

JAGMOHAN BANSAL, J. (ORAL)

1. As common issues are involved in the captioned petitions, with the consent of both sides, the same are hereby disposed of by this common order. For the sake of brevity and convenience, facts are borrowed from **CWP-35731-2025**.

2. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of checking report dated 04.07.2017 (Annexure P-4), assessment order dated 15.07.2017 (Annexure P-3) demanding electricity charges ₹4,05,200/- and compounding notice dated 15.07.2017 demanding fee ₹75,000/-.

3. The petitioner is engaged in the business of sale of wooden furniture and trading of scrap. He obtained Non-Domestic Supply ('NDS') electricity connection. The respondent installed electricity meter on the electric pole located outside the petitioner's premises. On 11.05.2014, sparking was emanating from the electricity meter and ultimately it got burnt. He submitted before respondent that meter has burnt due to technical reasons, thus, he is not liable to pay replacement fee. The respondent refused to replace burnt meter without deposit of cost of replacement. He under protest deposited Rs.1,100/- towards meter replacement charges. His electricity connection was restored on 20.06.2017. On 06.07.2017, the replaced meter got burnt. He reported the matter to Authorities. The Officials of respondent verified that meter has burnt due to technical reasons. The respondent on 15.07.2017 temporarily restored his connection. On 15.07.2017, the respondent issued notice

alleging that checking was carried out on 14.07.2017 and during checking bypass use of electricity was noticed. The respondent assessed theft of electricity of ₹4,05,200/-. The respondent vide notice dated 15.07.2017 assessed compounding fee. Notice dated 15.07.2017 reads as:-

“From

SDO (OP)

Hisar 2 Barwala

To

Rattan Singh S/o, D/o Hari Singh/Actual User-Rattan Singh, S/o D/o Hari Singh

Roank Furniture Factory, Pabra to Faridpur Road, Village Pabra, District Hisar.

Memo No. H22/2017/2214 Date: 15/07/2017

Subject:- Notice to consumer by licensee for compounding the offence of the theft of electricity Under Section- 135 and Section- 152 of Electricity Act- 2003

This is with reference to this office order assessment issued vide this office Memo no.H22/2017/2214 Date: 15/07/2017 vide which order of assessment by the licensee has been issued. In this connection, it is intimated that a complaint has been lodged in the Police/Special Court/Nigam is contemplating lodging of complaint for taking cognizance of the offence as per the provisions of EA-2003. In case, you want to compound the matter to absolve yourself from criminal liabilities, you are required to approach before compounding officer. The details of amount for compounding are given as under:-

Compounding:- 75000

Sd/-

SDO(OP)

Hisar 2 Barwala”

4. The petitioner preferred appeal before Appellate Authority against assessment order dated 15.07.2017. He withdrew appeal and preferred Civil Suit which was decreed. The respondent preferred appeal

which came to be dismissed. The respondent preferred second appeal before this Court. Reference with respect to jurisdiction of Civil Court was made to Division Bench of this Court which vide judgment dated 14.05.2025 passed in ***Mahesh Kumar Versus Sub Divisional Officer and Others, Law Finder Doc Id#2730461*** held that Civil Court in view of Section 145 of Electricity Act, 2003 (for short '2003 Act') has no jurisdiction to entertain suit. In view of judgment of this Court, the orders passed by Civil Court ceased to exist. The petitioner preferred suit before Special Court constituted under Section 153 of 2003 Act. Learned Special Court vide order dated 08.08.2025 rejected his suit on the ground of jurisdiction.

5. A battery of advocates led by Mr. Ajayvir Singh, Advocate submit that respondent has passed impugned order under Section 135 of 2003 Act. The order has been passed as assessment order. Under Section 135 of 2003 Act, there is no provision to pass assessment order. Civil Court jurisdiction is barred in view of Section 145 of 2003 Act and appellate remedy is not available because assessment is not framed under Section 126 of 2003 Act, thus, petitioners are left remediless. The respondent has framed assessment without issuing show cause notice and granting opportunity of hearing. It is settled proposition of law that assessment order cannot be passed without confronting the assessee with adverse material and thereafter granting opportunity of hearing. The Assessing Officers in the present cases have mechanically passed order under Section 135 of 2003 Act. The petitioners were neither confronted with adverse material nor granted opportunity of hearing. The orders were

per se bad in the eye of law. The assessment order under Section 135 of 2003 Act can be framed if dishonest intention is involved. Section 135 can be invoked only if there is dishonest intention. In the absence of dishonest intention, Section 126 of 2003 Act can be invoked and for the said purpose, procedure is required to be followed. The respondent has issued notice of compounding, however, prosecution has not been launched despite registering FIR in **CWP Nos.7396 and 6961 of 2026**. The respondent has not filed police report or complaint within three years from the date of commission of alleged offence, thus, proceedings cannot continue in view of mandate of Section 468 of Criminal Procedure Code, 1973.

6. *Per contra*, learned counsel representing the respondents submit that it is factually correct that under Section 135 of 2003 Act no provision has been made to frame assessment, however, Central Government in exercise of power conferred by Section 183 of 2003 Act issued order dated 06.06.2005 to remove difficulties. As per Electricity (Removal of Difficulties) Order, 2005, the Electricity Code prepared by State Commission has to include method of assessment of electricity charges payable in case of theft of electricity, pending adjudication by appropriate Court. The Haryana Electricity Regulatory Commission vide notification dated 08.01.2014 has issued Haryana Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2014 (for short '**2014 Regulations**'). Regulation 7 deals with demand of electricity dues where there is allegation of theft. Regulation 7.1.3 provides that provisions of Section 135 of 2003 Act has to be used where the alleged act has been

done with dishonest intention. In such cases, recourse shall not be taken to Section 126. It is only in cases where sufficient evidence of dishonest intention is not available. Benefit of doubt can be given only while applying Section 135 and not while applying Section 126. As per Regulation 7.1.3, the Assessing Officer has to frame assessment with respect to theft of electricity. The Licensee or supplier on payment of assessed amount shall, without prejudice to obligation to lodge complaint, restore supply of electricity within 48 hours of such payment. In case of default in payment of assessed amount, the Licensee shall after giving 15 days' notice in writing file a case against the consumer in the designated Special Court. Regulation 7.1.6 of 2014 Regulations provides for compounding of offence. The petitioners were granted opportunity to compound offence. They were issued compounding notice wherein fee was duly disclosed. The petitioner in *CWP No.6961 of 2026* opted for compounding and deposited compounding fee. He cannot challenge assessment once he has accepted notice of compounding. The department, on criminal side, cannot proceed against him because his offer stands accepted and matter stands closed.

7. On the asking of Court, learned counsel for the respondents concede that while passing impugned assessment orders, the respondent has not attempted to make distinction between assessment to be made under Section 126 *vis-à-vis* Section 135. In every case, assessment has been made under Section 135 and that too without issuing notice and granting opportunity of hearing.

8. Heard the arguments and perused the record.

9. From the perusal of record and arguments of both sides, following questions arise for the consideration of this Court.

- i) Whether remedy of Suit before Civil Court is available against assessment order passed under Sections 126 of 2003 Act?
- ii) Whether remedy of Suit before Civil Court is available against assessment order passed under Section 135 of 2003 Act?
- iii) Whether aggrieved person can approach Special Court against assessment order made under Section 135 of 2003 Act?

10. The conceded position emerging from record is that the petitioner's premises was inspected by officials of respondents. The assessing officer passed demand order under Section 135 of 2003 Act. Neither show cause notice nor opportunity of hearing was granted before passing order. The respondent issued notice proposing compounding of offence. In the said notice, amount payable for compounding of offence was jotted down. The petitioner, at the first instance, filed appeal before appellate authority, however, after withdrawing appeal approached Civil Court which decreed the suit. The respondent preferred appeal which came to be rejected by learned Additional District Judge. The respondent preferred second appeal before this Court which was allowed and it was held that Civil Court did not have jurisdiction to entertain suit against demand notice. The petitioner in ***CWP No.7159 of 2026*** preferred petition which was disposed of with liberty to approach Special Court. The

petitioner approached Special Court which vide order dated 08.08.2025 rejected his petition on the ground of jurisdiction. Hence, this petition.

Q. No.i) Whether remedy of Suit before Civil Court is available against assessment order passed under Sections 126 of 2003 Act?

11. Before dwelling into the issue involved, it would be appropriate to have bird's eye view of statutory provisions. Section 126 of 2003 Act provides for assessment of unauthorised use of electricity. As per said Section, after inspection of any premises or equipments, gadgets, machines, devices, the assessing officer shall provisionally assess electricity charges payable by such persons or by any other person benefitted by such use. Any person served with the order of provisional assessment may accept assessment and deposit assessed amount. He may file objections against provisional assessments before assessing officer who after affording opportunity of hearing has to pass final assessment order. As per Section 127 any person aggrieved by final order made under Section 126 may prefer an appeal before the Appellate Authority. The appeal is entertained on deposit of 50% of assessed amount. The order of Appellate Authority is final. Section 145 debars jurisdiction of Civil Court in respect of any matter which an assessing officer or Appellate Authority or Adjudicating Authority is empowered to determine. The Civil Court is further debarred to grant injunction in respect of any action taken pursuant to orders passed under Sections 126 or 127. Sections 126, 127 and 145 read as:

“126. Assessment

1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices

found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorised use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.

(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

(3) The person, on whom an order has been served under sub-section (2), shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment, of the electricity charges payable by such person.

(4) Any person served with the order of provisional assessment may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him.

(5) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorised use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.

(6) The assessment under this section shall be made at a rate equal to twice the tariff rates applicable for the relevant category of services specified in sub-section (5).

Explanation.--For the purposes of this section,--

(a) "assessing officer" means an officer of a State Government or Board or licensee, as the case may be,

designated as such by the State Government;

(b) "unauthorised use of electricity" means the usage of electricity--

(i) by any artificial means; or

(ii) by a means not authorised by the concerned person or authority or licensee; or

(iii) through a tampered meter; or

(iv) for the purpose other than for which the usage of electricity was authorised; or

(v) the premises or areas other than those for which the supply of electricity was authorised.

127. Appeal to Appellate Authorities

(1) Any person aggrieved by the final order made under section 126 may, within thirty days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fee as may be specified by the State Commission, to an appellate authority as may be prescribed.

(2) No appeal against an order of assessment under sub-section (1) shall be entertained unless an amount equal to half of the assessed amount is deposited in cash or by way of bank draft with the licensee and documentary evidence of such deposit has been enclosed along with the appeal.

(3) The appellate authority referred to in sub-section (1) shall dispose of the appeal after hearing the parties and pass appropriate order and send copy of the order to the assessing officer and the appellant.

(4) The order of the appellate authority referred to in sub-section (1) passed under sub-section (3) shall be final.

(5) No appeal shall lie to the appellate authority referred to in sub-section (1) against the final order made with the consent of the parties.

(6) When a person defaults in making payment of assessed

amount, he, in addition to the assessed amount shall be liable to pay, on the expiry of thirty days from the date of order of assessment, an amount of interest at the rate of sixteen per cent. per annum compounded every six months.

145. Civil courts not to have jurisdiction.

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in section 126 or an appellate authority referred to in section 127 or the adjudicating officer appointed under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.”

12. From the conjoint reading of Sections 126, 127 and 145, it is evident beyond the pale of doubt that in case of unauthorised use of electricity, assessing officer is required to pass provisional assessment order which is followed by final assessment order. As per Section 145, Civil Court has no jurisdiction to entertain suit with respect to any matter which is determined under Section 126 or 127. In other words, the civil court cannot entertain suit against provisional or final assessment order passed under Section 126. The legislature has provided remedy of appeal, thus, jurisdiction of civil court has been debarred. In view of specific provisions mandating that final assessment order passed under Section 126 shall be appealable and Civil Court shall have no jurisdiction, this Court is of the considered opinion that civil court has no jurisdiction with respect to provisional or final assessment framed under Section 126. Any person feeling aggrieved from order passed under Section 126 is required to file appeal before appellate authority. Once there is specific provision

restricting jurisdiction of Civil Court, it is inappropriate to entertain suit against assessment order. It would be apposite to mention here that under Central Excise Act, 1944; Customs Act, 1962; Income Tax Act, 1961; Central Goods and Services Tax Act, 2017; Haryana VAT Act, 2003 etc. assessment is framed by assessing authority. Any person feeling aggrieved from assessment order has to file appeal before Appellate Authority/Tribunal. He cannot approach Civil Court. At the most, he can invoke writ jurisdiction which is entertained in exceptional circumstances.

Q.No.ii) Whether remedy of Suit before Civil Court is available against assessment order passed under Section 135 of 2003 Act?

Q.No.iii) Whether aggrieved person can approach Special Court against assessment order made under Section 135 of 2003 Act?

13. Question No.ii) and iii) are interconnected, thus, taken up together. Section 135 deals with theft of electricity. It creates criminal liability. Section 126 creates civil liability whereas Section 135 creates criminal liability. The opening expression used in Section 135 is 'whoever dishonestly'. The expression 'dishonestly' means with *mala fide* intention. An act which is not honest. Section 126 provides for unauthorized use of electricity and Section 135 provides for theft of electricity. Section 126 is applicable even where there is no intention to evade payment of electricity charges. Section 135 is applicable where there is intention to evade payment of electricity charges. In Section 126 expression '*unauthorized use of electricity*' has been used whereas expression '*dishonestly*' has been used in Section 135. Section 135 reads

as:

135. Theft of electricity.

(1) *Whoever, dishonestly,--*

(a) taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee or supplier, as the case may be; or

(b) tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; or

(c) damages or destroys an electric meter, apparatus, equipment, or wire or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity; or

(d) uses electricity through a tampered meter; or

(e) uses electricity for the purpose other than for which the usage of electricity was authorised,

so as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or with both:

Provided that in a case where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use--

(i) does not exceed 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction the fine imposed shall not be less than six times the financial gain on account of such theft of electricity;

(ii) exceeds 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction, the sentence shall be imprisonment for a term not less than six months, but which may extend to five years and with fine not less than six times the financial gain on account of such theft of electricity:

Provided further that in the event of second and subsequent conviction of a person where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use exceeds 10 kilowatt, such person shall also be debarred from getting any supply of electricity for a period which shall not be less than three months but may extend to two years and shall also be debarred from getting supply of electricity for that period from any other source or generating station:

Provided also that if it is proved that any artificial means or means not authorised by the Board or licensee or supplier, as the case may be, exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer.

(1A) Without prejudice to the provisions of this Act, the licensee or supplier, as the case may be, may, upon detection of such theft of electricity, immediately disconnect the supply of electricity:

Provided that only such officer of the licensee or supplier, as authorised for the purpose by the Appropriate Commission or any other officer of the licensee or supplier, as the case may be, of the rank higher than the rank so authorised shall disconnect the supply line of electricity:

Provided further that such officer of the licensee or supplier, as the case may be, shall lodge a complaint in writing relating to the commission of such offence in police

station having jurisdiction within twenty-four hours from the time of such disconnection:

Provided also that the licensee or supplier, as the case may be, on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of this Act, shall, without prejudice to the obligation to lodge the complaint as referred to in the second proviso to this clause, restore the supply line of electricity within forty-eight hours of such deposit or payment.

(2) Any officer of the licensee or supplier as the case may be, authorised in this behalf by the State Government may--

(a) enter, inspect, break open and search any place or premises in which he has reason to believe that electricity has been or is being, used unauthorisedly;

(b) search, seize and remove all such devices, instruments, wires and any other facilitator or article which has been, or is being, used for unauthorised use of electricity;

(c) examine or seize any books of account or documents which in his opinion shall be useful for or relevant to, any proceedings in respect of the offence under sub-section (1) and allow the person from whose custody such books of account or documents are seized to make copies thereof or take extracts therefrom in his presence.

(3) The occupant of the place of search or any person on his behalf shall remain present during the search and a list of all things seized in the course of such search shall be prepared and delivered to such occupant or person who shall sign the list:

Provided that no inspection, search and seizure of any domestic places or domestic premises shall be carried out between sunset and sunrise except in the presence of an adult male member occupying such premises.

(4) *The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search and seizure shall apply, as far as may be, to searches and seizure under this Act.*”

14. From the perusal of above quoted Section, it can be gleaned that it is applicable where there is mala fide intention to abstract or consume or use electricity. There are five clauses of Section 135(1) which define offence. Any act or omission, contemplated in those clauses, which is with intent to abstract or consume or use electricity is an offence punishable with imprisonment. Section 135(1) does not provide for assessment of electricity charges, however, third proviso to Section 135(1A) provides that licensee or supplier on deposit of payment of assessed amount or electricity charges shall restore supply line of electricity within 48 hours of such payment. Expression ‘*assessed amount or electricity charges*’ has been used in third proviso of Section 135(1A). Assessed ‘*amount or electricity charges*’ in common parlance and in the ordinary sense means electricity charges assessed by some authority. No procedure like procedure under Section 126 has been prescribed under Section 135. At the first blush, it appears that assessment of electricity charges can be framed under Section 126 with respect to unauthorised use of electricity and in case of theft of electricity under Section 135, there is no provision to make assessment. This issue came in the knowledge of Central Government in 2005 which in exercise of power conferred by Section 183 vide notification dated 08.06.2005 issued Electricity (Removal of Difficulties) Order, 2005. The said notification reads as:

“1. Short tile and commencement.-

(1) This order may be called as the Electricity (Removal of Difficulties) order, 2005.

(2) It shall come into force on the date of publication in the Official Gazette.

2. Inclusions of measures to control theft in Electricity Supply Code.-

(1) The Electricity Supply Code as specified by the State Commission under Section 50 of the Act shall also include the following, namely:-

(i) method of assessment of the electricity charges payable in case of theft of electricity pending adjudication by the appropriate court;

(ii) disconnection of supply of electricity and removing the meter, electric line, electric plant and other apparatus in case of theft or unauthorized use of electricity; and

(iii) measures to prevent diversion of electricity, theft or unauthorized use of electricity or tampering, distress or damage to electrical plant, electric lines or meter.

(2) The above provisions in the Electricity Supply Code shall be without prejudice to the other rights of the licensee under the Act or any other applicable laws to recover the sum due and to protect the assets and interests of the licensee.”

15. The State Government in exercise of power conferred by Section 50 read with Section 181 issued notification dated 08.01.2014 whereby 2014 Regulations was notified. Regulation 7 of 2014 Regulations deals with theft of electricity under Section 135. Regulation 7.1.3 provides that provisions of Section 135 should be used where alleged act has been done with dishonest intention. In such cases, recourse shall not be taken to Section 126. Regulation 7.3 provides for

assessment of energy consumption. It provides that besides criminal action under Section 135, the assessing officer shall assess energy consumption as per assessment formula. The assessing officer after assessing energy consumption as per assessment formula shall prepare final assessment bill and serve upon consumer notice containing details relating to inspection carried out by authorized officer including details of energy consumption assessed on account of theft of electricity. Relevant extracts of 2014 Regulations are reproduced as below:

“THEFT OF ELECTRICITY AND UNAUTHORIZED USE OF ELECTRICITY UNDER SECTION 135 AND SECTION 126 OF THE ELECTRICITY ACT, 2003

7 THEFT OF ELECTRICITY UNDER SECTION 135 OF THE ELECTRICITY ACT, 2003

7.1 Theft of Electricity

7.1.1 A person shall be guilty of an act of theft of electricity if he dishonestly does an act as defined under Section 135 (1) (a to e) of the Act.

7.1.2 Theft shall not be limited to physical interference with the meter found during physical inspection. It shall also include theft committed by resorting to external methods which in any way interfere with the accurate registration of energy consumed.

7.1.3 Provision of Section 135 of the Act has to be used where the alleged act has been done with dishonest intention. In such cases recourse shall not be taken to Section 126 of the Act. It is only in cases where sufficient evidence of dishonest intention is not available that recourse can be taken to Section 126. Benefit of doubt can be given only while applying Section 135 and not while applying Section 126. In a case where the dishonest intention is doubtful, the

matter shall not be closed merely by giving benefit of doubt but the proceedings shall be converted to Section 126 of the Act.

7.3 Assessment of energy consumption

7.3.1 Notwithstanding the criminal action taken under Section 135 of the Act for theft of electricity, the assessing officer of the licensee or supplier, as the case may be, as defined under Section 126 of the Act, but not below the rank of SDO, shall assess the energy consumption as per the assessment formula given in Annexure – II to these Regulations.

7.3.2 In case of a regular metered connection, where a case of theft of electricity is detected, units recorded in the meter for the period for which the assessment is made and for which bills have been raised by the licensee, shall be accounted for while working out the net assessment of theft of electricity.

7.3.3 After assessing the energy consumption as per the assessment formula given in Annexure – II to these Regulations, the licensee shall prepare a final assessment bill on two times of the tariff applicable and serve upon the consumer notices containing the following information.

- (a) The details relating to the inspection carried out by the authorized officer including the dates and timings, list of material seized and any other relevant fact.*
- (b) Detail of the energy consumption assessed on account of theft of electricity, the period for which assessment has been made and the amount to be deposited by the consumer / person (amount calculated as per the assessment formula given in Annexure – II to these Regulations).*

7.5 Default in payment of assessed amount

In case of default in payment of the assessed amount, the licensee shall, after giving a 15 day's notice in writing, file a case against the consumer in the designated Special Court as per the provisions of Section 135 of the Act. If, however, the consumer comes forward to pay the assessed amount along with interest, which shall be at the rate of 16% per annum compounded every six months, he shall be allowed to deposit the amount and interest without prejudice to other actions taken under Section 135 of the Act."

16. The procedure of assessment with respect to theft under Section 135 as prescribed by 2014 Regulations is not under challenge. Section 183 empowered Central Government to remove difficulties by order not inconsistent with the provisions of the Act. The Central Government issued order pointing out that there is no provision for assessment in case of theft under Section 135. The State Government issued 2014 Regulations by notification dated 08.01.2014. The Act came into force w.e.f. 10.06.2003. It means no Code prescribing determination of liability *qua* theft under Section 135 was in force during 2003 to 2014. The Central Government was empowered to remove difficulties, however, State Government was not empowered to incorporate something which was not existing in the parent Act. Section 50 empowered State Commission to specify Code to provide for recovery of electricity charges, disconnection of supply for non-payment, restoration of electricity, measures for preventing, tampering, distress or damage to electrical plant or electrical line or meter. As validity of 2014 Regulations is not in question, it is relied upon for the adjudication of petitions in

hand. Neither Section 135 nor Section 127 provides for appeal against assessment order passed under Section 135. As per procedure prescribed under Section 135, the authorized officer on detection of theft of electricity has power to immediately disconnect supply of electricity. As per Section 135(1A) it is not mandatory to disconnect electricity supply, however, where recourse to disconnection of supply is resorted, the authorized officer is duty bound to lodge a complaint in writing in police station having jurisdiction. The complaint is required to be lodged within 24 hours from the time of such disconnection. As discussed hereinabove, as per third proviso to Section 135(1A) read with 2014 Regulations, the assessing officer is empowered to assess electricity charges under Section 135. In case assessment is framed under Section 126, remedy of appeal is available. As per 2014 Regulations read with third proviso to Section 135(1A), the aggrieved person may deposit assessed amount. In case assessed amount is deposited, electricity supply is required to be restored. The restoration of electricity supply is without prejudice to obligation to lodge complaint with police. The conjoint reading of Section 135(1A) and its provisos reveals that in case of detection of theft, an authorized officer may disconnect electricity supply. In case of disconnection of electricity supply, he is bound to lodge complaint with police. He is supposed to assess amount of electricity charges and restore supply, if consumer makes payment within 48 hours from the time of deposit. In Section 135(1A) as well as 2014 Regulations, nowhere time to frame assessment has been stipulated. The assessing officer in case of inspection under Section 126 and unauthorised use of electricity has to immediately frame

provisional assessment. From the assessment orders of different consumers placed on record, it is evident that assessing officer in each case has framed assessment within one or two days of inspection.

16.1 Coming back to question where assessment is framed under Section 135 and consumer opts not to make payment and decides to assail said order, which forum can entertain his grievance. It is undoubted that Appellate Authority constituted under Section 127 cannot entertain appeal against order passed under Section 135.

16.2 Section 111 provides that any person aggrieved by an order made by an adjudicating officer may prefer an appeal to Appellate Tribunal for Electricity. As per said Section, appeal against order of Appellate Authority passed under Section 127 is not maintainable before Appellate Tribunal for Electricity. Appeal is maintainable only against order of adjudicating officer or appropriate Commission. Order under Section 135 is not passed by adjudicating authority as contemplated under Section 143. Adjudicating authority is contemplated under Section 143 and it has power to adjudicate matters relating to violation of provisions of Section 29 or 33 or 43. Relevant extracts of Section 111 and 143 read as:

“111. Appeal to Appellate Tribunal

(1) Any person aggrieved by an order made by an adjudicating officer under this Act (except under section 127) or an order made by the Appropriate Commission under this Act may prefer an appeal to the Appellate Tribunal for Electricity:

Provided that any person appealing against the order of

the adjudicating officer levying any penalty shall, while filing the appeal, deposit the amount of such penalty:

Provided further that where in any particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, it may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realisation of penalty.

143. Power to adjudicate

(1) For the purpose of adjudging under this Act, the Appropriate Commission shall appoint any of its Members to be an adjudicating officer for holding an inquiry in such manner as may be prescribed by the Appropriate Government, after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

(2) While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry, and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of section 29 or section 33 or section 43, he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.”

As per above quoted provisions, appeal is not maintainable before Appellate Tribunal against order passed under Section 135.

16.3 Part XIV of 2003 Act deals with ‘offences and penalties’. Part XV deals with Special Courts. Section 153 provides that State Government for the purposes of trial of offences referred to in Section 135 to 140 and 150 shall constitute Special Courts. As per Section 154,

every offence punishable under 135 to 140 and 150 can be tried only by Special Court. Section 154(5) provides that Special Court shall determine civil liability against a consumer or a person in terms of money for theft of energy. Expression '*civil liability*' has been defined in the explanation of Section 154. It provides that civil liability means loss or damage incurred by the Board or licensee or the concerned person due to commission of an offence referred to in Sections 135 to 140 and 150. Section 151 provides that no Court shall take cognizance of an offence punishable under this Act except upon a complaint in writing or police report of a police officer. As per Section 151A, police officer is empowered to investigate the matter as per Chapter XII of Cr.P.C. As per Section 151B, an offence under Section 135 to 140 and 150 is cognizable and non-bailable. Offences punishable under Section 135 to 140 and 150 are cognizable and non-bailable, however, officers authorized to file complaint are not empowered to investigate the matter or arrest the accused. Power of investigation is vested in police officers and they have power to arrest. It is apposite to mention here that under Customs Act, Central Excise Act, PMLA, Companies Act, 2013 and CGST Act, matter is inquired/investigated by departmental authorities i.e. other than police officers and complaint is filed before criminal court still authorized officers who are other than police offices are empowered to arrest the accused. In 2003 Act, officer of the licensee or supplier are not empowered to arrest though offence is cognizable & non-bailable and they are empowered to file complaint. In the original 2003 Act, officers of licensee were authorized to file complaint, however, by Electricity

(Amendment Act), 2007, the police officers are authorized to investigate the matter and file police report. Section 151A, 151B and 154 are reproduced as below:

“151A. Power of police to investigate.

For the purposes of investigation of an offence punishable under this Act, the police officer shall have all the powers as provided in Chapter XII of the Code of Criminal Procedure, 1973.

151B. Certain offences to be cognizable and non-bailable.

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence punishable under sections 135 to 140 or section 150 shall be cognizable and non-bailable.

154. Procedure and power of Special Court.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under sections 135 to 140 and section 150 shall be triable only by the Special Court within whose jurisdiction such offence has been committed.

(2) Where it appears to any court in the course of any inquiry or trial that an offence punishable under sections 135 to 140 and section 150 in respect of any offence that the case is one which is triable by a Special Court constituted under this Act for the area in which such case has arisen, it shall transfer such case to such Special Court, and thereupon such case shall be tried and disposed of by such Special Court in accordance with the provisions of this Act:

Provided that it shall be lawful for such Special Court to act on the evidence, if any, recorded by any court in the case of presence of the accused before the transfer of the case to any Special Court:

Provided further that if such Special Court is of opinion that further examination, cross-examination and re-examination of any of the witnesses whose evidence has already been recorded, is required in the interest of justice, it may re-summon any such witness and after such further examination, cross-examination or re-examination, if any, as it may permit, the witness shall be discharged.

(3) The Special Court may, notwithstanding anything contained in sub-section (1) of section 260 or section 262 of the Code of Criminal Procedure, 1973, try the offence referred to in sections 135 to 140 and section 150 in a summary way in accordance with the procedure prescribed in the said Code and the provisions of sections 263 to 265 of the said Code shall, so far as may be, apply to such trial:

Provided that where in the course of a summary trial under this subsection, it appears to the Special Court that the nature of the case is such that it is undesirable to try such case in summary way, the Special Court shall recall any witness who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the said Code for the trial of such offence:

Provided further that in the case of any conviction in a summary trial under this section, it shall be lawful for a Special Court to pass a sentence of imprisonment for a term not exceeding five years.

(4) A Special Court may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to, any offence tender pardon to such person on condition of his making a full and true disclosure of the circumstances within his knowledge relating to the offence and to every other person concerned whether as principal or abettor in the commission thereof, and any pardon so tendered shall, for the purposes of section 308 of the Code of Criminal

Procedure, 1973, be deemed to have been tendered under section 307 thereof.

(5) The Special Court shall determine the civil liability against a consumer or a person in terms of money for theft of energy which shall not be less than an amount equivalent to two times of the tariff rate applicable for a period of twelve months preceding the date of detection of theft of energy or the exact period of theft if determined whichever is less and the amount of civil liability so determined shall be recovered as if it were a decree of civil court.

(6) In case the civil liability so determined finally by the Special Court is less than the amount deposited by the consumer or the person, the excess amount so deposited by the consumer or the person, to the Board or licensee or the concerned person, as the case may be, shall be refunded by the Board or licensee or the concerned person, as the case may be, within a fortnight from the date of communication of the order of the Special Court together with interest at the prevailing Reserve Bank of India prime lending rate for the period from the date of such deposit till the date of payment.

Explanation.-For the purposes of this section, “civil liability” means loss or damage incurred by the Board or licensee or the concerned person, as the case may be, due to the commission of an offence referred to in sections 135 to 140 and section 150.”

[Emphasis Supplied]

17. From the perusal of Section 154(5) read with its explanation, it is evident beyond the pale of doubt that Special Court is duty bound to determine civil liability against a consumer or a person in terms of money for theft of energy. The aforesaid Section does not provide that civil

liability shall be determined at the conclusion of criminal proceedings. Under Prevention of Money Laundering Act, 2002, question of attachment of proceeds of crime is determined by adjudicating authority. Any person feeling aggrieved from order of Adjudicating Authority may prefer first appeal before Tribunal and second appeal before High Court, however, as per Section 8(5) of PMLA, on the conclusion of trial of an offence, order with respect to confiscation of attached property is passed by Special Court. In other words, the order of attachment passed by adjudicating authority and upheld by higher Forums takes final colour on the conclusion of criminal proceedings. Section 8(5) of PMLA Act reads as:

“(5) Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money-laundering has been committed, it shall order that such property involved in the money laundering or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government.”

18. From the perusal of Section 154(5), it cannot be concluded that Special Court has to determine civil liability at the time of or after conclusion of trial. Under taxing statutes, PMLA and other enactments remedy of appeal is provided against orders passed by authorities though criminal liability is adjudicated by Criminal Court. A person aggrieved from order under Section 135 as narrated hereinabove cannot file appeal before Appellate Authority or Appellate Tribunal. The final liability has to be determined by Special Court. Section 154(6) makes it further clear that liability already discharged by consumer is adjusted against liability

assessed by Special Court, thus, sub-sections (5) and (6) read with explanation of Section 154 make it clear that Special Court is the final authority to determine civil liability where offence punishable under Sections 135 to 140 is committed.

19. The assessing authority under Section 135 read with 2014 Regulations determines civil liability. The consumer cannot file appeal against said order. There may be a situation where licensee/supplier files complaint with police and FIR is registered. There may be another situation where neither complaint is filed with police nor FIR is registered. In such a situation, the licensee/supplier may file complaint before Special Court. Section 151 originally authorized departmental authorities to file complaint and by 2007 Amendment Act, police was authorised to file police report. In view of Section 151, the supplier/licensee may file complaint though neither complaint is lodged with police nor FIR is registered. It is further apposite to mention that lodging of complaint with police does not debar departmental authorities to file complaint before Special Court. Section 155(1) provides that every offence punishable under Section 135 to 140 and 150 shall be triable by Special Court within whose jurisdiction such offence has been committed. The moment an offence is committed, the Special Court gets jurisdiction. Taking cognizance of offence and jurisdiction of Court are two different facets of criminal law. Police officers during the course of investigation impound documents, articles, vehicles. The one from whose custody documents, goods or vehicles etc. are seized/detained, approaches jurisdictional criminal court seeking release of seized goods

even prior to taking cognizance of offence by trial Court. The police may file its report after many years, however, jurisdiction of jurisdictional Magistrate is not barred to deal with seized documents, goods, vehicles etc. Similarly, regular or anticipatory bails are entertained by jurisdictional Courts even prior to filing of police report or taking cognizance by Court. As per Section 135(2), any officer of the licensee may seize any books of account or documents, devices, instruments, wires and other articles which have been used for unauthorized use of electricity. Owner/consumer may be interested to get released these articles. If these articles are not released by officer of the licensee, the owner/consumer has to approach Court. The licensee or police may either opt to delay or drop the decision to file complaint/police report. In such a situation, the consumer would have no option except to approach Special Court. Officers of the licensee may seize books of accounts which are indispensable for the consumer. Similar may be case of one or another article. It would create piquant situation and may cause irreparable loss to the consumer if he is left remediless on the ground that Court has not taken cognizance. It shows that Criminal Court gets jurisdiction, the moment offence is committed within its jurisdiction.

20. Section 154(5) enjoins Special Court to determine civil liability. It is settled proposition of law that power to pass final order includes power to pass interim order. Wherever a Court is empowered to adjudicate the dispute, it has power to pass interim orders. As under Section 154(5) the Special Court is bound to determine civil liability against a consumer, it has power to determine civil liability during the

pendency of proceedings. If a person does not agree with the demand raised under Section 135, he has right to approach Special Court for the determination of his liability as an interim measure. The Special Court, at this stage, may not determine final liability because determination of final liability requires determination of dishonest/*mala fide* intention in non-payment or short payment of electricity charges. The question of evasion of electricity charges and *mala fide* intention has to be determined under Section 154(3). It is apposite to notice that Special Court notwithstanding anything contained in Cr.P.C. may try the offence punishable under Sections 135 to 140 and 150 in a summary way. The Court is not bound to follow normal procedure prescribed by Cr.P.C. for an offence punishable with imprisonment which may extend to three years.

21. In the wake of above discussions and findings, this Court is of the considered opinion that Special Court has power to entertain petition/application against assessment order passed under Section 135 of 2003 Act. The Special Court cannot deny to entertain application against assessment order under Section 135 on the ground that it has not taken cognizance. The stage of cognizance arises on filing of complaint or police report. The Special Court is duty bound to determine provisional/interim civil liability even prior to filing of complaint by licensee or police report by Investigating Agency. As pointed out by learned counsel for the petitioners, there are many cases where either police has failed to file its report after registration of FIR or despite complaint of licensee, FIR has not been registered. In both the situations, Special Court has not got opportunity to take cognizance of offence under

Section 135/136. Offence punishable under Section 135 is compoundable. It may be compounded at any stage. If offence is compounded before arrest or after arrest but before filing complaint/police report, matter would not reach to Special Court. If it is opined that in the absence of cognizance, the Special Court cannot entertain application/petition against assessment order under Section 135, the consumer would be remediless. In that situation, this Court would have to entertain petition under Articles 226/227 of Constitution of India. In view of availability of remedy under Section 154(5), this Court does not find it appropriate to entertain petition against assessment order passed under Section 135. A similar view has been expressed by Coordinate Bench of this Court in ***Shanti Vidya Mandir School v. Punjab State Power Corporation Ltd. & Others, CWP-28295-2019***, decided on 09.10.2025.

22. There are other facets of the matter which need to be examined.

23. The assessing officer may frame assessment under Section 126 or 135 of 2003 Act. Section 135 as noted hereinabove is applicable where there is *mens rea*/dishonesty. Section 126 is applicable where there is unauthorized use of electricity. The expression '*unauthorized use of electricity*' has been defined in explanation (b) of Section 126. As per said explanation, unauthorized use of electricity means uses of electricity by any artificial means or by a means not authorized or through a tampered meter or for the purposes other than for which uses of electricity were authorized or for the premises or areas other than those for which supply of electricity was authorized. There are five clauses of Section 135(1)

which are encompassing offence of theft of electricity.

24. A three Judge Bench of Hon'ble Supreme Court in ***Executive Engineer and another v. M/s Sri. Seetaram Rice Mill, 2012(2) SCC 108*** while interpreting expression 'means' used in explanation to Section 126 has held that if it is held that expression means is exhaustive and cases of unauthorized use of electricity are restricted to the ones stated under explanation (b) of Section 126 alone then it shall defeat the very purpose of 2003 Act inasmuch as different cases of breach of terms and conditions of the contract of supply would escape the liability, thus, it would not be appropriate for the Courts to adopt such an approach. The primary object of the expression 'means' is intended to explain the terms '*unauthorized use of electricity*'. The legislation has intentionally omitted to use the word 'includes' and has only used the word 'means'. Relevant extract of the judgment read as:

“50. In other words, the purpose sought to be achieved is to ensure stoppage of misuse/unauthorised use of the electricity as well as to ensure prevention of revenue loss. It is in this background that the scope of the expression “means” has to be construed. If we hold that the expression “means” is exhaustive and cases of unauthorised use of electricity are restricted to the ones stated under Explanation (b) of Section 126 alone, then it shall defeat the very purpose of the 2003 Act, inasmuch as the different cases of breach of the terms and conditions of the contract of supply, Regulations and the provisions of the 2003 Act would escape the liability sought to be imposed upon them by the legislature under the provisions of Section 126 of the 2003 Act. Thus, it will not be appropriate for the courts to adopt such an approach.

51. The primary object of the expression “means” is intended to explain the term “unauthorised use of electricity” which, even from the plain reading of the provisions of the 2003 Act or on a common sense view cannot be restricted to the examples given in the Explanation. The legislature has intentionally omitted to use the word “includes” and has only used the word “means” with an intention to explain inter alia what an unauthorised use of electricity would be. It must be noticed that clause (iv) of Explanation (b) and sub-section (5) of Section 126 of the 2003 Act were both amended/substituted by the same amending Act 26 of 2007, with a purpose and object of preventing unauthorised use of electricity not amounting to theft of electricity within the meaning of Section 135 of the 2003 Act. This amendment, therefore, has to be given its due meaning which will fit into the scheme of the 2003 Act and would achieve its object and purpose.”

25. In view of above cited judgment, explanation (b) of Section 126 is not exhaustive. The expression ‘means’ and ‘includes’ has not been used in the explanation, thus, there is scope to include other eventualities which are not contemplated in Clauses (i) to (v) of said explanation. Clauses (iii) and (iv) of explanation are existing in Section 135(1) as clauses (d) and (e). In view of judgment of Supreme Court in ***M/s Sri. Seetaram Rice Mill (supra)***, liability would be determined under Section 126 despite use of tampered meter where there is no *mala fide* intention. If tampered meter is used dishonestly to abstract or consume or use electricity, Section 135 would be applicable. This may be understood with an example of use of tampered meter by a person who has purchased a premises. If previous owner of the premises has tampered the meter and

subsequent owner without knowledge uses said tampered meter, he would be liable to pay differential amount of electricity charges, however, shall not be liable under Section 135. The previous owner of the premises who had tampered with the meter would incur liability under Section 135. Under the taxing statutes, there is liability of payment of tax. In case of non-payment of tax, the criminal liability may arise. If it is established that there was intention to evade payment of tax, the person is subjected to criminal liability besides tax liability, whereas is proceeded departmentally where there is no intention to evade payment of tax. In both the situations, the department determines tax liability. Filing of prosecution is an independent aspect. The department despite determining liability may not lodge prosecution. An assessee is not exonerated from his liability on the ground that prosecution has not been lodged. The situation may be understood by noticing Sections 28 and 135 of Customs Act. As per Section 28, the customs department has right to recover duty short levied, not levied, erroneously refunded either on account of collusion or wilful mis-statement or suppression of facts or by mistake. The criminal liability is created under Section 135. As per said Section, a person who by fraud, collusion, mis-statement avails duty drawback, obtains incentive instruments, evades payment of custom duty, makes misdeclaration of value etc. is liable to imprisonment which may extend to 7 years. Relevant extracts of Sections 28 and 135 read as:

“28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.—(1) Where any 5 duty has not been levied or not paid or short-levied or short-paid or erroneously refunded, or any interest

payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any wilful mis-statement or suppression of facts, —

(a) the proper officer shall, within two years from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied or paid] or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:

Provided that before issuing notice, the proper officer shall hold pre-notice consultation with the person chargeable with duty or interest in such manner as may be prescribed;

(b) the person chargeable with the duty or interest, may pay before service of notice under clause (a) on the basis of, —

(i) his own ascertainment of such duty; or

(ii) the duty ascertained by the proper officer,

the amount of duty along with the interest payable thereon under section 28AA or the amount of interest which has not been so paid or part-paid.

Provided that the proper officer shall not serve such show cause notice, where the amount involved is less than rupees one hundred.”

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(4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,—

(a) collusion; or

(b) any wilful mis-statement; or

(c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter; the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

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135. Evasion of duty or prohibitions.—

(1) Without prejudice to any action that may be taken under this Act, if any person—

(a) is in relation to any goods in any way knowingly concerned in misdeclaration of value or in any fraudulent evasion or attempt at evasion of any duty chargeable thereon or of any prohibition for the time being imposed under this Act or any other law for the time being in force with respect to such goods; or

(b) acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111 or Section 113, as the case may be; or

(c) attempts to export any goods which he knows or has reason to believe are liable to confiscation under Section 113; or

(d) fraudulently avails of or attempts to avail of drawback or any exemption from duty provided under this Act in connection with export of goods,

he shall be punishable,—

(i) in the case of an offence relating to,—

(A) any goods the market price of which exceeds one crore of rupees; or

(B) the evasion or attempted evasion of duty exceeding fifty lakh of rupees; or

(C) such categories of prohibited goods as the Central Government may, by notification in the Official Gazette, specify; or

(D) fraudulently availing of or attempting to avail of drawback or any exemption from duty referred to in clause (d), if the amount of drawback or exemption from duty exceeds fifty lakh of rupees, with imprisonment for a term which may extend to seven years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for less than one year;

(ii) in any other case, with imprisonment for a term which may extend to three years, or with fine, or with both.]

(2) If any person convicted of an offence under this section or under sub-section (1) of section 136 is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to seven years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court such imprisonment shall not be for less than one year.

(3) For the purposes of sub-sections (1) and (2), the following shall not be considered as special and adequate

reasons for awarding a sentence of imprisonment for a term of less than one year, namely:—

(i) the fact that the accused has been convicted for the first time for an offence under this Act;

(ii) the fact that in any proceeding under this Act, other than a prosecution, the accused has been ordered to pay a penalty or the goods which are the subject matter of such proceedings have been ordered to be confiscated or any other action has been taken against him for the same act which constitutes the offence;

(iii) the fact that the accused was not the principal offender and was acting merely as a carrier of goods or otherwise was a secondary party to the commission of the offence;

(iv) the age of the accused.”

26. The legislature could provide common provisions for assessment of unauthorized use of electricity and theft of electricity like assessment in taxing statutes, however, the legislature under 2003 Act has drawn distinction between non-payment of electricity charges on account of unauthorized use and on account of dishonest intention. As per proviso to Section 135(1), the amount of fine on first conviction cannot be less than three times of the financial gain. It extends to six times in case of subsequent conviction. Fine may be imposed in addition to imprisonment. Section 136 deals with theft of electrical lines and materials. In case of theft of electrical lines and materials, there is no involvement of electrical charges. The licensee loses electrical line and material in case of theft. There is theft of material still there is no assessment. In case of theft of material and lines, the person committing offence is liable to punishment

of imprisonment for a term which may extend to three years or with fine or both. In case of second conviction, the punishment may extend to five years. As per Section 137, person dishonestly receiving stolen electrical line or material is liable to punishment with imprisonment which may extend to three years. In case of theft of electric lines and material, the licensee has no option except to file criminal case either by way of criminal complaint or police report. In both the situations, the Special Court has to determine civil liability. No order determining civil liability is passed by assessing officer, however, Special Court is bound to determine civil liability i.e. loss on account of theft of electric lines and material.

27. The above discussion makes it clear that legislature did not explicitly provide for assessment under Section 135, however, Central Government by way of order dated 08.06.2005 under Section 183 and State Government by way of 2014 Regulations under Section 50 provided for assessment in case of commission of offence of theft punishable under Section 135.

28. Regulation 7.1.3 of 2014 Regulations makes it clear that Section 135 is applicable where there is non-payment of electricity charges on account of dishonest intention. As noted hereinabove, few clauses of explanation of Section 126 and Section 135(1) are common. In all the writ petitions, the Assessing Officer has framed assessment under Section 135 just reiterating that petitioner has committed offence of theft. The language used in the notices issued to different petitioners is identical. The respondent during the course of hearing has conceded that

there was need to decipher cases falling under Section 135. The Assessing Officer was bound to record that there is intentional evasion of payment of electricity charges. There are five Clauses of Section 135(1) and Assessing Officer was bound to point out particular clause of said Section to invoke rigour of Section 135. He was supposed to bring act and omission of the consumer within purview of any one or more clauses of Section 135(1). In the absence of holding that consumer has committed one or another act with intent to use electricity without payment of charges, Section 135 could not be invoked.

29. In the backdrop, inescapable conclusion is that all the assessment orders under Section 135, which have been passed without recording categoric finding that there was dishonest intention of the consumer and he evaded payment of electricity charges by adopting any one or more means enumerated in one or more clauses of Section 135(1), are bad in the eye of law and deserve to be set aside. In the cases in hand, as conceded by respondents that impugned orders were passed without complying with mandate of Section 135 read with 2014 Regulations, the assessment orders are liable to be set aside. Accordingly, the impugned assessment orders are hereby set aside. It is hereby made clear that assessment order passed in **CWP-6961-2026** is also set aside though petitioner has already deposited compounding fee and settled the matter. Civil liability is outstanding against him though as per Section 152(3) stands acquitted within the meaning of Section 300 of Cr.P.C.

30. Section 126 as well as Regulation 8.2 and 8.3 of 2014 Regulations provide for notice and personal hearing. Regulation 8.2 and

8.3 prescribing procedure for assessment under Section 126 are reproduced as below:-

“8.2 Notice to the Consumer:

8.2.1 If the assessing officer comes to the conclusion that unauthorized use of electricity has taken place, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use and shall serve, within seven days of Inspection, the provisional assessment order along with a notice to the person for showing cause as to why a case of unauthorized use of electricity should not be made against him. While doing so the assessing officer shall compute the amount payable by the person benefited by unauthorized use of electricity as per provision laid down in Sub-Section 5 read with Sub-Section 6 of Section 126 of the Act and as per procedure specified in Annexure – II to these Regulations. The show cause notice should clearly state the time and date by which the reply has to be submitted and the designation and address of the person to whom it should be addressed.

8.2.2 If the person served with the order of provisional assessment accepts such assessment, the provisional assessment shall be treated as final assessment. The person shall then deposit the assessed amount with the Licensee within seven days of service of such provisional assessment order upon him and the matter shall be closed.

8.2.3 If the person does not accept the show cause notice/provisional assessment, he shall be entitled to file objections against the show cause notice / provisional assessment before the assessing officer within seven (7) days.

8.3 Personal Hearing

8.3.1 *Within four (4) days of the receipt of objections from the person, the assessing officer shall arrange a personal hearing with such person.*

8.3.2 *If during the personal hearing, the assessing officer and the person arrive at a consensus, then the assessing officer shall pass a final speaking order based upon such consensus. If no such consensus is arrived at during the personal hearing, the assessing officer shall give due consideration to the facts submitted by the person and pass, within fifteen (15) days, a speaking order as to whether the case of unauthorized use of electricity is established or not. Speaking order shall contain the brief of inspection report, submissions made by the person in his written reply and oral submissions made during personal hearing and reasons for acceptance or rejection of the same and shall contain final assessment.*

8.3.3 *In the final assessment order issued under section 126(3) of the Act, it shall be clearly mentioned that the order is challengeable before the appellate authority (name, designation and address to be mentioned) under section 127 of the Act, within 30 days of the said order.*

8.3.4 *In case unauthorized use of electricity is not established, further proceedings shall be discontinued and case of unauthorized use of electricity shall be dropped immediately and the person concerned shall be informed accordingly.*

8.3.5 *The person served with the final order of assessment may accept such assessment and deposit the assessed amount with the licensee within seven (7) days of the service of the order on him.”*

31. From the perusal of Section 126 and afore-cited regulations, it is evident that Assessing Officer on completion of inspection at the first instance has to frame provisional assessment. Thereafter, notice is sent to affected person. He is supplied copy of notice, calculation of charges payable, copy of provisional assessment order. He may accept liability or file objections. In case of non-acceptance of provisional assessment, the Assessing Officer after considering objections, if any, and granting opportunity of hearing has to pass final assessment order. In the assessment order, it is clearly mentioned that the order is challengeable before Appellate Authority.

32. The State Government by 2014 Regulations has authorized Assessing Officer to frame assessment under Section 135, however, no procedure has been prescribed. As per Regulation 7 of 2014 Regulations, the Assessing Officer has to make assessment as per formula given in Annexure II. No provision with respect to show cause notice or opportunity of hearing has been prescribed. It is settled principle of law that in the absence of specific exclusion, the authorities even while passing administrative order ensuing civil or criminal consequences are bound to grant opportunity of hearing. In a particular case, opportunity of hearing may be post-decisional. In the absence of granting opportunity of hearing, the assessment order is bad in the eye of law on the ground of violation of principle of natural justice.

33. A Five Judge Bench of Apex Court in ***State of Punjab v. E.R. Erry and Sobhag Rai Mehta, (1973) 1 SCC 120***, while dealing with the question of cut in the amount of pension and gratuity of employees

had occasion to consider question of need of issuing show cause notice and opportunity of personal hearing. The Court has held that where a body or authority is judicial or where it has to determine a matter involving rights judicially because of express or implied provisions, the principle of natural justice are required to be complied with.

34. A three Judge Bench of the Hon'ble Supreme Court in ***Sahara India (Firm) Lucknow v. Commissioner of Income Tax, Central-I and Another, (2008) 14 SCC 151***, while dealing with special audit under Income Tax Act, 1961 has held that order of special audit cannot be passed without granting opportunity of hearing. Relevant extracts of the said judgment read as:

“15. Rules of “natural justice” are not embodied rules. The phrase “natural justice” is also not capable of a precise definition. The underlying principle of natural justice, evolved under the common law, is to check arbitrary exercise of power by the State or its functionaries. Therefore, the principle implies a duty to act fairly i.e. fair play in action. As observed by this Court in A.K. Kraipak v. Union of India [(1969) 2 SCC 262] the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. They do not supplant the law but supplement it. (Also see ITO v. Madnani Engg. Works Ltd. (1979) 2 SCC 455.

16. In Swadeshi Cotton Mills v. Union of India [(1981) 1 SCC 664] R.S. Sarkaria, J., speaking for the majority in a three-Judge Bench, lucidly explained the meaning and scope of the concept of “natural justice”. Referring to several decisions, His Lordship observed thus: (SCC p.

666)

“Rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules. But there are two fundamental maxims of natural justice viz. (i) audi alteram partem and (ii) nemo judex in re sua. The audi alteram partem rule has many facets, two of them being (a) notice of the case to be met; and (b) opportunity to explain. This rule cannot be sacrificed at the altar of administrative convenience or celerity. The general principles distinguished from an absolute rule of uniform application seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the audi alteram partem rule at the pre-decisional stage. Conversely if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing, shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative process or frustrate the need for utmost promptitude. In short, this rule of fair play must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. The court must make every effort to salvage this cardinal rule to the maximum extent

possible, with situational modifications. But, the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise.”

17. Initially, it was the general view that the rules of natural justice would apply only to judicial or quasi-judicial proceedings and not to an administrative action. However, in State of Orissa v. Dr.Binapani Dei [AIR 1967 SC 1269 : (1967) 2 SCR 625] the distinction between quasi-judicial and administrative decisions was perceptively mitigated and it was held that even an administrative order or decision in matters involving civil consequences, has to be made consistent with the rules of natural justice. Since then the concept of natural justice has made great strides and is invariably read into administrative actions involving civil consequences, unless the statute, conferring power, excludes its application by express language.

18. Recently, in Canara Bank v. V.K. Awasthy (2005) 6 SCC 321 the concept, scope, history of development and significance of principles of natural justice have been discussed in extenso, with reference to earlier cases on the subject. Inter alia, observing that the principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights, the Court said: (SCC pp. 331-32, para 14)

“14. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder.

They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression 'civil consequences' encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life."

19. Thus, it is trite that unless a statutory provision either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences for the party affected. The principle will hold good irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi-judicial.

20. We may, however, hasten to add that no general rule of universal application can be laid down as to the applicability of the principle audi alteram partem, in addition to the language of the provision. Undoubtedly, there can be exceptions to the said doctrine. Therefore, we refrain from giving an exhaustive catalogue of the cases where the said principle should be applied. The question whether the principle has to be applied or not is to be considered bearing in mind the express language and the

basic scheme of the provision conferring the power; the nature of the power conferred and the purpose for which the power is conferred and the final effect of the exercise of that power. It is only upon a consideration of all these matters that the question of application of the said principle can be properly determined. (See Union of India v. Col. J.N. Sinha (1970) 2 SCC 458.

21. *In Mohinder Singh Gill v. Chief Election Commr. (1978) 1 SCC 405 explaining as to what is meant by expression “civil consequence”, Krishna Iyer, J., speaking for the majority said: (SCC p. 440, para 66)*

“66. ... ‘Civil consequences’ undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material deprivations and nonpecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence.”

35. In the wake of above discussions and findings, this Court is of the considered opinion that Assessing Authority while framing assessment under Section 135 is duty bound to confront the consumer with adverse material and grant opportunity of hearing. In the absence of supplying adverse material, opportunity of hearing may be futile exercise and mere formality, thus, Assessing Officer is bound to supply adverse material and grant opportunity of hearing to affected party.

36. There are few cases where respondent has framed assessment under Section 135, however, neither complaint nor police report despite expiry of substantial period has been filed before Special Court. In the absence of complaint or police report Special Court cannot take cognizance with respect to offence committed under Section 135 to 140 or 150. Civil liability is independent from criminal liability. No consumer

can claim that his civil liability cannot be determined without determining criminal liability. Licensee is more or less concerned with recovery of electricity charges. Penal provisions prescribing punishment with imprisonment besides fine are inserted with intent to prevent evasion of electricity charges. Criminal liability is deterrent action. As per Section 135(1)(a), the licensee may or may not disconnect electricity supply. In a given situation, licensee may be compelled to disconnect electricity supply. It is not mandatory to disconnect electricity supply on detection of theft. The Assessing Officer has to determine liability and grant opportunity to consumer to make payment, thus, electricity supply should be withheld in exceptional cases like habitual offender, theft of substantial amount, interference on the part of consumer in the proceedings carried out by officials, problem of law and order etc. In the ordinary circumstances, the assessment ought to be framed and consumer should be granted opportunity to deposit assessed amount.

Licensee is required to inform police authorities if electricity supply is disconnected. In case assessed liability is paid, electricity supply is restored. As per scheme of the Act, the licensee has right to disconnect electricity supply where theft is detected. It has right to lodge FIR. In case of registration of FIR, police has power to arrest because offence is cognizable and non-bailable. The consumer has option to pay assessed liability. Payment of assessed liability entitles him restoration of electricity connection. He can apply for compounding of offence. If he pays compounding fee as prescribed under Section 152 criminal proceedings come to an end. If consumer is in custody he is released. If

criminal proceedings are not already instituted, cannot be initiated. Already instituted proceedings are withdrawn. The acceptance of compounding fee amounts to acquittal within the meaning of Section 300 of Cr.P.C. Compounding is permissible once in life. These provisions collectively prove that criminal liability is independent from civil liability. A person cannot escape from his civil liability on the ground that he has not been punished by Criminal Court. Civil liability is independently determined/examined.

37. Section 152 provides for compounding of offence. Compounding fee has been prescribed. The petitioner's financial liability under Section 135 was determined ₹4,05,200/- and compounding fee was determined ₹75,000/-. It shows that payment of compounding fee entails acquittal from criminal liability. If civil liability is extinguished on account of payment of compounding fee, it would be convenient for every consumer to pay compounding fee and evade liability of electricity charges. The compounding fee in the present case was found Rs.75,000/- whereas liability under Section 135 was found Rs.4,05,200/-. The Department to avoid litigation and in the obtained circumstances may not institute criminal complaint. The consumer cannot take advantage of non-initiation of prosecution. He is liable to discharge his civil liability.

38. In the wake of above discussion, this Court is of the considered opinion that civil liability is not extinguished on account of compounding of offence or non-initiation of prosecution.

39. In the wake of above discussions and findings, it is hereby concluded as below:

- i. Civil Court has no jurisdiction to entertain suit against assessment order passed under Section 126 of 2003 Act. The aggrieved person may prefer an appeal before Appellate Authority.
- ii. The Assessing Officer while framing assessment under Section 126 or 135 is required to comply with principles of natural justice. He is required to supply adverse material to the consumer. He is further required to grant opportunity of hearing before passing order.
- iii. In case of theft, the Assessing Officer has right to frame assessment with respect to non-payment of electricity charges.
- iv. Any person feeling aggrieved from assessment order passed under Section 135 may approach Special Court. He can neither approach Appellate Authority nor Appellate Tribunal.
- v. Order of determination of civil liability under Section 135 cannot be set aside on the ground that prosecution has not been launched. Special Court is duty bound to determine civil liability where there is assessment order under Section 135. The Special Court is required to determine civil liability not only in respect of theft of electricity but also theft of electric lines and material.

40. In the backdrop, assessment orders passed under Section 135 of 2003 Act are hereby set aside with liberty to respondent to pass fresh order after complying observations/conditions discussed hereinabove.

(JAGMOHAN BANSAL)
JUDGE

13.03.2026
Prince Chawla

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No