

Swaroop Vegetables Products Industries

Vs

State of U. P. and Others

Civil Writ Petitions Nos. 3039 of 1974, 89 of 1976, 760 of 1975, 759 of 1975, 442 of 1976, 2630 of 1977 and 547 of 1975

(Syed M. Fazal Ali, A. Varadarajan, M. P. Thakkar JJ)

19.08.1983

JUDGMENT

THAKKAR, J. –

1. The main controversy in this group of appeals centres around the question whether Electricity Duty on the Consumption of electrical energy in Uttar Pradesh is payable by a person who has his own source of generation and also purchases electrical energy from a licensee, or the Board, or the State Government, or the Central Government. The contention has been raised in the context of Sections 3(1) and 4(1) of the U.P. Electricity (Duty) Act, 1952. The view is canvassed on behalf of the consumers of electrical energy that while under Section 3(1)(c) read with Section 4(1)(c) of the Act electricity duty is indubitably leviable and payable on electrical energy consumed by a person from his own source of generation, such duty is not payable by him in case he consumes energy from his own source of generation and also purchases energy from a licensee, the Board, the State Government or the Central Government.

2. This question initially came up before a Division Bench of the Allahabad High Court in Sherwani Sugar Syndicate Pvt. Ltd. v. State of U.P. [C.M.W.P. No. 3039 of 1974] The Division Bench by its judgment dated October 8, 1974 upheld the contention that inasmuch as the petitioner company had its own source of generation of energy and was also purchasing energy from another source indicated in Sections 3(1)(a) and 3(1)(b), the petitioner company was not liable for payment of duty on the energy generated from its own source of supply. The State of Uttar Pradesh had called into question the legality and validity of this decision by way of an appeal by certificate of fitness granted by the High Court (C.A. No. 1312 of 1977). Meanwhile M/s. Deoria Sugar Mills Ltd. also approached the High Court of Allahabad by way of C.M.W.P. No. 9990 of 1975 on an identical plea. The matter came up before another Division Bench of the Allahabad High Court. The Division Bench was of the opinion that the decision in Shervani Syndicate case [C.M.W.P. No. 3039 of 1974] required reconsideration. The matter was therefore referred to a Full Bench. The Full Bench was of the opinion that the view taken earlier in Shervani case [C.M.W.P. No. 3039 of 1974] was not correct and dismissed the Writ Petition filed by M/s. Deoria Sugar Mills, taking the view that a user of electricity was liable to pay electricity duty on the consumption of energy from his own source of supply regardless of whether or not he also purchased electricity from some other source indicated in Sections 3(1)(a) and (b). In view of this decision of the Full Bench, petitions instituted by six other companies raising the identical the question were dismissed by the High Court of Allahabad. These companies have approached this court by way of six separate appeals by special leave granted by this court.

3. Section 3(1) and Section 4(1) of the Act insofar as material read thus :

3. Levy of Electricity Duty. - (1) Subject to the provisions hereinafter contained, there shall be levied for and paid to the State Government on the energy :

(a) sold to a consumer by a licensee, the Board, the State Government or the Central Government, or

(b) consumed by a licensee or the Board in or upon premises used for commercial or residential purposes, or in or upon any other premises except in the construction, maintenance or operation of his or its works, or

(c) consumed by any other person from his own source of generation; a duty (hereinafter referred to as 'electricity duty').....

* * * * *##

4. Payment of electricity duty and interest thereupon. -

(1) The electricity duty shall be paid, in such manner and within such period as may be prescribed, to the State Government.

(a) where the energy is supplied or consumed by a licensee, by the licensee;

(b) where the energy is supplied by the State Government or the Central Government or is supplied or consumed by the Board, by the appointed authority; and

(c) where the energy is consumed by any other person from his own source of generation;

by the person generating such energy.

4. The original writ petitioners who canvass the view that electricity duty is not leviable or payable by a person consuming energy from his own source of generation under Section 3(1)(c) read with Section 4(1)(c) of the Act lay great stress on the expression 'any other person' occurring in Section 3(1)(c) and Section 4(1)(c) of the Act. It is contended that in view of the user of this expression only those consumers who wholly fall outside the orbit of Sections 3(1)(a) or 3(1)(b) are exigible to electricity duty under Section 3(1)(c). In case a consumer falls both under Sections 3(1)(a) and 3(1)(c) or Sections 3(1)(b) and 3(1)(c) (it is so argued) such a person would not be exigible to electricity duty. The same argument is urged pro tanto in the context of clauses (a), (b) and (c) of Section 4(1). In our opinion this submission is altogether untenable and has been rightly repelled by the Full Bench of the Allahabad High Court in its well considered judgment. On a plain reading of Section 3(1)(c) it is evident that duty has been levied on the energy consumed by a person from his own source of generation without anything more. There is no rider or qualification engrafted in Section 3(1)(c) or Section 4(1)(c). The fact that the user of electricity from his own source of generation purchases electricity from some other source as well, is an altogether irrelevant factor from the stand point of the liability imposed by the said provisions. Be it realized that duty is levied on the consumption of energy. The taxing event is the consumption of energy. The source from which the electricity is acquired is altogether irrelevant. A person having his own source of energy who also purchases energy from another source indicated in Section 3(1)(a) will be covered by

Section 3(1)(a) to the extent he purchases electricity from such a source, and will be equally covered by Section 3(1)(c), insofar as he consumes energy from his own source of generation. He will be covered by both the provisions read conjointly. The same reasoning applies in the context of clauses (a), (b) and (c) of Section 4(1). There is no rational basis for exonerating a person from payment of duty merely because he has his own source of generation and he also purchases electricity from some other source. In fact it will be irrational to do so and it would give rise to an anachronism. Why make him pay only if he generates his own energy and why exempt him altogether merely because he also purchases from some other source ? Duty is levied as a measure of taxation in order to raise additional revenue as is made abundantly clear by the prefatory note and the extract from the statement of objects and reasons published in U.P. Gazette Extraordinary dated September 1, 1952 which reads as under :

The minimum programme of development which this State must carry out within the next three or four years for the attainment of the objective of a welfare State is set out in the Five Year Plan drawn up by the Planning Commission. This plan provides for an expenditure of 13.58 crores of rupees on power development projects. Such a huge expenditure cannot be met from our present resources. It is, however, essential for the welfare of the people that the expenditure should be incurred and that nothing would be allowed to stand in the way of the progress of the plan. Additional resources have therefore to be found, the bulk of which can be raised only by means of fresh taxation.

A tax on the consumption of electricity energy will impose a negligible burden on the consumer and is a fruitful source of additional revenue. The bill has been so prepared as to ensure that the tax payable by a person will be related to the quantity of electricity consumed by him. The bill is being introduced with the above object. Vide Statement of Objects and Reasons published in U.P. Gazette Extraordinary dated September 1, 1952.

5. How would this object be promoted or served by adopting such an irrational course ? The taxing event being the consumption of energy, the source from which the electricity is acquired would become altogether irrelevant. Section 3(1) as also Section 4(1) has to be read as a whole and has to be interpreted in a harmonious and meaningful manner. To do otherwise would be to defeat the legislative intent which is abundantly clear, whilst at the same time exposing the provision to the charge of being irrational and arbitrary, by placing such an unwarranted construction thereon. The Full Bench of the Allahabad High Court, was, therefore, perfectly justified in taking the view that duty was chargeable in respect of energy consumed by a person from his own source of generation regardless of the fact that he also purchased electricity from some other source indicated in Section 3(1)(a) and Section 4(1)(a). The appeal preferred by the State, being Appeal No. 1312 of 1977, will therefore have to be allowed and the appeals preferred by the consumers of electricity challenging the correctness of the decision rendered by the Full Bench must therefore be dismissed.

6. The next question agitated in five out of the seven appeals comprised in the group (it does not arise in C.A. No. 1312 of 1977 and C.A. No. 1146 of 1979) arises thus : The State of U.P. issued a notification dated March 17, 1973 whereby in exercise of powers under sub-section (4) of Section 3 of the Act a person consuming energy from his own source of generation installed after January 2, 1973 was exempted from payment of electricity duty. The appellants in the appeals before us are persons who have their own source of generation of electricity. The generating machinery was however installed and commissioned by them before January 2, 1973. It is their contention that exemption could not have been lawfully granted to a person installing his own source of generation

after January 2, 1973 unless exemption was also granted to the persons consuming electricity from their own source of generation installed prior to January 2, 1973. In other words the argument is that exemption must be granted to all persons having their own source of electricity regardless of the date on which the source of generation is installed, in order to be able to successfully face the challenge from the platform of Article 14 of the Constitution of India. Exemption, (it is argued in effect), must be granted to all or to none irrespective of the date of installation of the equipment for generation of electricity to save the provision from the peril of being held as unconstitutional by reason of its being discriminatory and violative of Article 14 of the Constitution. This argument has been rightly negated by the High Court for the very good reason that the Notification ex facie made it abundantly clear that exemption was being granted "having regard to the need to promote industrial production generally and to the prevailing acute power shortage in the State". It is evident that in view of the felt-need for augmenting the sources of supply of electrical energy an incentive needed to be provided by way of granting exemption to those who installed their own source of generation of energy. As acute shortage of power was being experienced there was a need to encourage the consumers to acquire their own source of energy with a view to reduce or lessen the burden on the existing sources of electricity generation. Obviously this purpose can be achieved only by granting the exemption prospectively to those consumers who install their own source of generation of energy pursuant to the concession being granted under the provision for exemption. Those who already had their own source of generation of energy need no such encouragement in respect of the source of generation already installed. If they wanted to further augment their own source of generation of energy they would also be entitled to exemption in respect of the additional source of generation installed after the date specified in the notification. The classification is, therefore, rational, purposeful, as also meaningful, and it is calculated to effectively serve the real purpose of granting exemption. Article 14 cannot be invoked in a situation like this to successfully assail that part of the Notification whereby the date of installation has been made the precondition for qualifying for exemption.

7. State of Uttar Pradesh v. Jageshwar [(1983) 2 SCC 305 : 1983 SCC (Cri) 427] on which reliance is placed cannot buttress the view canvassed by the writ petitioners having regard to the fact that exemption was granted with a view to encouraging consumers of electricity to become self-sufficient henceforth and with the end in view to lessen the burden on the other source of generation prospectively. As against this those who had already acquired their own source for generating electricity were in need of no retroactive encouragement by way of concession or exemption for doing what they had already done. There would have been no augmentation of the existing resources by extending the exemption to them. Under the circumstances we are of the opinion that the High Court was fully justified in repelling the plea urged by the writ petitioners in this behalf.

8. In the result the appeal preferred by the State of Uttar Pradesh (C.A. No. 1312 of 1977) is allowed, the judgment and order of the High Court are set aside, and the writ petition giving rise to the said appeal is dismissed with costs throughout.

9. The rest of the appeals are dismissed with costs.

10. All interim orders will stand vacated.

</html