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

% ***Judgment reserved on: 06.10.2026***

Judgment pronounced on: 27.10.2026

Judgment uploaded on: 27.10.2026

\# **CNR No. DLHC010101462022**

\+ W.P.(C) 4144/2022

NTPC LTD .....Petitioner

Through: Mr. Gopal Jain, Sr. Adv. with Ms. Sakie Jakharia, Ms. Aseem Aggarwal and Ms. Kriti Sharma, Advs.

versus

SOUTH DELHI MUNICIPAL CORPORATION AND ORS. .....Respondents

Through: Mr. Sanjay Poddar, Sr. Adv. with Dr. Divya Swamy, SC for MCD with Mr. Govind Kumar, Mr. Yagyawalkya Singh, Mr. R. R. Panda, Mr. Apurv Kumar, Ms. Anshika Singh, Mr. Sameer Pandey, Mr. Ankit Kakkar, and Ms. Akriti Singh, Advs. for SDMC/MCD for R-1/SDMC.

Mr. Tushar Sannu, ASC for NDMC.

Mr. Anupam Varma, Mr. Aditya Gupta and Mr. Yash Srivastava, Advs. for R-3 and R-4.

Mr. Nitin Kala, Mr. Kunal Singh, Mr. Tanmay Jain and Ms. Kanishka Rawat, Advs. for R-5.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE BHARAT PARASHAR

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J U D G M E N T

ANIL KSHETARPAL, J.:

1. The principal issue that has been raised by way of the present Petition, is to declare the Bye-Law 3(3) of the Delhi Municipal Corporation (Assessment and Collection of Tax on the Consumption, Sale or Supply of Electricity) Bye Laws, 1962[1] *ultra vires* the Delhi Municipal Corporation Act, 1957[2], which enables the Respondent No.1 to impose a municipal electricity tax upon the Petitioner for consumption of self-generated electricity for the period 01.06.2006 to 15.10.2018 amounting to Rs. 197,15,84,639/- (Rupees One Hundred Ninety-Seven Crores Fifteen Lakhs Eighty-Four Thousand Six Hundred Thirty-Nine-only)

2. As a consequence to the aforestated, the Petitioner also seeks issuance of writ in the nature of *certiorari*, seeking quashing of impugned Demand cum Show Cause Notice dated 06.12.2021 and communications dated 08.11.2021, 03.01.2022 and 24.01.2022 issued to the Petitioner by the Respondent No.1, seeking payment of the electricity tax demand raised thereof.

A. BRIEF BACKGROUND:

3. In order to appreciate the controversy in the present case, the facts in brief are required to be noticed.

4. In the year 1973, the Badarpur Thermal Power Station (BTPS) was established and constructed under the ownership of Central

[1] hereinafter referred to as Bye-Laws
[2] hereinafter referred to as the Act

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Electric Authority with an object of supplying electricity to various states including Delhi. However, in the year 1978, its management came to be transferred to the Petitioner, and since then Delhi became the sole beneficiary of the electricity generated by the said plant.

5. Subsequently, *vide* notification dated 31.05.2006, the ownership of the BTPS also came to be transferred to the Petitioner. In the ordinary course of its operations, the plant continued to generate and supply electricity to the licensees until its closure on 15.10.2018, when it came to be shut down permanently.

6. Thereafter, the Respondent No.1, *vide* a communication dated 08.11.2021, raised a demand of Rs. 197,15,84,639/- towards alleged electricity tax on the auxiliary consumption of electricity at BTPS for the period from 01.06.2006 to 15.10.2018. Following which, the impugned SCN dated 06.12.2021 along with subsequent communications dated 03.01.2022 and 24.01.2022, came to be issued by the Respondent No.1 seeking payment of the assessed electricity tax by the Petitioner. Aggrieved thereby, the Petitioner has approached this Court seeking our indulgence.

7. Before proceeding towards the examination of contentions raised by the parties, we deem it appropriate to reproduce the relevant provisions of the Bye-Law along with the Act, which forms the basis of contentions raised thereby. The relevant provisions are as under-

The Act

113. Taxes to be imposed by the Corporation under this Act.—*(1) The Corporation shall, for the purposes of this Act, levy the following taxes, namely:—*

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(a) property taxes;

(b) a tax on vehicles and animals;

(c) a theatre-tax;

(d) a tax on advertisements other than advertisements published in the newspapers;

(e) a duty on the transfer of property; and

(f) a tax on buildings payable along with the application for sanction of the building plan.

(2) In addition to the taxes specified in sub-section (1), the Corporation may, for the purposes of this Act, levy any of the following taxes, namely:—

(a) an education cess;

(b) a local rate on land revenues;

(c) a tax on professions, trades, callings and employments;

(d) a tax on the consumption, 2[sale or supply] of electricity;

109. Adoption of budget estimates.—*1[(1) The Corporation shall, on or before the 31st day of March of every year, adopt for the ensuing year the budget estimate which shall be an estimate of the income and expenditure of the Corporation to be received and incurred on account of the municipal government of Delhi.]*

(2) On or before the 15th day of February of each year the Corporation shall determine the rates at which various municipal taxes, rates and cesses shall be levied in the next following year and save as otherwise provided in this Act the rates so fixed shall not be subsequently altered for the year for which they have been fixed.

(3) Budget estimates shall be prepared in such form as may be approved by the Standing Committee and presented and adopted in such manner and shall provide for all such matters as are prescribed by regulations made in this behalf.

150. Imposition of other taxes.—*(1) The Corporation may, at a meeting, pass a resolution for the levy of any of the taxes specified in sub-section (2) of section 113, defining the maximum rate of the tax to be levied, the class or classes of persons or the description or descriptions of articles and properties to be taxed, the system of assessment to be adopted and the exemptions, if any, to be granted.*

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*(2) Any resolution passed under sub-section (1) shall be submitted to the 1*** Government for its sanction, and if sanctioned by that Government, shall come into force on and from such date as may be specified in the order of sanction.*

(3) After a resolution has come into force under sub-section (2), the Corporation may, subject to the maximum rate, pass a second resolution determining the actual rates at which the tax shall be leviable; and the tax shall come into force on the first day of the quarter of the year next following the date on which second resolution is passed.

(4) After a tax has been levied in accordance with the foregoing provisions of this section, the provisions of sub-section (2) of section 109, shall apply in relation to such tax as they apply in relation to any tax imposed under sub-section (1) of section 113.

152. Time and manner of payment of taxes.—*(1) Save as otherwise provided in this Act, any tax levied under this Act shall be payable on such dates, in such number of instalments and in such manner as may be determined by bye-laws made in this behalf.*

169. Appeal against assessment, etc.—*(1) An appeal against the levy or assessment of any tax under this Act shall lie to the court of the District Judge of Delhi.*

(2) If, before or on the hearing of an appeal under this section, any question of law or usage having the force of law or construction of a document arises, the court of the District Judge on its own motion may, or on the application of any party to the appeal, shall, draw up a statement of the facts of the case, and the question so arising, and refer the statement with its opinion on the question for the decision of the High Court.

(3) On a reference being made under sub-section (2), the subsequent proceedings in the case shall be, as nearly as may be in conformity with the rules relating to references to the High Court contained in Order XLVI of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908).

(4) In every appeal, the costs shall be in the discretion of the court.

(5) Costs awarded under this section to the Corporation shall be recoverable by the Corporation as an arrear of tax due from the appellant.

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(6) If the Corporation fails to pay any costs awarded to an appellant within ten days after the date of the order for payment thereof, the court may order the Commissioner to pay the amount to the appellant.

The Bye-Law

3. Collection of Electricity Tax.- *(1) Where within the limits of the Corporation :*

(a) electricity is supplied by the Delhi Electric Supply Undertaking, a tax on the consumption, sale or supply of the electricity (hereinafter in these bye-laws referred to as the electricity tax) payable under the provisions of the Act, shall be collected by the General Manager (Electricity); and

(b) electricity is supplied by any licensee other than the Delhi Electric Supply Undertaking, the electricity tax shall be collected by that licensee on behalf of the Corporation.

(2) The licensee who collects any tax under sub-clause (b) of Clause (1) shall pay the tax so collected to the General Manager (Electricity) within such time and in such manner as prescribed in these by-laws. The tax so paid shall be a first charge on the amount recoverable by the licensee for the electricity supplied by him an shall be a debt due by him to the Corporation.

Provided that the license shall not be liable to pay the tax in respect of any electricity supplied by him for which he has been proved to be unable to recover his own charges.

(3) In the case of electricity generated by any person for his own consumption, the person who generates such electricity shall pay the electricity tax to the General Manager (Electricity) within such time and in such manner as are prescribed in the bye-laws.

2. Definition. - *In these bye-laws, unless the context otherwise requires:*

(2) "Consumer" means any person who is supplied with electricity by a licensee, or whose premises are, for the time being, connected for the purposes of receiving electricity, with the works of a licensee and includes a consumer of electricity generated by himself within the limits of the Corporation;

7. ***Time and manner.of collection and payment.*** *–*

(2)A person generating electricity shall pay to the General Manager (Electricity the tax due on electricity generated by him in the

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proceeding calendar month by the 15" of the subsequent month.

(3) The General Manager (Electricity) shall pay to the Commissioner:

(a) the tax collected by him under sub-clause (a) of Clause 3 of Bye-law 3 within 70 days after the expiry of the month for which it is levied.

(b) the amount received by him under Clauses (1) and (2) within 30 days of the receipt thereof.

15. Any person liable to pay tax under clause (3) of Bye-law 3 shall keep separate accounts of the electricity consumed by him in the form or forms prescribed under Bye-law 13, and shall submit to the General Manager (Electricity) by the 15th of the month following that to which the return relates, a monthly return in such form as may be prescribed by the Commissioner by notification in the Official Gazette."

B. CONTENTIONS OF THE PARTIES:

***Submission on behalf of the Petitioner*:**

8. Learned senior counsel representing the Petitioner has raised the following submissions:

8.1 The primary contention of the Petitioner is that the consumption of electricity is to be understood as an incidence of generation itself. To derive support to the aforestated, reference has been made to Section 113(2)(d) of the Act to argue that the said provision merely provides imposition of tax on consumption, as such the Bye-Law 3(3) which enlarges the scope of usage of word consumption to include imposition of tax on consumption of self-generated electricity is *ultra vires* the parent statute. In support to

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the aforestated, reliance has been placed on ***St. Johns Teachers Training Institute v. Regional Director, National Council for Teacher Education & Anr.***[3]***, NDMC & Ors. v***[4]***. Association of Concerned Citizens of New Delhi & Ors.*** and ***Kerala State Electricity Board & Ors. v. Thomas Joseph & Ors.***[5], to argue that a rule cannot be made to supplant any provision of the parent statute.

8.2 Nothwithstanding, the aforestated it has also been argued that any auxiliary consumption of electricity by the generating company during the course of such generation, amounts to taxation upon generation itself, making such generation an incidence of tax/taxable event. Additionally, it has also been argued that the electricity consumed by the Petitioner was used in generating electricity for supply to distribution licensees and, ultimately, end consumers, and not for its own end use. Such incidental consumption cannot be equated with 'own consumption' under Bye-Law 3(3), nor can the impugned levy be sustained under Section 113(2)(d) of the Act.

8.3 It is contended that the tariff determined during the relevant period already factored in the expenses of generation, excluding the tax now sought to be imposed. The subsequent demand for the period from 2006 to 2018 is, therefore, arbitrary and violative of Article 14 of the Constitution of India.

8.4 Such imposition of tax has further been challenged for

[3] (2003) 3 SCC 321
[4] (2019) 15 SCC 303
[5] (2023) 11 SCC 700

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non-compliance with Sections 150 and 152 of the Act, particularly in the absence of any assertion of compliance with Sections 150(1) and 150(2) thereof. Further, the Bye-Laws in toto has also been assailed for non-compliance with Section 481A of the Act, as there is no material demonstrating that they were laid before and approved by Parliament in the prescribed manner.

8.5 It is contended that the demand raised in November 2021 for the period from 01.06.2006 to 15.10.2018 is barred by delay and laches, having never been assessed or demanded during the relevant period. Reliance is placed upon ***Government of India v. Citadel Fine Pharmaceuticals, Madras & Ors.***[6], and ***Union of India v. CITI Bank***[7]**,** in support of the proposition that statutory powers must be exercised within a reasonable period.

8.6 Without prejudice, it is also contended that no interest is recoverable on the alleged arrears, since the tax was never levied or demanded during the relevant period. It is further submitted that the levy under Section 113(2) of the Act is optional, and Respondent No.1 cannot retrospectively impose an interest burden upon the Petitioner.

8.7 It is contended that the responsibility for collection and remittance of electricity tax rested with the electricity licensee, i.e., Delhi Electricity Supply Undertaking, under Bye-Law 7(3). Following the unbundling of the Delhi Vidyut Board in 2002, the distribution licensees assumed the function of collecting electricity

[6] (1989) 3 SCC 483
[7] 2022 SCC OnLine SC 1073

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tax, stated to be at the rate of 5%, for remittance to the respective Municipal Corporations. Therefore, the demand raised directly against the Petitioner is contended to be misconceived and legally untenable.

8.8 Lastly, it is contended that the cost of auxiliary consumption is factored into the tariff determined by the CERC, computed with reference to net generation after deducting auxiliary consumption from gross generation. Since electricity tax on the tariff-inclusive sale price has already been collected by the distribution licensees and remitted to the Respondent No.1, the separate levy on auxiliary consumption amounts to double taxation of the same economic component.

***Reply on behalf of the Respondent No.1*:**

9. *Per contra*, learned senior counsel representing the Respondent No.1 has made the following submissions:

9.1 The principal contention of the Respondent No.1 is that consumption of electricity is the incidence of tax, irrespective of its source, purpose or the identity of the consumer, accordingly, an auxiliary consumption by the generator is also liable to electricity tax.

9.2 In support to the aforestated, reference has been made to Entry 53 of List II of the Seventh Schedule of the Constitution and Section 113(2)(d) of the Act to argue that neither the constitutional

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entry nor the statutory provision restricts the meaning of consumption by reference to the source of electricity, the purpose of its use or the identity of the consumer.

9.3 Reliance has been placed on the judgments in ***Jiyajeerao Cotton Mills Ltd. v. State of M.P.***[8]***, State of Mysore v. West Coast Papers Mills Ltd.***[9]***, Swaroop Vegetable Products Industries v. State of U.P.***[10] and ***State of A.P. v. National Thermal Power Corporation Ltd.***[11]***,*** to contend that it is a settled legal position that the taxable event is consumption and not generation. The source of electricity, the purpose for which it is consumed, and the identity of the consumer are immaterial. Additionally, electricity consumed by a generator for further generation constitutes consumption, and the term is not confined to use by the end consumer.

9.4 Controverting the argument pertaining to Bye-Law 3(3) being *ultra vires*, it has been contended that Section 113(2)(d) of the Act authorises the levy of electricity tax on consumption, while Sections 113(3), 150(1) and 152 empower the Respondent No.1 to frame bye-laws governing its levy, assessment, collection and the class of persons to be taxed. In view thereof, the Bye-Law 3(3) does not create a new tax but identifies the person liable to pay tax on self-generated electricity consumed by him.

9.5 The aforestated scheme is further argued to be reinforced by Bye-Law 2(2), which includes a person consuming electricity

[8] AIR 1963 SC 414
[9] (1975) 3 SCC 448
[10] (1983) 4 SCC 24
[11] (2002) 5 SCC 203

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generated by himself within the definition of "consumer"; Bye-Law 15, which requires accounts of electricity consumed by such person; and Bye-Law 7(2), which prescribes the time for payment. Reliance has been placed on ***Delhi International Airport (P) Ltd. v. South Delhi Municipal Corporation***[12], to contend that the impugned Bye-Law cannot be said to exceed the scope of the parent Act, as the levy falls within the charging provision itself.

9.6 It has been contended that the impugned Bye-Law has been in force since 1963, and the Petitioner's challenge, instituted in 2022 upon receipt of a demand, is grossly belated and ought not to be entertained under Article 226 of the Constitution. It is further submitted that Section 169 of the Act provides an efficacious alternative remedy by way of appeal before the Municipal Taxation Tribunal against the levy or assessment of tax. Hence, in view of ***Titaghur Paper Mills Co. Ltd. v. State of Orissa***[13], and ***State of Madhya Pradesh v. Commercial Engineers & Body Building Co.***[14], the Petitioner ought to be relegated to the statutory remedy, particularly in respect of disputes concerning quantum.

9.7 Replying to the non-compliance of Section 150 of the Act it has been contended that the requirements under the said provision have been duly complied with. It has been asserted that the Respondent No.1, by Resolution dated 17.03.1992, defined the classes of persons liable to tax, including consumers of self-generated electricity. Thereafter, the levy was sanctioned by the

[12] 2020:DHC:33102-DB
[13] (1983) 2 SCC 433
[14] 2022 SCC OnLine SC 1425

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Lieutenant Governor on 30.06.1992 under Section 150(2). Further, the actual rates were determined by Resolution dated 30.06.1992, with the tax coming into force on 01.07.1992; and the rates have since been determined in accordance with Section 109(2) of the Act.

9.8 Replying to the contention pertaining to double taxation it has been argued that such plea is misconceived, inasmuch as auxiliary consumption is taxed on electricity consumed within the generating station, whereas the tax collected by licensees pertains to electricity consumed by their respective consumers. The two levies concern distinct units of electricity consumed by different persons. In this regard, it has also been argued that the Petitioner already pays duty on auxiliary consumption in other States, notwithstanding the levy on end consumers. Without prejudice to the aforestated, reference has been made to ***Jain Bros. v. Union of India***[15], to argue that there is no constitutional bar against double taxation.

9.9 Lastly, the Respondent No.1 has sought to distinguish the judgments relied upon by the Petitioners. ***St. Johns (Supra)***, is argued to have laid down the general principle that subordinate legislation must conform to the parent Act, which Bye-Law 3(3) does. ***Association of Concerned Citizens of New Delhi*** *(Supra)* is stated to have been dealt with the impugned Bye-Law altering the method of valuation prescribed by the statute, whereas the present Bye-Law neither alters the taxable event nor the measure of tax. Similarly, with respect to ***Kerala State Electricity Board*** *(Supra),* it

[15] 1969 (3) SCC 311

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is argued to be concerned with a regulation directly contrary to the parent enactment, which is not the case here.

9.10. Further, it is contended that the decisions in ***Citadel Fine Pharmaceuticals*** *(Supra)* and ***Citi Bank N.A.*** *(Supra)*, merely hold that the reasonableness of the period for initiating action depends on the facts of each case. However, in the present case, the liability accrued monthly under Bye-Law 7(2), and the Petitioner neither filed returns nor paid the tax. It is argued that the question of limitation, being a mixed question of fact and law, is to be appropriately examined by the Municipal Taxation Tribunal in statutory appeal.

***Reply on behalf of the Respondent Nos.3 and 4*:**

10. Learned counsel representing the Respondent Nos.3 and 4, although a performa party, have also made the following submissions:

10.1 The principal and only contention of the aforestated Respondents is that the levy by the Respondent No.1 results in double taxation of the same economic component, since the cost of auxiliary consumption is already factored into the tariff charged for electricity supplied to the Discoms, on which electricity tax is subsequently collected from end consumers.

10.2 To elaborate the aforestated, it has been contended, by way of an illustration, that if the BTPS generated 100 units of electricity at a total cost of Rs. 1,000 and consumed 20 units

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towards auxiliary consumption, the remaining 80 units were supplied to the Discoms at a tariff of Rs. 12.50 per unit to recover the entire cost of generation. Consequently, the tariff payable for the 80 units aggregated to Rs. 1,000, on which electricity tax at the rate of 5% amounts to Rs. 50, already collected from the end consumers and remitted to the Respondent No.1.

10.3 Since the cost attributable to auxiliary consumption is already factored into the tariff, a separate levy of electricity tax on the 20 units consumed by BTPS would result in an additional tax of Rs. 12.50, thereby increasing the total tax to Rs. 62.50. It is, therefore, contended that the impugned levy results in double taxation of the same economic component.

***Reply on behalf of the Respondent No.5*:**

11. Similarly, learned counsel representing the Respondent No.5, who again is a performa party, has made the following submissions:

11.1 It has been contended that a demand raised on 06.12.2021 for the period from 01.06.2006 to 15.10.2018, is grossly belated and unreasonable, particularly as the BTPS ceased operations in October 2018. It is the case of the Respondent No.5 that retrospective recovery of the levy through future tariffs would unfairly burden existing consumers with past costs and is contrary to the Tariff Policy and the principles laid down in ***U.P. Power Corporation Ltd. v. NTPC Ltd.***[16].

[16] (2009) 6 SCC 235

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11.2 It is argued that in absence of a prescribed limitation period under the Act, the demand must nevertheless be raised within a reasonable time, as held in ***State of Punjab v. Bhatinda District Co-operative Milk Producers Union Ltd.***[17]**,** and ***Mr. Ved Marwah v. NDMC and Ors.***[18].

***Rejoinder on behalf of the Petitioner*:**

12. Learned senior counsel representing the Petitioner has made the following rebuttals to the arguments raised by the Respondent No.1:

12.1 It is contended that auxiliary consumption is incidental to the process of generation and constitutes an incidence of generation rather than taxable consumption. Further, it is submitted that Bye-Law 3(3), insofar as it includes self-consumption within the ambit of Section 113(2)(d) of the Act, enlarges the scope of the parent Act and is *ultra vires*.

12.2 With respect to the reference made to Bye-Law 2(2) it has been contended that, the definition of consumer therein only includes a person consuming electricity generated by himself, and as such does not cover the Petitioner, whose station is neither supplied by a licensee nor connected to a licensee's works.

12.3 Accordingly, it is the case of the Petitioner that the electricity generated at the BTPS was intended for supply to third parties and not for its own consumption, as such an auxiliary consumption cannot be construed as generation for self-

[17] (2007) 11 SCC 363
[18] 2018:DHC:2055-DB

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consumption within the meaning of the impugned Bye-Law, thereby enlarging the scope of the parent Act to impose tax on auxiliary consumption.

12.4 The Petitioner has also sought to distinguish the judgments relied upon by the Respondent No.1, including, ***Jiyajeerao Cotton Mills*** *(Supra)*, ***Swaroop Vegetable Products Industries*** *(Supra)* and ***West Coast Papers Mills Ltd.*** *(Supra)*, inasmuch as they were concerned with captive consumption and not auxiliary consumption incidental to generation for onward sale. It is submitted that the said decisions proceeded on express statutory provisions covering self-generated electricity consumed by the producer, which are absent from Section 113(2)(d) of the Act.

12.5 Insofar as the Respondent No.1's contention of payment of similar taxes by Petitioner in other states is concerned, it has been argued that the principal statute in such states, namely, Chhattisgarh, Orissa and Karnataka, already provide for duty on auxiliary consumption or for own use.

C. ANALYSIS AND FINDINGS:

13. Having heard the rival submissions advanced by the learned counsel for the parties and upon perusal of the record, this Court is of the view that the entire challenge rests on a single proposition, namely, that consumption of electricity in the course of generation is an incident of generation itself. If that proposition fails, the attack on the *vires* of Bye-Law 3(3) loses its premise, and the pleas of double taxation and arbitrariness loose their foundation. Therefore, this Court

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has, identified the following four issues, which are to be examined in that order:

I. Whether consumption, and not generation, is the taxable event under Section 113(2)(d) of the Act, and whether auxiliary consumption by a generating station falls within it?

II. Whether the Bye-Law 3(3) travels beyond the parent Act, or merely gives effect to it?

III. Whether the levy on auxiliary consumption results in double taxation of a cost already recovered through tariff?

IV. Whether the demand raised in November 2021 for the period 01.06.2006 to 15.10.2018 is vitiated by delay?

***In re: Issue I*:**

14. At the outset, this Court deems it appropriate to observe that the character of a levy must be determined by reference to its taxable event, namely, the event upon which the charge is imposed, and not merely by the nomenclature assigned to it. However, the Petitioner seeks to conflate generation with consumption by contending that electricity consumed in the process of generation constitutes an incident of generation itself and a levy thereon is, in substance, a tax on production, a subject falling within the legislative domain of Parliament.

15. A tax on the consumption of electricity is attracted by its use and falls within the legislative field contemplated under Entry 53 of

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List II of the Seventh Schedule, whereas a duty of excise is attracted by its production. The question, therefore, is whether the levy on auxiliary consumption at BTPS is attracted by the consumption of electrical energy or as contended by the Petitioner, constitutes a tax on generation itself.

16. Notably, law in regard to the aforestated is no longer res integra and has been settled by the Supreme Court by way of its precedents discussed hereinafter. In ***Jiyajeerao Cotton Mills Ltd.*** *(Supra)*, the Court held that a levy on consumption, including consumption by the very person who generated the electricity, is distinct from an excise duty on generation. The Court also observed that the expression consumption means the use or expenditure of electrical energy, so that the levy attaches when energy is used up and not when it is brought into being.

17. The above stated principle was further reiterated by the Supreme Court in ***National Thermal Power Corporation Ltd.*** *(Supra)*, wherein the Court recognised that the relevant taxable event may be sale or consumption, and a levy on it does not become an excise duty merely because the electricity is generated before it is consumed. Similarly, in ***Rajasthan Textile Mills Assn. v. State of Rajasthan***[19]**,** the Rajasthan High Court held that a producer consuming electricity generated by it is a consumer for the purposes of Entry 53 of List II and the State Legislature is competent to impose duty on such consumption. In view of these decisions, the Petitioner's contention that auxiliary consumption in the course of generation is

[19] 2005 SCC OnLine Raj 563

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merely an incident of generation cannot be sustained.

18. This Court is also unable to accept the contention of the Petitioner that auxiliary consumption stands on a different footing merely because the electricity generated is intended for supply to third parties. In ***West Coast Paper Mills Ltd.*** *(Supra)*, the Supreme Court held that electricity utilised to operate equipment for generating further electricity constitutes consumption and may attract tax. The said decision also highlighted that the distinction lies between electricity consumed and electricity lost in transmission before reaching the point of use. It was observed that auxiliary electricity is not lost in transmission but is utilised to operate the generating station's equipment and, therefore, constitutes consumption for the purposes of the levy.

19. Similarly, neither the source of the electricity nor the purpose for which it is consumed alters the said position. In ***Swaroop Vegetable Products Industries*** *(Supra),* a person consuming electricity from its own source of generation was held liable to the levy even though it also purchased electricity from a licensee. Therefore, this Court is in agreement with the Respondent No.1 that the source of the electricity, the purpose for which it is consumed, and the identity of the consumer are immaterial to a levy on consumption. Consequently, the fact that the Petitioner supplies the remaining electricity to third parties does not alter the character of the electricity consumed within the generating station.

20. The Petitioner's attempt to confine the decisions in ***Jiyajeerao***

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Cotton Mills Ltd. *(Supra),* ***West Coast Paper Mills Ltd.*** *(Supra)* and ***Swaroop Vegetable Products Industries*** *(Supra)* to cases of captive consumption is equally misplaced. Captive electricity is a narrow statutory category, being electricity generated by a qualifying captive generating plant and consumed by the captive users in accordance with the ownership and consumption conditions of the Electricity Rules, 2005. Whereas, self-generated electricity is the wider genus, namely, electricity produced by a person for its own use, and it may be self-generated without being captive.

21. The aforesaid decisions, which pre-date the 2005 Rules interpreted the scope of the term 'consumption' and did not turn upon the captive status of the generating plant. As such, the absence of an express reference to self-generated electricity in Section 113(2)(d) of the Act does not, by itself, exclude such consumption from the ambit of the provision.

22. In view of the aforestated, this Court holds that the taxable event under Section 113(2)(d) of the Act is consumption of electricity, hence, the auxiliary consumption at BTPS is consumption, and a levy thereon does not, merely by reason of its use in the process of generation, constitute a duty of excise on generation.

***<u>In re: Issue II</u>*:**

23. It is trite law that delegated legislation cannot supplant the parent statute or travel beyond the authority conferred thereunder. The principles laid down in ***St. Johns Teachers Training Institute*** *(Supra),* ***Association of Concerned Citizens of New Delhi*** *(Supra)*

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and ***Kerala State Electricity Board*** *(Supra)*, relied upon by the Petitioner, admit of no dispute. However, the question is whether Bye-Law 3(3) creates a liability beyond that contemplated under the Act or merely prescribes the manner of imposing the tax already authorised by the parent statute.

24. The test is whether the impugned Bye-Law creates a new levy, alters the taxable event or the measure of tax, or merely gives effect to the charge authorised by the parent Act. Section 113(2)(d) of the Act authorises the levy of tax on consumption, which, as held hereinabove, includes consumption of self-generated electricity. Bye-Law 3(3) does not create a new taxable event but identifies the person liable to pay tax on such consumption, which is precisely what Sections 113(3), 150(1) and 152 of the Act empower the Respondent No.1 to do. Therefore, this Court is in agreement with the Respondent No.1 that the Bye-Law does not create a new tax.

25. The aforesaid interpretation is also consistent with the scheme of the Bye-Laws, as Bye-Law 2(2) includes within the definition of consumer, a person consuming electricity generated by himself, Bye-Law 15 requires accounts of such consumption to be maintained, and Bye-Law 7(2) prescribes the time for payment of the tax.

26. In this regard, the decisions relied upon by the Petitioner are distinguishable on facts, as rightly submitted by Respondent No. 1. ***St. Johns Teachers Training Institute*** *(Supra)* reiterates the settled principle that subordinate legislation must conform to the parent Act, a requirement which Bye-Law 3(3) satisfies. In ***Association of***

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Concerned Citizens *(Supra)*, the impugned Bye-Law altered the method of valuation prescribed by the statute, whereas in ***Thomas Joseph*** *(Supra)*, the regulation was directly contrary to the parent enactment.

27. In the present case, Bye-Law 3(3) neither alters the taxable event nor the measure of tax and is not inconsistent with Section 113(2)(d) of the Act. Indeed, had Bye-Law 3(3) never been framed, the consumption of the Petitioner would still have fallen within the scope of the charging provision. However, if the Bye-Law 3(3) is taken into consideration for the purpose of imposition of tax, the same at its highest is declaratory in nature, clarifying the operation of the statutory charge. Therefore, a provision which declares what the Act already provides cannot be said to supplant or exceed the parent Act.

28. With respect to the present issue, two ancillary issues raised by the Petitioner also warrant consideration. *Firstly*, the contention that Bye-Law 2(2) does not apply to the Petitioner in the absence of a connection with the works of a licensee is misconceived. Bye-Law 2(2) expressly includes within the definition of a consumer a person who consumes electricity generated by himself, irrespective of whether his premises are connected to the works of a licensee. Reference in this regard is to be made to ***Swaroop Vegetable Products Industries*** *(Supra)*, wherein the Supreme Court held that the source of electricity is immaterial to the levy on consumption.

29. *Secondly*, this Court finds no infirmity in compliance with Section 150 of the Act. The Respondent No.1 has pointed to the

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Resolution dated 17.03.1992 defining the classes of persons liable, the sanction of the Lieutenant Governor dated 30.06.1992 under Section 150(2), and the rates fixed with effect from 01.07.1992, however, no material has been placed on record by the Petitioner to displace the said submissions.

30. In view of the aforesaid discussion, this Court is of the view that Bye-Law 3(3) gives effect to the Act and does not supplant it, therefore, cannot be held to be *ultra vires* the Act.

***In re: Issue III*:**

31. The plea of double taxation, urged by the Petitioner and the Respondent Nos.3 and 4, proceeds on the premise that the cost of auxiliary consumption, having been factored into the tariff, cannot be subjected to a separate levy of electricity tax. The contention falls for consideration on two aspects, namely, the distinction between tariff and taxation, and the illustration relied upon to demonstrate the alleged duplication of tax.

32. It is pertinent to note that tariff determination and taxation operate in distinct fields. While tariff represents the schedule of prices and charges payable for the supply of electricity, tax constitutes a statutory levy payable to the State over and above the tariff. As recognised by the Supreme Court in ***National Thermal Power Corporation Ltd.*** *(Supra)*, the power of a regulatory commission to determine tariff does not extend to imposing or regulating a statutory levy of electricity tax.

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33. This Court accepts the submission of Respondent Nos.3 and 4 that the cost of auxiliary consumption is factored into the tariff to enable the Petitioner to recover its generation costs. However, the inclusion of such costs in the tariff does not, by itself, confer immunity from a tax otherwise lawfully leviable on the electricity consumed. Any grievance arising from the treatment of such tax in the tariff determination must be agitated before the appropriate regulatory forum and cannot, in the absence of any statutory exemption, furnish a ground to invalidate the impugned levy.

34. Similarly, the illustration relied upon by the Respondent Nos.3 and 4 does not establish double taxation. On the contrary, it demonstrates that the electricity tax of Rs. 50, calculated at 5% of the tariff of Rs. 1,000 recovered from the supply of 80 units, is attributable to the consumption of those units by the end consumers. No tax is thereby imposed on the 20 units consumed by BTPS towards auxiliary consumption. The additional levy of Rs. 12.50 represents tax on the value attributable to those 20 units and constitutes the first levy thereon. The aggregate figure of Rs. 62.50 is arrived at only by treating the cost of auxiliary consumption embedded in the tariff as equivalent to tax already paid on that consumption, which is not borne out by the illustration.

35. Since the illustration demonstrates that no tax has been imposed on auxiliary consumption, it does not amount to double taxation, which requires the same subject to be taxed twice. It is for the reason that the 80 units supplied to the end consumers and the 20 units consumed by BTPS constitute distinct quantities of electricity

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consumed by different persons, and the tax is levied separately on each. The inclusion of the cost of auxiliary consumption in the tariff does not render the tax paid on the electricity supplied to end consumers a tax on the electricity consumed by BTPS.

***In re: Issue IV*:**

36. The proposition drawn by the Petitioner is that where a statute prescribes no period of limitation, a power must be exercised within a reasonable time, and this Court has no hesitation in accepting the same. However, what constitutes a reasonable period depends on the facts and circumstances of each case, and delay in raising a demand does not, by itself, extinguish a tax liability lawfully incurred.

37. In the present case, the demand raised in November 2021 cannot be held to be invalid on three premises. *Firstly*, the liability did not arise from the demand, rather it accrued month to month under Bye-Law 7(2) by operation of law, under a levy in force since 1992 and Bye-Laws in force since 1963. *Secondly*, under Bye-Law 15, the Petitioner was required to maintain accounts of electricity consumed. In this regard, it has been argued by the Respondent No.1 that no returns were filed and no tax was paid, a position not controverted by the Petitioner in its rejoinder. In these circumstances, the Petitioner cannot rely upon the delay in raising the demand while having failed to discharge its obligation to account for the consumption. *Lastly*, the demand raised by the Respondent No.1 seeks recovery of an existing statutory liability and does not impose a new levy.

38. The apprehension expressed by the Respondent No.5 that

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recovery of the demand may burden existing consumers through a future tariff revision does not affect the Petitioner's statutory liability. As observed hereinabove, the recovery of such costs through tariff is a matter for the appropriate regulatory framework. Likewise, the closure of BTPS in October 2018 is immaterial, since the liability arose when the electricity was consumed.

39. The Petitioner's reliance placed on ***Citadel Fine Pharmaceuticals*** *(Supra)* and ***CITI Bank*** *(Supra)*, also does not come to its rescue, inasmuch as the said decisions merely lay down a general observation of law, a position that is not alien. However, what they do not establish is the prejudice caused by a delay with respect to the imposition of municipal tax by the Respondent No.1 on consumption of electricity by the Petitioner.

D. CONCLUSION:

40. For all the foregoing reasons, this Court is of the view that the taxable event under Section 113(2)(d) of the Act is consumption, and the auxiliary consumption at BTPS is consumption and not generation. Further, Bye-Law 3(3) does not enlarge the Act, as it only identifies the person liable on consumption of self-generated electricity, which the Act already taxes. Furthermore, tariff and tax operate in separate fields, and the levy on auxiliary consumption does not result in double taxation. Lastly, the Respondent No.1 was not barred by delay from recovering a tax which accrued by operation of law and was never paid.

41. In view of the aforestated, the present Petition is dismissed.

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Pending applications, if any, also stands closed.

42. It is clarified that the foregoing discussion is confined to the *lis* raised in the present Petition. Any dispute confined to the computation of the amount may be raised by the Petitioner before the appropriate forum under Section 169 of the Act, in accordance with law.

ANIL KSHETARPAL, J.

BHARAT PARASHAR, J.

OCTOBER 27, 2026/sp/hr

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