

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW BENCH LUCKNOW

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Reserved

Case :- MISC. BENCH No. - 3006 of 1984

Petitioner :- Oudh Sugar Mill

Respondent :- State Of U.P.

Counsel for Petitioner :- R.K.Srivastav, Dr. R.K.
Srivastava, V.P.Upadhyaya

Counsel for Respondent :- C.S.C.

Hon'ble Devi Prasad Singh,J.

Hon'ble Ashok Pal Singh,J.

[PER: HON. MR. JUSTICE DEVI PRASAD SINGH]

1. Instant petition under Article 226 of the Constitution of India has been preferred by the petitioner Oudh Sugar Mill feeling aggrieved with the recovery notice initiated in pursuance to order issued with regard to electricity charges from July 1978 to 1983 in pursuance to UP Electricity (Duty) Act 1952 (Annexure-10).
 2. The petitioner is a public limited company incorporated under the Indian Companies Act and possessing a sugar factory situated at Hargaon District Sitapur (U.P.). The sugar mill has been registered under the Factories Act 1948.
 3. According to petitioner's counsel manufacturing process of sugar factory and its distillery is carried on with the aid of electricity generated by the petitioner from its own source of generating sets as well as electricity supplied by U.P. State Electricity Board (now U.P. Power Corporation) through 375 KVA transformer installed in the factory premises. It is alleged that the petitioner has installed five
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electricity generating sets. Three of which were steam turbo generating sets of 600, 660 and 1400/1600 KW respectively and one diesel generating set of 110 KW and one Rustin diesel generating set of about 50 HP. Since, three steam turbo generating sets had become very old to meet out the requirement, the petitioner decided to install a new turbo generating set of 2500 KW in February 1978. It is alleged that petitioner has obtained prior permission from the State Government with regard to generating set of 2500 KW and after completing other formalities required under the Electricity Act 1960 and Rules framed thereunder applied for its inspection on payment of Rs. 1500/- as fees. The newly installed turbo generating set was inspected on 24.5.1978 by the authorities of electricity department and after due permission the generating set become operative from 5.1.1979. According to the petitioner in view of new generating set the old sets became outdated and lost their utility hence dumped without use.

4. According to petitioner's counsel, the consumption of electricity from own generating sets installed after 2.1.1973 was exempted subject to payment of electricity duty under the provisions of U.P. Electricity (Duty) Act 1952 (in short hereinafter referred as 1952 Act) vide notification dated 17.3.1973 (Annexure-4 to the writ petition). The notification was issued in pursuance to the power conferred under Sub Section 4 of Section 3 of the 1952 Act. However, the petitioner has been held responsible by the impugned assessment order/notice

dated 14.3.1984 (Annexure-10 to the writ petition).

5. It has been stated by the petitioner's counsel, Dr. R.K.Srivastava that respondent no. 2 unauthorizedly required the petitioner to pay electricity duty on the basis of consumed generating electricity from old generating sets (supra) that too on the basis of 100 per cent capacity of turbo generator. By demand notice dated 25.1.1983 opposite parties required the petitioner to pay electricity duty amounting to Rs. 714527/- (Annexure-6 to the writ petition). The demand notice includes Rs. 4,31,517.19/- and Rs. 21285.16/- towards duty on two turbo generating set of 660 KW and 1400/1600 KW which according to petitioner's counsel have completely been shut down after new generating set become operative. Petitioner filed objection dated 4.2.1984 (Annexure 7 to 9 to the writ petition). Thereafter, petitioner received a revised notice/assessment order dated 14.3.1984 (Annexure 10 to the writ petition). It is argued that respondent no. 3 without any reason reduced the electricity duty on the energy consumed on running of auxiliary use for generation of electricity on its own to 10 per cent. By another letter dated 8.3.1984 (Annexure-11 to the writ petition) petitioner was required to deposit an amount of Rs. 41327.68/-. Petitioner received recovery certificate dated 31-3-1984 from opposite party no. 2 for a sum of Rs. 645202.92/- towards arrears of electricity duty upto August, 1983 (Annexure 13 to the writ petition). It is submitted that since petitioner has already paid an amount of Rs. 213685 towards electricity duty or

electricity produced from the diesel generating set during off season and electricity generations by turbo generating set of 600 KW from 1.1.1982 to 31.8.1982 without any factual foundation, Tehsildar concerned proceeded to recover the aforesaid duty of Rs. 4,31,517.19/- with threat to take coercive action.

6. The case setup and grounds pleaded in the writ petition has been denied by the respondents and stated that petitioner had never intimated the respondent about the six generating sets. It has been further stated in the counter affidavit that the letter allegedly sent by the petitioner on 5.1.1979 was received on 16.4.1984 i.e. after lapse of five years. Hence, contents of the letter dated 5.1.1979 have been repudiated by the respondents vide registered letter dated 19.6.1984 (Annexure-2 to the counter affidavit). It has categorically been pleaded in the counter affidavit that at the time of inspection of factory premises the respondent no.2 was not shown any record of accounts regarding energy generated during the period i.e. 5.1.1979 to 20.12.1981 which was necessary as per 1952 Act. Hence, during the course of electricity account checking on 19.12.1981 and 20.12.1981, the assessment of electricity was done in pursuance to provisions contained in Rule 4(1) of the Uttar Pradesh Electricity (Duty) Rules 1952. It is stated by the respondents in counter affidavit that information was allegedly sent by the petitioner through its letter dated 26.12.1981 with regard to turbo generating set which was received on 16.4.1984 i.e. after lapse of two years and the same was

duly repudiated by respondents through a letter dated 19.6.1984.

7. It has been pleaded and argued by Shri H. P. Srivastava, learned Additional Chief Standing counsel that the petitioner had sent ante-dated letter on 26.12.1991 with intention to mislead the authorities and conceal the actual generation of energy from already installed generating capacity of 3060 KW and tried to claim benefit of exemption from newly installed generating set of 2500 KW. It has been stated in the counter affidavit that according to standing order of department letter no. 5004 dated circulated vide letter dated 7.10.1976 (Annexure 3 to the Counter Affidavit), the energy consumed in the auxiliaries is exempted from payment of electricity duty to the extent of 10 per cent of total energy generation. As such the standard set up has been made applicable to entire State of Uttar Pradesh. It has been stated in the counter affidavit that petitioner had not installed any working condition meter for recording consumption on auxiliaries.

Hence, there was no alternative left with opposite party no. 2 but to assess the consumption at the rate of 10 per cent as auxiliary consumption out of total generated units which is the standard adopted for all own generating units who pay electricity to the State.

8. The sum and substance of arguments advanced by respondent is that on one hand petitioner has not installed any meter to record consumption in auxiliaries but at the same time has claimed that for computation of auxiliaries consumption the total load of 462 KW should be taken into consideration although part of this load was also

being used in sugar manufacturing process by the petitioner.

9. With regard to reliance placed on notification dated 17.3.1973 (Annexure 4 to the writ petition) it has been submitted that the exemption granted was in public interest for exemption from payment of electricity (duty) on the energy consumed by any person from his own source of generation installed after 2.1.1973 in order to give incentive for augmentation of actual generation of energy. It is stated that since petitioner had already installed generating capacity of 3060 KW before 2.1.1973 hence petitioner would have been entitled to claim exemption from newly installed generating set of 2500 KW only if it kept running the old generating sets to their full capacity of 3060 KW. It has been stated by the respondents that petitioner was actually generating and consuming energy from the old turbo generating sets as was found during inspection by the respondent no. 2 brought on record vide letter dated 14-01-1982 and 19.2.1983 (Annexure 1 and 4 to the counter affidavit). Since, there was no record of the units of energy generated by respective turbo generating sets, hence electricity (duty) was assessed and recovery proceeding was initiated on the basis of assessment order passed by the competent authority. It is submitted that 'duty' is levied as a means of taxation in order to raise additional revenue. Since, 'duty' is levied on consumption of energy it is a taxing event and the source from which energy is acquired is altogether irrelevant from the stand point of the liability imposed under the Act. It is submitted that exemption from

payment of electricity 'duty' is granted on electricity consumed in auxiliaries. The petitioner has installed auxiliaries with steam turbo sets and no auxiliaries have been installed with diesel generating sets. As such no exemption has been granted on that part of consumption which has not been used for auxiliaries.

10. No evidence has been brought on record to establish that turbo generating sets of 1400/1600KW and 660 KW were closed and the third turbo generating set remained closed from 5.1.1979 to 31.12.1981.

11. It is further submitted by the learned counsel for the respondents that petitioner has concealed material facts and set up its case based on ante-dated letters, hence, is not entitled for any relief and that in any event since, controversy involve mixed question of law and fact writ petition is not maintainable and matter may be relegated to appellate authority.

12. In the alternative respondent no. 2 pleaded that petitioner had an alternative remedy of filing appeal under Sub Rule 1 of Rule 13-A of the U.P. Electricity (duty) Rules 1952.

13. Learned counsel for the petitioner has relied upon the cases reported in AIR 1940 PC 183, Bank of Chettinad Ltd. Vs. Commissioner of Income Tax, Madras; AIR 1970 SC 755, Hansraj Gorddhan Das Vs. H. H. Dave, Assistant Collector Central Excise and Customs; AIR 1973 ALL 33, Renusagar Power Co. Ltd. vs. State of U.P. And others; AIR 1984 SC 20, M/S Swaroop Vegetables Products

Industries Ltd. Etc. vs. State of U.P. And others; (2004) 3 SCC 553, ABL International Ltd. And another vs. Export Credit Guarantee Corporation of India Ltd.and others; (2005) 3 SCC 241, Cholan Roadways Ltd. Vs. G. Thirugnanasambandam; (2006) 3 SCC 208, S.N.Chandra Shekhar vs. State of Karnataka and others; (2006) 12 SCC 33, Siemens Ltd. Vs. State of Maharashtra and others; AIR 2009 SC 2975, Uttamrao Shivadas Jankar Vs. Ranjitsinh Vijaisinh Mohite-Patel.

14. On the other hand, Shri H. P. Srivastava, learned Additional Chief Standing counsel has relied upon the cases reported in 1983 (2) SCC 433, Titaghur Paper Mill Co. Ltd. Vs. State of Orissa; (1985) 1 SCC 260, Assistant Collector Central Excise, Chandan Nagar, West Bengal vs. Dunlop India Ltd. And others; (2010) 4 SCC 772, Raj Kumar Shivhare vs. Directorate of Enforcement and another; 2010 (8) SCC 110, United Bank of India vs. Satyawati Tandon and others; (2012) 11 SCC 211 Zunaid Enterprises vs. State of Madhya Pradesh; (2005) 3 SCC 378, Commissioner of Central Excise vs. Ginni Filament Ltd. and (2010) 2 SCC 114, Dalip Singh vs. State of U.P. and others.

STATUTORY PROVISIONS

15. U.P. Electricity (duty) Act 1952 empowers the respondents to impose electricity duty conferred by Section 3 of the 1952 Act. Section 4 provides that electricity duty shall be paid in such manner and within such period as prescribed by the Government. For

convenience Section 4 of the 1952 Act is reproduced as under:-

“Section 4 : Payment of electricity duty and interest thereon

[(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.

(2) Where the amount of electricity duty is not paid to the State Government within the prescribed period as aforesaid, the licensee, the Board or other person mentioned in clause (c) of sub-section (1), as the case may be, shall be liable to pay within such period as may be prescribed, interest at the rate of eighteen per cent. per annum on the amount of electricity duty remaining unpaid until payment thereof is made.”

16. Under Section 5 of the 1952 Act it shall be obligatory on the part of licensee to maintain such record in such a manner as prescribed by the Government which includes unit of energy generated or received by it and energy supplied to the consumer or consumed by him. The amount of electricity duty payable by the consumer may be verified by the Government. Section 7 empowers the Government to make recovery on account of electricity duty or interest or penal duty in case not paid within the prescribed period. For convenience, Section 7 and 8 of the 1952 Act are reproduced as

under:-

Section 7 Recovery of electricity duty, etc.

(1) Any sum due on account of electricity duty or interest or penal duty under Section 3, Section 4 or Section 4-B, if not paid within the prescribed period to the State Government, shall be recoverable as an arrear of land revenue--

(a) in the case of energy supplied or consumed by a licensee,--from the licensee;

(b) in the case of energy supplied or consumed by the Board,--from the Board; and

(c) in the case of energy consumed by any other person generating it,--from the person liable to pay such duty under this Act.

(2) Without prejudice to the provisions of sub-section (1) the State Government may,--

(a) in the case of any such sum as aforesaid being due from a licensee' or the Board, deduct the sum from any amount payable by the State Government to the licensee or the Board; or

(b) in the case of any sum as aforesaid being due from a licensee, requiring the Board to deduct the sum from any amount payable by the Board to the licensee and to pay the sum so deducted to the State Government].

Section 8 : Penalties

(1) If any person--

(a) required by Section 5 to keep record or to submit returns fails to keep or submit the same in prescribed manner or form, or

(b) intentionally obstructs an inspecting officer appointed under Section 6 in the exercise of his powers and duties under this Act and the rules, or

(c) contravenes any rule,

he shall be liable, on conviction before a Magistrate, to a fine not exceeding two hundred rupees.

[(2) If any person keeps any record or submits any return specified in Section 5, which he knows or has reasonable cause to believe to be false or not

true in any material particular, he shall be punishable with a fine not exceeding one thousand rupees.]

17. Uttar Pradesh Electricity (Duty) Rules 1952 (in short hereinafter referred as 1952 Rules) contains the provision with regard to installation of meter, manner and time, payment of duty, interest as well as penalty. Rule 4 of the 1952 Rules deals with the *manner of calculating duty*. It provides that duty shall be computed on the total consumption for the period intervening between the reading of electricity meter consumed immediately preceding and immediately following September 1, 1970, and that Rule 4 may not be given effect unless the meter is installed to find out the total electricity consumed.

18. Rule 10 deals with the power of entry by inspecting officers whereas Rule 11 deals with the other duty and duty of inspecting officers. For convenience Rule 10 and 11 of the 1952 Rules are reproduced as under:-

“[11. Other powers and duties of the Inspecting Officers.--An Inspecting Officer shall, as often as may be necessary inspect the books of accounts kept and returns submitted by a licensee, appointed authority or other person, under Rules 7 and 8 respectively and apply a detailed test of individual entries for verifying the particulars noted by the licensee, appointed authority or other person, so far as they are connected with the levy and payment of duty, as shall also verify all entries and records relating to--

(i) exemption from duty, and
(ii) adjustments, authorised and actually effected by the licensee, appointed authority or other person.

(2) The Deputy Electrical Inspector, after giving

the licensee, appointed authority of the Board and other persons reasonable opportunity of being heard, shall determine the amount of penalty to be imposed for evading or attempting to evade the payment of duty, assess the amount of duty for such period and notify the amount of duty/penalty in writing to the licensee, appointed authority or other person, as the case may be.

(3) The Deputy Electrical Inspector, after giving reasonable opportunity to the licensee, appointed authority or other person of being heard, in the event of any of the seals fixed on the meter by an inspecting officer under sub-rule (b) of Rule 10 being found broken at the time of any subsequent inspection, shall estimate the amount of the energy supplied or consumed during the period between the date of affixing the seal and the date on which the same is found tampered. He shall also determine the amount of penalty to be imposed for such default and notify to the licensee, appointed authority or other person, in writing the amount of penalty as well as of the duty payable.

In cases where no appeal is preferred against the order of the Deputy Electrical Inspector, the Electrical Inspector may, if considered necessary by him, revise the order of the Deputy Electrical Inspector and may either maintain the order or enhance or reduce the estimated quantity of energy supplied or consumed as above and accordingly reduce or enhance the amount of duty and/or penalty.]”

19. A combined reading of Rule 10 and Rule 11 reveals that Inspecting Officer may verify book of accounts kept and returns submitted by the licensee.

20. Admittedly assessment order has been passed and notice has been issued followed by recovery proceeding in pursuance to decision taken under Rule 11 of the 1952 Rules. Under Rule 13-A of the 1952 Rules appeal lies against the assessment order. For convenience Rule 13-A of the 1952 Rules is reproduced as under:-

“ [13A. *Appeal*--

(1) *An appeal shall lie to the--*

(a) or sub-rule (3) of Rule 11 and his decision except for the amount of penalty under sub-rule (2) or sub-rule (3) of Rule 11 shall be final.

(b) Electrical Inspector against the order of Deputy Electrical Inspector given under Rule 13 or under sub-rule (2) of Rule 14 and the decision of the Electrical Inspector shall be final.

(c) Authority appointed generally or specially by the State Government, against the decision of the Electrical Inspector with regard to the amount of penalty only given under clause (a) above in appeal under sub-rule (2) or sub rule (3) of Rule 11 and its decision shall be final.

(2) Every appeal shall be in writing, duly accompanied by a copy of the order or decision appealed against and a receipted copy of the treasury challan in token of payment of fee prescribed under Rule 13-B.

An appeal shall not be entertained beyond a period of 90 days from the date of the service of the order appealed against.]

21. It shall be appropriate to consider the cases relied upon by the learned counsel for the petitioner and respondent State.

22. In **Bank of Chettinad Ltd. Vs. Commissioner of Income Tax, Madras** Privy Council held that if a person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be.

23. In **Hansraj Gorddhan Das Vs. H. H. Dave, Assistant Collector Central Excise and Customs** (supra), their Lordship of

Hon'ble Supreme Court held that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words. The entire matter is governed wholly by the language of the notification. If the tax-payer is within the plain terms of the exemption it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority.

24. In **Renusagar Power Co. Ltd. vs. State of U.P. And others** (supra) Hon'ble Supreme Court held that where energy consumption by the petitioner is proved to be not consumed in the premises used by it for commercial purpose no duty may be imposed.

25. In **M/S Swaroop Vegetables Products Industries Ltd. Etc. vs. State of U.P. And others** (supra) a plea and argument advanced by the appellant before Hon'ble Supreme Court 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. Argument was negatived by the High Court on the ground that exemption was granted having regard to the need to promote industrial production generally and to the prevailing acute power shortage in the State. Their Lordship held that in view of acute power shortage and with intention 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, government had rightly took a policy decision with prospective effect with regard to those consumer who install their own source of generation of energy pursuant to the

concession being granted under the provision for exemption. Classification made on the principle of prospectivity was held to be correct by the Hon'ble Supreme Court.

26. In **Cholan Roadways Ltd. Vs. G. Thirugnanasambandam** (supra) Hon'ble Supreme court held that error of fact can also be a subject-matter of judicial review. Relevant portion from the judgement is reproduced as under:-

“Errors of fact can also be a subject-matter of judicial review. (See E. v. Secy. Of State for the Home Deptt.) Reference in this connection may also be made to an interesting article by Paul P. Craig, Q.C. Titled “Judicial Review; Appeal and Factual Error” published in 2004 Public Law, p. 788.”

Hon'ble Supreme Court had interfered the factual controversy over long pendency of the matter and being satisfied from material on record.

27. In **(2005) 3 SCC 254, Divisional Controller, KSRTC (NWKRTC) Vs. A.T. Mane** Hon'ble Supreme Court reiterated the aforesaid proposition of law with regard to court's right of judicial review in a matter involving disputed question of fact.

28. In **Siemens Ltd. Vs. State of Maharashtra and others** (supra) Hon'ble Supreme Court upheld the court's right to interfere in a petition questioning a show cause notice. Their Lordship held that when a notice is issued with premeditation or without jurisdiction writ petition shall be maintainable.

29. Same proposition has been reiterated in the case of **Uttamrao Shivadas Jankar Vs. Ranjitsinh Vijaisinh Mohite-Patel** (supra).

30. The contention of the petitioner's counsel does not seem to be a question of dispute and courts have got power of judicial review even in a matter where disputed question of law is involved but that would depend upon the facts and circumstances of each case. It is further not disputed that a taxing event should be followed strictly even if it causes hardship to someone. Tax may be imposed only in case the statute enables the authorities to impose such tax or duty.

31. Reliance placed by Shri H. P. Srivastava, learned Additional Chief Standing counsel is second face of coin where Hon'ble Supreme Court declined to interfere with disputed question of fact and law involved or where in tax matter a person has got adequate alternative remedy under the statute.

32. In **Titaghur Paper Mill** (supra) the assessing order was subject matter of dispute during the course of judicial review. Their Lordship held that where a decision of the assessing authority requires to be impugned it should be done before the statutory authority provided under the Act or statute. To quote relevant portion as under:-

“8. No such question arises in a case like the present where the impugned orders of assessment are not challenged on the ground that they are based on a provision which is ultra vires. This is a case in which the entrustment of power to assess is not in dispute and the authority within the limits of his power is a Tribunal of exclusive jurisdiction. The challenge is only to the regularity of the proceedings before the

learned Sales Tax Officer as also his authority to treat the gross turnover returned by the petitioners to be the taxable turnover. Investment of authority to tax involves authority to take transactions which in exercise of his authority the taxing officer regards as taxable and not merely authority to tax only those transactions which are, on a true view of the facts and the law, taxable. 11. Under the scheme of the Act, there is a hierarchy of authorities before which the petitioners can get adequate redress against the wrongful acts complained of. The petitioners have the right to prefer an appeal before the prescribed authority under sub-s. (1) of s. 23 of the Act. If the petitioners are dissatisfied with the decision in the appeal, they can prefer a further appeal to the Tribunal under sub-s. (3) of s. 23 of the Act, and then ask for a case to be stated upon a question of law for the opinion of the High Court under s. 24 of the Act. The Act provides for a complete machinery to challenge an order of assessment and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Art. 226 of the Constitution. It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of.”

33. In the case of **Assistant Collector Central Excise** (supra) their Lordship of Hon'ble Supreme Court held that power conferred under Article 226 of the Constitution of India is not to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, power of judicial review may be exercised under Article 226 of the Constitution of India. To quote relevant portion which is as under:-

“Article 226 is not meant to short circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in

question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it, that recourse may be had to Art. 226. The Court must also have good and sufficient reason to by-pass the alternative remedy provided by statute. Matters involving the revenue where statutory remedies are available are not such matters. The vast majority of the petitions under Art. 226 are filed solely for the purpose of obtaining interim orders and thereafter to prolong the proceedings by one device or the other. This practice needs to be strongly discouraged.”

34. In **Raj Kumar Shivhare** (supra) Hon'ble Supreme Court reiterated the aforesaid principle and held that when statutory forum is created for redressal of grievances and that too in a fiscal statute a writ petition should not be entertained ignoring the statutory provisions. The statutory forum of appeal should not be abdicated and given a go by by a litigant for invoking the forum of judicial review of the High Court under writ jurisdiction. The High Court fell into a manifest error by not appreciating this aspect of the matter. Their Lordship concluded the finding as under:-

“In this case, liability of the appellant is not created under any common law principle but, it is clearly a statutory liability and for which the statutory remedy is an appeal under Section 35 of FEMA, subject to the limitations contained therein. A writ petition in the facts of this case is therefore clearly not maintainable.”

35. In **United Bank of India vs. Satyawati Tondon and others** reported in **(2010) 8 SCC 110**, their Lordship held that in financial matters involving government revenue, interference by the court should be very cautiously and held that in a matter under the

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 High court should loath to interfere.

36. In **Union of India limited** (supra) Hon'ble Supreme Court held that only under exceptional circumstances court may interfere by passing the statutory remedy that too when statutory authority has not acted in accordance to statutory provisions of the enactment in question or in defiance of the fundamental judicial procedure or resorted to invoke the provisions which are repealed, or order has been passed in utter disregard of the principles of natural justice.

37. In **Zunaid Enterprises** (supra) Hon'ble Supreme Court reiterated that in the event of availability of alternative statutory remedy ordinarily court should not interfere under the writ jurisdiction more so when the controversy involved mixed question of law and fact.

38. In **Commissioner of Central Excise** (supra) Hon'ble Supreme Court ruled that notification should be read on its own and no analogy should be drawn from another notification.

39. In the case of **Dalip Singh** (supra) Hon'ble Supreme Court deprecated new breed of dishonest litigants and declined to grant any relief.

40. On behalf of State a case has been set up that petitioner has not installed any meter to find out the actual electricity consumption and also not intimated the respondents with regard to decrease of

efficiency of six generating sets. The letter dated 5.1.1979 was received on 16.4.1984 by the office of respondents. It has further been stated that during the course of inspection by respondent no.2 the petitioner had not shown any record of accounts regarding energy generated during period from 5.1.1979 to 20.12.1981. To avail exemption from payment of electricity duty to the extent of 10 percent the petitioner should have installed meter in working condition for recording consumption of auxiliaries which has alleged to be not done.

41. Further it has been stated by the respondents that assessment was made on all the turbo generating sets which were running and assessment was made on the basis of crushing hours of the mill and so far as consumption of auxiliaries is concerned, the percentage adopted was standard percentage which has been allowed also to other sugar mills.

42. The factual controversy on record seems to involve mixed question of fact and law. Power of appellate court or the civil court is much wider than the power of this court available under Article 226/227 of the Constitution of India vide **2003 (VI) SCC 220, Dwarka Prasad Agarwal and another Versus Ramesh Chander Agarwal and others, 2003 (VII) SCC 66, Dipak Chandra Ruhidas Versus Chandan Kumar Sarkar, 2003 (V) SSC 395, Bimal N. Desai Versus State of Karnataka and others, 2003 (VII) SCC 410 National Highway Authority of India Versus Ganga Enterprises**

and 2001 (10) SCC 617 Union of India and others Versus Ingersoll Rand (India) Ltd.

43. It shall not be possible for this Court while exercising power conferred by Article 226 of the Constitution of India to resolve the factual controversy on record. Whether the assessment order has been passed imposing duty is based on correct appreciation of facts and material on record or not is a disputed question of fact. Further whether petitioner has installed meter or it was possible to find out the actual consumption by the auxiliaries is also a disputed question of fact. Appellate authority has got wider power than this court to enter into factual controversy on record and also to decide question of fact and law. Our hands are tight and it is not possible for this Court to ascertain the factual dispute on record on the basis of summary proceeding in a petition filed under Article 226 of the Constitution of India. It is well settled proposition of law that where mixed question of fact and law are involved ordinarily this court should refer the matter to statutory authority.

44. In view of above no finding of fact may be recorded by this court in view of serious contest between the parties from the pleading on record with regard to assessment done by the order contained in Annexure-10 to the writ petition. Moreover petitioner had himself paid an amount of Rs. 2,13,685.73/- to the respondents raising objection to remaining amount.

45. Though the petition is pending in this court since last 30 years

and order-sheet shows how the case could not be decided by this Court in spite of the fact that it was listed repeatedly, but there is no option except to remit the matter back to the appellate authority.

46. Keeping in view the special facts and circumstances on record and without creating any future precedent for other case, we permit the petitioner to prefer an appeal within a month from today before the appellate authority under Rule 13 A of the U.P. Electricity Duty Rules 1952. The appellate authority shall decide the appeal by passing a speaking and reasoned order expeditiously say within a period of four months. For the period of six months or till disposal of appeal whichever is earlier, status-quo as exists today shall be maintained by the parties.

47. Subject to above writ petition is disposed of finally. No order as to costs.

Order Date :-24.11.2014

Madhu
