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**(1976) 04 AHC CK 0030**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 9990 of 1975

Deoria Sugar Mills Ltd.

APPELLANT

Vs

State of U.P.and another

RESPONDENT

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**Date of Decision :** 28-04-1976

**Acts Referred:**

Constitution of India, 1950 — Article 226

Uttar Pradesh Electricity (Duty) Act, 1952 — Section 3(1)(c), 4, 4A

**Citation :** (1976) 04 AHC CK 0030

**Hon'ble Judges :** Yashoda Nandan, J;C.S.P.Singh, J and N.D.Ojha, J

**Final Decision :** Dismissed

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## Judgement

N. D. Ojha, J.

The petitioner is a public limited company duly incorporated under the Indian Companies Act. It owns and operates a sugar factory at Deoria known as Deoria Sugar Mills Limited. For the working of the said factory electrical energy is needed which is supplied to the petitioner by the State Electricity Board. The electrical energy as supplied by the Board not being sufficient for the petitioner's sugar factory during the seasons, the petitioner also generates its own electricity during the crushing season by employing its own generating sets. The U. P. Electricity (Duty) Act, 1952 (hereinafter referred to as the Act) provides for the levy and recovery of electricity duty. Prior to its amendment by U. P. Act No. 2 of 1971 no duty was payable in respect of energy consumed by a person from his own source of generation. By U. P. Act No. 2 of 1971 the Act was amended whereby under Section 3 (1) (c) duty became payable on the energy consumed by any other person from his own source of generation. Recovery notices dated 25/1/1975 and 19/1/1975 were issued against the petitioner. It appears that a sum of Rs. 6,607.65 was also recovered from the petitioner. Aggrieved, the petitioner instituted the present writ petition with a prayer for the issue of a writ of certiorari quashing the recovery notices aforesaid, for a writ of mandamus restraining the respondents namely the State of Uttar Pradesh and the Assistant Electrical Inspector, Uttar Pradesh State, Gorakhpur Division, Gorakhpur, from

realising any electricity duty on the selfgenerated energy at the source of its own generation and also for a direction requiring the respondents to refund the sum of Rs. 6, 607. 65 already recovered by them from the petitioner.

Reliance in support of the writ petition was placed on the decision of a Division Bench of this Court in Civil Misc Writ No. 2029 of 1974 (Shervani Sugar Syndicate Private Limited v. State of U. P.) dated October 8, 1974, at the time when the writ petition was presented. The Bench before which the writ petition was presented was of the view that the decision in the aforesaid case required reconsideration. It accordingly admitted the writ petition and directed it to be heard by a larger Bench to be named by Hon"ble the Chief Justice. It is thus that the petitioner has come up before this Full Bench.

The only point which was urged by learned counsel for the petitioner before us was that the petitioner being a consumer within the meaning of the Act came within Clause (a) of Section 3 (1) and in view of the words "any other person" in Clause (c) of Section 3 (1) the petitioner was not liable to pay any duty on the energy consumed by it from its own source of generation. In order to appreciate the submission aforesaid it would be relevant to quote subsection (1) of Section 3 of the Act. It reads:

"3. Levy of electricity duty...(i) 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") determined at such rate or rates as may from time to time be fixed by the State Government by notification in the Gazette, and such rate may be fixed either as a specified percentage of the rate charged or as a specified sum per unit.

(2)....."

It was urged that the words "any other person" used in Clause (e) of Section 3 (1) on a plain reading of the section were capable of only one interpretation namely that only such persons fell within the purview of that clause who were covered neither by Clause (a) nor Clause (b) of Section 3 (1) and since the petitioner was also a consumer within the meaning of the Act inasmuch as it was being supplied with energy by the State Electricity Board it came under Clause (a) and was excluded under Clause (c). In other words the argument was that Clause (c) applied only to such person who did not consume electricity other than one generated from his own source of generation. A similar argument had been advanced in the case of Shervani Sugar Syndicate (supra). While accepting

the said argument it was held:

"In the context the only meaning that can be given to the words "any other person" used in Clause (c) is any person other than the person consuming energy referred to in Clauses (a) (b) of Section 3 (1). Provision for levy of duty on energy consumed by a consumer has been made in Clause (a). Under that clause such a consumer has been made liable to duty only in respect of energy sold to it by a licensee or a Board or the State or Central Government. Similarly Clause (b) deals with the circumstances in which the energy consumed by a licensee or Board becomes liable to duty. Under Clause (c) the energy consumed by persons other than consumers, or licensee or Board have been made liable to duty if it be from their own source of generation. A consumer i. e. a person who purchases energy from a licensee, a Board or the State or the Central Government not being a person covered by the expression "any other person" as used in Section 3 (1) (c), he does not become liable to duty under that clause in respect of energy consumed by him from his own source of generation. His case would obviously not be covered by Clause (b) and duty under Clause (a) is chargeable from him only in respect of the energy which he purchases from a licensee or Board or the State or Central Government. It follows that under the Act, no duty is payable on the energy consumed by a consumer from his own source of generation."

It was also urged that the meaning of the statute which is a taxing statute being clear, this said meaning had to be given effect to. Reliance was placed on *Janapada Sahha v. C. P. Syndicated* (A.I.R. 1971 S.C. 57), where the following observation of Rowlatt, J. in *Cape Bandy Syndicate v. Commissioners of Inland Revenue* ((1921) 12 Tax Cases 358), was quoted with approval;

"In a taxing Act one has to look merely at what is clearly stated. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax, nothing is to be read in, nothing is to be implied. One can only look fairly the language used."

Reliance was also placed on *State of Punjab v. Jullundur Vegetables Syndicate* (A.I.R. 1966 S.C. 1295), in paragraph 5 whereof it was held;

"It is a settled rule of construction that in interpreting a fiscal statute the Court cannot proceed to make good the deficiencies, if there be any, in the statute, it shall interpret the statute as it stands and in case of doubt it shall interpret it in a manner favourable to the taxpayer."

In so far as the rule of interpretation in regard to fiscal statutes is concerned as laid down in the aforesaid two cases there is no scope for any doubt. Indeed, the Standing Counsel appearing for the respondents has not challenged that the correct rule of interpretation in regard to fiscal statutes was the one as enunciated in the aforesaid two cases.

The question which, therefore, remains for consideration is whether on a plain

reading of Section 3 (1) the submission made by counsel for the petitioner is acceptable. From the extract quoted above from the decision in Shervani Sugar Syndicate's case (supra), it would appear that the learned Judges proceeded on an assumption that under Clause (a) of Section 3 (1) it is the "consumer" who is made liable to duty in respect of energy sold to it by a licensee or a Board of the State or the Central Government. Counsel for the petitioner also advanced his submissions on the same assumption and it was on its basis that it was urgent since the petitioner being a "consumer" was covered by Clause (a) he was excluded from liability to pay duty under Clause (c) in view of the plain meaning of the words "any other person". For the respondents it was urged by the Standing Counsel that the words "any other person" were referable only to the persons liable to pay duty under Clause (b) of Section 3 (1) and not to those coming under Clause (a). Emphasis was laid on the fact that Clause (a) referred to energy sold to consumer whereas Clauses (b) and (c) referred to the energy consumed by the various persons mentioned therein.

In our opinion, it is not necessary to decide as to whether the contention made by the Standing Counsel is correct inasmuch as even if the submission made by counsel for the petitioner is accepted, the petitioner would still be liable under Clause (c) of Section 3 (1). The reason for this view is simple. As pointed out above, the submission made by counsel for the petitioner as well as the view taken by the Division Bench in Shervani Sugar Syndicate's case proceeds on the assumption that under Clause (a) of Section 3 (1) it is the consumer as denned in the act who is liable to pay duty. In our opinion, there is no basis for such an assumption. Section 3 is the charging section and it speaks of duty being payable on the energy. Strictly speaking, it does not refer to the person from whom such duty is payable. It is true that when some duty is payable in respect of energy it must be payable by some person. It is only in that context that the person who is liable to pay the duty has to be found out. For this purpose Section 4/3 does not throw any light. The relevant section in this behalf is Section 4 of the Act as it stands after the amendment by U. P. Act No. 2 of 1971. It reads:

4. Payment of electricity duty and interest thereon. 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 the other person mentioned in Clause (c) of subsection (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."

Reading Sections 3 and 4 together it would be seen that the word "sold" in Clause (a) of Section 3 (1) can be interchanged with the word "supplied" in Clause (a) of Section 4. The duty in respect of energy sold or supplied to a consumer by a licensee within the meaning of Clause (a) of Section 3 (1) is payable by the licensee and not by consumer in view of Clause (a) of Section 4. Likewise the duty in respect of energy sold or supplied to a consumer by the Board, the State Government or the Central Government within the meaning of Clause (a) of Section 3 (1) is payable by the appointed authority under Clause (b) of Section 4. The duty in respect of energy consumed by a licensee contemplated by Clause (b) of Section 3 (1) is payable by the licensee under Clause (a) of Section 4 whereas the duty payable in respect of the energy consumed by the Board is payable by the appointed authority under Clause (b) of Section 4. The petitioner claimed only to be a consumer within the meaning of Section 2 (d) of the Act. It neither claims to be nor is either an appointed authority within the meaning of Section 2 (a) or licensee within meaning of Section 2 (f). The persons who are liable to pay duty under Clauses (a) and (b) of Section 3 (1) being either the licensee or the appointed authority the petitioner does not fall within either category. In this view of the matter even if the submission made by the counsel for the petitioner that the words "any other person" in Clause (c) referred to persons other than those covered by Clauses (a) and (b) is accepted, the petitioner is clearly liable to pay duty in respect of energy consumed by it from its own source of generation inasmuch as it is not covered either under Clause (a) or Clause (b) for the simple reason that it is neither the appointed authority nor a licensee.

That the person referred to in Clause (a) of Section 3 (1) who was sought to be excluded by "any other person" in Clause (c) was not the consumer finds support even from the difference in the phraseology of Clause (a) of the said section on the one hand and Clause (b) and (c) on the other. Whereas Clauses (b) and (c) start with the words "consumed by" Clause (a) starts with "sold". The emphasis was obviously laid on the seller in place of the consumer because under Section 4 it was the seller namely the licensee or the appointed authority on behalf of the remaining sellers referred to in Clause (a) who was made liable to pay the duty. If the consumer was the person referred to in Clause (a), the object of this clause would have been better achieved by saying "consumed by a consumer". It was urged that the difference in the phraseology may have been the result of a desire to avoid repetition of the words "consumed by". If that was the purpose it would have certainly been better served by using the words "consumed by" at one place only in the entire Section 3 (1) after the word "energy" and before the colon occurrence prior to Clause (a) and by having a such simpler Clause (a) as; (a) a consumer". The definition of the term "consumer" under Section 2 (d) would have included everything contained in the present Clause (a). By doing so

the Legislature could have avoided the use of the words "consumed by" in Clauses (b) and (c) also.

To a layman and in common parlance the expressions "sold to a consumer by....." and "purchased by a consumer from..." may look alike in substance but those conversant with taxation laws relating to sales and purchases are aware that the terms "seller" and "purchaser" or "sold" and "purchased" have different connotations and have their own relevance in determining the person who is liable to pay tax. The use of the expression "sold to a consumer by....." in place of "purchased by a consumer from....." in Clause (a) is also a pointer to the fact that the emphasis in the said clause is on the seller and not the purchaser. The expression "any other person" in Clause (c) would, therefore, in so far as Clause (a) is concerned exclude the seller namely the licensee and the Board etc. and not the consumer who is the purchaser.

It thus appears that so far as the liability to pay duty in respect of energy referred to in Clause (a) is concerned the Legislature avoided to touch the consumer even with a pair of tongs. Indeed the consumer has not at all been made liable to pay duty to the State Government directly in respect of energy referred in Clause (a) as is clear from Section 4A of the Act as it stands after its amendment by U. P. Act No. 2 of 1971. It reads:

"4. A reimbursement of electricity duty from consumers. (1) The amount of electricity duty payable under Section 3 on the energy supplied to a consumer by a licensee, the State Government, the Central Government, or the Board, may be recovered by the licensee or the appointed authority, as the case may be, from the consumer.

(2) For the purpose of recovering the amount of electricity duty from the consumer, the licensee or the appointed authority, as the case may be, may, without, exercise the powers conferred on the licensee under subsection (1) of Section 24 of the Indian Electricity Act, 1910 (Act IX of 1910), as if the duty were a charge or sum due in respect of energy supplied to such consumer."

Section 4A authorises the licensee to recover the duty paid by it in respect of energy sold by it to a consumer from the said consumer. The duty which a consumer has, therefore, to pay in respect of energy purchased by him from a licensee is because of the requirement of Section 4A and not because it is a person liable to pay duty under Clause (a) of Section 3(1). Even at the risk of repetition it may be pointed out that the person liable to pay duty under Clause (a) of Section 3 (1) in respect of energy sold to a consumer is either the licensee or the appointed authority in view of Clauses (a) and (b) of Section 4 of the Act. It is only in respect of the energy consumed by the petitioner from its own source of generation within the meaning of Clause (c) of Section 3 (1) that the petitioner would be liable to pay duty under Clause (c) of Section 4. The petitioner is thus even on a plain reading of the relevant section liable to pay the duty in respect of which the impugned notices have been issued and a portion of

which has also been recovered from it.

As seen above Section 3 is the charging section. It levies duty on energy by categorising electrical energy into three categories, and makes all of them liable to duty. The first category is electricity which is sold to a consumer by a licensee, the Board, the State Government or the Central Government. The Second category is that which is consumed by a licensee or a Board. The third category is that which is consumed by any other person from his own source of generation. It is not disputed in the present case that electrical energy is generated by the petitioner and is also consumed by him. The only contention is that it is not "any other person" as contemplated by Section 3 (1) (c). We find it difficult to accept this contention. The mere fact that in respect of first category of electrical energy the petitioner is a consumer would not mean that it would not fall within the words "any other person" as used in Sections (1) (c) of the U. P. Electricity (Duty) Act, 1952,, The words "any other person" are of very wide amplitude and their width cannot be curtailed by the mere fact that the petitioner is also a consumer for the purposes of the first category of electrical energy. The petitioner has really two capacities, one, that of a consumer as respects the first category of energy and two, it answers the description of the words "any other person" so far as the third category of energy is concerned. The change in Section 3 was brought in by the Amending Act of 1971 and as is obvious was made in order to charge selfgenerated electricity to duty. It is not disputed that persons who do not take any electricity of the first category would, as respects their selfgenerated electricity, be liable to duty. It would be anomalous, and in fact would frustrate the object of the legislation to hold that person who draw supplies from two sources viz., from the licensee, or the Board or the State Government, or the Central Government, and who also generate their own electricity, would, as respects their selfgenerated electricity be liable to any duty at all. Neither the phraseology of the charging section, nor any rule of integration or equity impels us to accept this contention. The decision in the case of Shervcmi Sugar Syndicate (supra), in so far as it holds that a consumer to whom energy is sold within the meaning of a Section 3 (1) (a) of the Act would not be liable to pay duty in respect of energy consumed "from his own source of generation" within the meaning of Section 3 (1) (c) does not lay down the law correctly.

In view of the above conclusions, the petitioner is not entitled to any relief and the petition is liable to be dismissed. It is accordingly dismissed with costs.