

5. The petitioner-firm was, however, served with a notice under Section 126 of the Electricity Act, 2003 alleging that the LS (Industrial Category Connection) category was being used in the disputed premises, whereas the application ought to have been submitted for electricity connection under the NRS Category as no manufacturing was being done at the disputed premises. A provisional assessment of Rs. 40,56,727/- was conveyed to the petitioner-firm vide order dated 07.02.2013.

6. In response thereto, the petitioner-firm submitted its objections dated 18.02.2013. A personal hearing was granted to the petitioner-firm by the authorities on 06.03.2013 and thereafter a final order, dismissing the objections, was passed on 08.03.2013 upholding the order of provisional assessment.

7. Aggrieved thereof, the petitioner-firm had preferred statutory appeal under Section 127 of the Electricity Act, 2003 before the Additional Deputy Commissioner/ Appellate Authority (under Electricity Act-2003), SAS Nagar, Mohali. The said appeal was dismissed by the Appellate Authority vide its order dated 01.01.2014 upholding the order of assessment. Hence the present petition was filed.

8. It is argued by the learned senior counsel for the petitioner that the order of assessment on account of unauthorized use of electricity has been wrongly passed by the respondent-authorities and the appeal has been dismissed without appreciating the objections raised by the petitioner-firm and solely on the ground that no manufacturing activity was being undertaken by the petitioner-firm and that the premises was being used only for the stocking of the pharmaceutical products. The activity was thus assigned as a commercial activity holding the petitioner disentitled for the

electricity connection under LS (Industrial Category). He contends that there was no concealment of any nature, whatsoever, by the petitioner-firm at the time of seeking release of electricity connection from the respondents, and that after a lapse of nearly five years, the respondents have now raised this arbitrary demand, by way of penalty, under Section 126 of the Electricity Act, 2003.

9. It is further argued that the disputed premises continued to be used and occupied for the same purpose for which it was constructed and there was no change of usage of the premises or the electricity by the petitioner-firm and that the assessment order was passed by the respondents by categorizing the same as NRS (category connection) under the category "Air Conditioned Plant", is misplaced and misconceived.

10. When the matter had come up for hearing on one of the dates i.e. 08.11.2023, learned counsel for the respondents – PSPCL - Distribution Licensee was asked to file a response / affidavit clarifying therein as to whether an 'Air Condition Warehouse' would fall within the definition of "Industry" or "Commercial Activity".

11. Pursuant thereto, an affidavit had been filed by the respondents, by placing reliance on the General Conditions of Tariff and Schedule of tariff, as per which an 'Air Conditioned Warehouse' was not shown in any schedule / category in the said instructions. Hence, a letter was sent by the Senior Executive Engineer, Distribution Division, Lalru to the Principal Engineer Commercial, PSPCL, Patiala for seeking clarification as to the category in which the connection for "Air Conditioned Warehouse" would fall. In response thereto, vide letter dated 08.05.2024, it was informed that as per Annexure II of Commercial Circular No. 17/2023 issued by the

Corporation, "an air conditioning unit/ plant" falls under the NRS category i.e. Commercial Category.

12. It is argued that even though the provisional assessment order dated 07.02.2013 was served upon the petitioner-firm but the explanation is being put forth by the respondents by placing reliance on the Commercial Circular issued in the year 2023 and the same is not with respect to any circular / tariff order that was in force at the time when the assessment was undertaken. He further contends that notwithstanding the reliance on the said circular, it is evident that the reasons given by the respondents for treating the electricity supply of the petitioner under the NRS category, by placing reliance on SV(1.1), is misconceived. The Schedule of Tariff for Non-Residential Supply (NRS) category applies the said tariff schedule to an 'Air Conditioning Unit/ Plant', amongst various other non-residential premises such as business houses, cinemas, clubs, offices, hotels/motels, marriage places, departmental stores etc. He submits that the expression an "Air Conditioning Plant" has to be read in the context of the nature of the activities that have been mentioned thereunder and that as per Annexure-II, of the General Conditions of tariff, applicable to Large Supply Industrial Consumers (LS), it shows at SL.3 that Ice Factories, Ice Candies & Cold Storage were covered under the Industrial Category and that even the packaging and storage units also fell in the said industrial Schedule. He submits that similar provisions were also made in the Medium Supply Industrial Power (MS) category wherein the Cold Storage, Ice Factories and Ice Candies fell in that category. He contends that the "Warehouse" having been leased out to a pharma industry for "storage of their manufactured drugs under controlled temperatures" is thus more akin to the

category of a storage unit instead of being categorized as an Air Conditioned Plant /Unit under the NRS category. He further submits that the classification made by respondents would not born out of an intelligible differentia. Once a Cold Storage is covered under an Industrial Unit for supply of electricity, where storage of perishable items is done, there is no reason why a Temperature Controlled Storage Unit/Air Conditioned Unit for the same object but a different product would be differentiated, merely on the basis of categorization of the Cold Storage or the nature of product stored. It is also argued that Section 126 of the Electricity Act, 2003 defines an Unauthorized Use of Electricity. He submits that the petitioner never violated any of the said conditions. The Electricity Connection was nowhere being used by him for a purpose other than for which use the Electricity connection had been authorized or at any premises, other than where the supply has been authorized. All factors having been disclosed, no case for an unauthorized use of electricity was ever made out.

13. He further contends that the premises had regularly been inspected during the period from release of connection, till the order of assessment was served upon the petitioner, spanning more than five years. No deficiency or defect was ever noticed and that no demand was raised for the entire duration of five years by the respondents. He further submits that even assuming that the order has to be made for the sake of arguments, the assessment could not exceed beyond 12 months from the date on which such detection was made.

14. Learned counsel for the respondent-Distribution Licensee, however, submits that the order of assessment had been rightly passed in accordance with the laws, rules and regulations applicable and that the 'Air

Condition Unit /plants' are covered under the NRS category while the electricity supply released to the petitioner was under the Industrial Category. When the said error was detected, the charge was re-assessed and the objections filed by the petitioners were duly considered and were declined. He further submits that the account of the petitioner was overhauled only for a period of 12 months, according to Regulation 36 of the Electricity Supply Code & Related Matter Regulations, 2007 read with Annexure 8(1)(a) and not for the entire duration. It is also submitted that as per the Electricity Supply Instructions, 2010, the Schedule of tariff for Non-Residential Supply (NRS) mandated in para 121 that Air Conditioning unit would also be covered under the said Schedule i.e. the NRS Category.

15. He further contends that they also sought specific clarification from the Office of Deputy Chief Engineer and they referred to the General Conditions of Tariff and Schedule of Tariff, as issued by the Chief Commissioner, as per which Air Conditions Warehouse would fall under the category of NRS and that the supply has been rightly assessed.

16. On being confronted with the averments made in para 3 of the preliminary submissions, learned counsel for respondent-Distribution Licensee, submits that the description about overhauling being only for a period of 12 months, according to regulation 36 of the Electricity Supply Code & related matters Regulations, 2007 is factually incorrect, and that the account of the petitioner has been overhauled for the entire duration after the release of electricity connection till the order of the assessment. He, however, contends that the limitation for a period of 12 months is prescribed where the time period is not determinable and that when such time period is discernible, then the Distribution Licensee is entitled to levy the penalty for

the entire period for which such unauthorized use has continued.

17. No other argument has been advanced or judgment cited by the counsel for either parties.

18. I have heard learned counsel appearing for the respective parties and have gone through the record with their able assistance.

19. The core question which arises for consideration of this Court is as to whether an "Air Conditioned Storage Unit/ Warehouse" for pharmaceutical company, would fall under an Industrial activity or has to be treated as 'NRS category' under an Air Conditioned Units/ Plants.

20. It is not in dispute that after coming into force of the electricity Act, 2003 only an appropriate commission is competent to carry out an exercise for determination of tariff under section 62 of the electricity act, 2003 and in devising such tariff, a classification or categorization can be made by the appropriate commission prescribing different tariff schedule for different types of usage. The Industrial and NRS category, are some of the different categories that have been prescribed in the Tariff that was notified. As per the Electricity Supply Instructions Manual, 2010, "a Cold Storage" was brought within the ambit of an industrial activity. The classifications were broadly brought out and there was no further sub-categorization based on nature of product stored, once the broad category of "storage" – whether cold storage or for packaging etc., were classified under the Industrial Category.

21. The second argument advanced that as no manufacturing activity was being undertaken, hence, the consumption would be deemed to be a commercial connection would fall flat only on the argument of the respondents and the categorization done by them since even a 'Cold Storage'

would not fall in a category where any manufacturing activities were done. Thus, the reasoning given now for such classification does not withstand their own scrutiny. The other classification for the LS category connections has been further widened and includes the storage and packaging units. No industrial or manufacturing activity would also be presumed to be undertaken in a 'storage and packaging unit' as well. Thus the explanation put forth that it must involve a manufacturing process before an industrial connection can be released, does not hold ground. The justification behind classification under the NRS category, given by the respondents, is based solely on the use of the expression an "Air Conditioned Plant/Unit" which, however, is not being read alongwith the preceding activities mentioned thereunder. A careful reading of the Schedule of Tariff for Non-Residential Supply (NRS) category, as per the ESIR, 2011, shows that for the supply of electricity to be categorized as NRS, the supply for the 'Air Conditioned Unit/Plant' had to be in non-residential premises such as business houses, cinemas, clubs, offices, hospitals and private educational institutions, hotels/motels, departmental stores, shops, guest houses and restaurants, including sports institutions/facilities including gymnasiums etc. Thus, the classification of NRS category was not on the basis of installation of an Air Conditioned Unit or a plant and rather, the installation of the air condition unit/plant had to be in a premises where the classified nature of activities or activities similar to it were being undertaken. The classification and categorization undertaken above shows that the activities such as storage, packaging, warehousing etc. do not fall in the above category under SV Schedule of Tariff and in classification SV.1.1 extracted hereinafter below:-

"***SV Schedule of Tariff for Non Residential Supply (NRS)***

SV.1 Availability

SV.1.1 Supply for lights, fans, appliances like pumping set and air-conditioning units/ plants, lifts, welding set, small lathe, electrical drill, heater, battery charger, embroidery as business houses, cinemas, clubs, offices, hospitals and private educational institutions viz school, colleges and universities, hostels and residential quarters attached shops, guest houses and restaurants. All private sports institutions / facilities including gymnasiums will also come under this category."

22. It is further not in dispute that the aforesaid Supply instructions were in force as in the year 2013, when the provisional assessment was conveyed to the petitioner, and the final order of assessment was passed. Taking a clue from the said classification, it is also evident that such categorization of a storage and packaging unit and as well as the cold storage units, being part and parcel of an industrial activity, remained intact.

23. The categorization now sought to be done by the respondents-PSPCL is not based upon a correct reading of their own circulars as were in force at the relevant point in time. Similar categorization also reflects in the Schedule of Tariff of 2023, on the basis whereof the instant affidavit has been filed. The same reads, thus:

SV.1.1 This tariff shall apply to:

Non-residential premises such as business houses, cinemas, clubs, offices, hotels/motels, marriage palaces, hot mix/ready mix plants, departmental stores, shops, guest houses, restaurants for lights, fans, pumping set, air conditioning units/plants, lifts, welding sets, small lathes, electric drills, heaters etc.;

EV Charging Stations, battery chargers, embroidery machines, printing presses, ice candy machines, dry cleaning machines,

power presses, small motors, Street lighting connections by private colonizers/private companies/individuals etc.
Private hospitals (other than charitable), Private unaided educational institutions i.e. schools, colleges and universities, hostels and residential quarters attached thereto where such institutions/installations are not covered under schedule DS/BS: Telecommunication/Cellular Mobile Phone Towers and all private sports institutions/facilities including gymnasiums."

24. The aforesaid categorization starts from non-residential premises such as houses, cinemas, clubs, offices, hotels/motels, marriage palaces, hot mix/ready mix plants, departmental stores, shops, guest houses, restaurants for lights, fans, pumping set, air conditioning units/plants, lifts, welding sets, small lathes, electric drills, heaters etc. Hence, the installation of air conditioned plants has to be in such a premises. Unless the activity of storage and warehousing is put in the said category, it cannot be subjected to the NRS tariff merely on account of installation of air conditioning unit.

25. Evidently, the tariff categorization has been done on the basis of the activities that are being undertaken, before a particular tariff is applied to it. The activity which is being undertaken by the petitioner herein is a "<u>storage/warehousing unit</u>" for which an electricity supply had been obtained and that the requirement of establishing an air condition is an integral part of "<u>temperature controlled storage unit</u>" to be deployed for storage of "pharma" and is similar to "cold storage" equipment required to be installed for storage of perishable items. A discrimination merely on the basis of the nature of product stored, for subjecting same substantial activities to different tarrif is even otherwise not borne from the reading of the Schedule of Tariff as approved by the appropriate Commission. It is a

trite law that in an event where the categorization or classification has over-lapping shades, in the tariff schedule notified by the Commission, a Court of Law would draw a parallel and greater similarity in the nature of activities, before determining as to which tariff category would a consumer fall into.

26. The nature of activity undertaken by the petitioner, is akin to an activity that would fall in the category of '<u>storage</u>' and 'cold storage' as against an 'air conditioned unit/plant'. Hence tariff applicable to the former would be applicable.

27. Even otherwise, the respondents being the author of the said instructions, cannot claim advantages to themselves for any lapses. Benefit of such omission has to be extended in favour of the consumer, who has not made any concealment of any nature whatsoever at the time of submitting the application for release of electricity connection. A complete disclosure as regards the installation of the AC plant had been made and a physical verification was also undertaken before the release of the Electricity connection. Thus, it cannot be construed that the electricity connection was being used for any purpose other than for which it had been authorized. The case hence does not fall in the category of an unauthorized use of electricity under Section 126 of the Electricity Act, 2003.

28. For the abovestated reasons, I find that the order passed by the respondents under Section 126 of the Electricity Act, 2003 levying a fine/penalty to the tune of Rs. 40,56,727/- is bad and is not based upon correct appreciation of facts as also the provisions of Electricity Supply Instructions Manual as well as the General Conditions of Tariff.

29. The present writ petition is accordingly allowed. The impugned

demand is set aside. The pre-deposit, if any, made by the petitioner at the time of preferring statutory appeal under Section 127 shall be adjusted by the respondents along with the statutory interest, within a period of three months of receipt of a certified copy of this order.

06.11.2024 **(VINOD S. BHARDWAJ)**
Satyawan **JUDGE**

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