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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 15th July, 2025

\+ **W.P.(C) 8073/2023 & CM APPL. 31128/2023**

D.B. POWER LIMITED .....Petitioner

Through: Mr. Deepak Khurana, Advocate.

versus

UNION OF INDIA AND ORS. .....Respondents

Through: Mr. Anurag Ojha, SSC with Mr. Dipak Raj and Ms. Garima Kumar, Advs. Dr. B. Ramaswamy, CGSC for UOI, Mob. no. 9999605344

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\+ **W.P.(C) 9187/2023 & CM APPL. 34923/2023**

M.B. POWER (MADHYA PRADESH) LIMITED .....Petitioner

Through: Mr. Deepak Khurana, Advocate.

versus

UNION OF INDIA, MINISTRY OF FINANCE & ORS. .....Respondents

Through: Mr. Anurag Ojha, SSC with Mr. Dipak Raj and Ms. Garima Kumar, Advs. for R-2.
Mr. Rakesh Kumar, CGSC with Mr. Sunil, Mr. Ramleen Singh and Ms. Parul Bansal, Advs. for UOI
Mr. Vedansh Anand, GP

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. The present two petitions have been filed on behalf of the Petitioners- D.B. Power Limited and M.B. Power (Madhya Pradesh) Limited under

Articles 226 and 227 of the Constitution of India *inter alia* challenging the office memorandum dated 10th March, 2023 *(hereinafter, the 'office memorandum')* issued by the Department of Revenue.

3. Vide the office memorandum, the Department of Revenue *inter alia* directed that, where the period of 120 months has expired in respect of the Central Excise Duty exemption and the Mega Power Projects certificates for all goods cleared at the exempted rate of Excise Duty have not been submitted, proportional duty would be recoverable. The relevant portion of the office memorandum is extracted hereunder:

> *"It may also be noted that in cases where the extended period of 120 months has expired in respect of the Central Excise duty exemption and the Mega Power Project certificates for all goods cleared at the exempted rate of Excise duty have not been submitted, proportional duty is now recoverable."*

4. The Petitioners in effect sought extension of the period of exemption from payment of excise duty for Mega Power Projects from 120 months to 156 months. The prayers in the writ petition are as under:

> "*(i) Call for the records of the Case,*
> *(ii) Issue a writ of certiorari or any other appropriate writ, order or direction, setting aside Respondent No. I's Office Memorandum dated 10.03.2023 (Annexure P-1), wherein it stipulates that where the period of 120 months has expired in respect of the Central Excise Duty exemption and the Mega Power Projects certificates for all goods cleared at the exempted rate of Excise Duty have not been submitted, proportional duty would now be recoverable;*
> *(iii) Issue a writ of mandamus or any other appropriate writ, order or direction directing the Respondents to issue a corresponding circular for Excise Duty, as has*

been issued for Custom Duty [being Notification No. 31/2022-Customs dated 07.06.2022 (Annexure P-19)] ie. extending the period for furnishing the final mega power status certificate, by 36 months ie.. from a period of 120 months to a period of 156 months exemption, for purposes of availing Excise Duty
(iv) Pass any other or further order as this Hon'ble Court may deem fit in the facts and circumstances of the present case, as also in the interest of justice."

5. Notice was issued in ***W.P. (C) 8073/2023*** on 1st June, 2023. The petition, ***W.P. (C) 9187/2023*** was tagged with the said petition on 12th July, 2023. Thereafter, the ld. ASG was also requested to assist the Court in the matter. However, on 11th August, 2023, the recovery proceedings were directed to be kept in abeyance. The relevant portion of the order dated 11th August, 2023 is extracted hereunder:

> *"Learned ASG has placed for our perusal a copy of an order dated 07 August 2023 in terms of which a decision appears to have been taken to keep all recovery proceedings in abeyance pending reexamination of the issue by the Board. A copy of the said order is placed on the record."*

6. On 12th March, 2025 time was sought on behalf of the Ministry of Power to file an affidavit. Accordingly, on the said date, the following directions were passed:

> *"5. The affidavit of the Ministry of Power is not on record. Considering the same, let the concerned official of a level not below the Deputy Secretary of the Ministry of Power remain present before this Court on the next date of hearing.*

6. It also appears from the record that the Union of India has to take a comprehensive and a coordinated decision between the Department of Revenue, Ministry of Finance and Ministry of Power. For the said purpose, let a meeting be held between the concerned officials of the said Departments so that the stand of the Union of India in this regard can be placed on record by the next date of hearing.

7. List on 29th April, 2025.

8. Interim orders to continue."

7. It was finally on 15th April, 2025 that the Ministry of Power filed an affidavit. The said affidavit has been sworn by Mr. Somraj who is stated to be working as an Assistant Director at the Central Electricity Authority, Ministry of Power, Sewa Bhawan, R.K. Puram, New Delhi – 110066. In the said affidavit, it is stated as under:

"4. It is to submit that as per the direction of the Hon'ble Court, a meeting was held on 24.03.2025, under the chairmanship of Joint Secretary (Thermal), Ministry of Power (respondent no.3) and the same was attended by the Director, Department of Revenue, Ministry of Finance on behalf of respondent no.l and other officials from both the ministries. The Minutes of Meeting is attached at Annexure-R3/I.

5. It is to further submitted that the representative of Department of Revenue, Ministry of Finance (respondent no.l) has confirmed in the said meeting that the time period has already been extended to 156 months for excise duty benefits for provisional mega projects through an amendment to the Finance Act, 2024. A copy of the same is attached at Annexure -R3/2.

6. As the instant petition is filed before the this Hon'ble Court with a prayer to extend the period for furnishing the final mega *power certificate from a period of 120 months to 156 months for the purpose of availing Excise Duty exemption which has already been fulfilled with the said amendment to the Finance Act, 2024 whereby the period has been extended from 120 months to 156 months, and therefore, the instant petition becomes infructuous."*

8. In terms thereof, the Department of Revenue, vide an amendment to the Finance (No. 2) Bill, 2024 has recorded that the time period for excise benefits has been extended to 156 months, for mega power projects.

9. The said Bill has also recorded the exemption under 5th Schedule to the Central Excise Act retrospectively. The said amended 5th Schedule under the Central Excise Act reads as under:

"

THE FIFTH SCHEDULE

(See section 108)

Notification number and date	Amendment	Date of effect of amendment
(1)	(2)	(3)
G.S.R. 163(E), dated the 17th March, 2012 [12/2012-Central Excise, dated 17th March, 2012]	In the said notification, in the ANNEXURE, in Condition No.43, under heading "Conditions", in clause (b),— (i) for the words "a term of one hundred and twenty-six months", the words "a term of one hundred and sixty-two months" shall be substituted; and (ii) for the words "with in a period of one hundred and twenty months", the words "within a period of one hundred and fifty-six months" shall be substituted.	29th day of June, 2017

"

10. The Government having already accepted the extension to 156 months for excise benefits for mega power projects, the relief sought in the present petitions, has been satisfied.

11. In view thereof, no further orders are sought for by the Petitioner. The petitions are accordingly dismissed.

12. The appearance of Mr. Anurag Ojha, ld. Senior Standing Counsel for Respondent no. 2 who was representing CBIC is taken on record for all the hearings, including the hearing dated 12th March, 2025.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

JULY 15, 2025/*kp/rks*