(2011) 04 GUJ CK 0208

In the Gujarat High Court

Case No : Letters Patent Appeal No. 2325 of 2010 in Special Civil Application No. 13969 of 1993

Gujarat Hotel Limited and Another — APPELLANT

Vs

State of Gujarat and Others — RESPONDENT

Date of Decision : 27-04-2011

Acts Referred:

Bombay Electricity Duty Act, 1958 — Section 2, 3, 3(1), 3(2), 3(2AA)
Constitution of India, 1950 — Article 14
Electricity (Supply) Act, 1948 — Section 2(4A), 5
Electricity Act, 1910 — Section 24(1), 28
Environment (Protection) Act, 1986 — Section 3(2)

Citation : (2011) 04 GUJ CK 0208

Hon'ble Judges : S.J. Mukhopadhaya, C.J;J.B. Pardiwala, J

Bench : Division Bench

Advocate : S.N. Shelat and A.S. Asthavadi,s 1 - 2, for the Appellant; Manisha Lavkumar, AGP for Respondents 1 to 2 and H.S. Munshaw, for Respondent 3, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, C.J.—The Appellant-original Petitioners have challenged the order dated 14.6.2010 passed by the learned Single Judge in the writ petition-Special Civil Application No. 13969 of 1993. While partially allowing the writ petition, the learned Single Judge held that Petitioner Nos. 1 and 3 are liable to pay interest at the applicable rate on the outstanding amount of electricity duty, commencing from 11.11.1993 till the actual date of payment.

2. The case of the Appellant-original Petitioners is that Gujarat Hotels Ltd. (hereinafter referred to as "the 1st Petitioner Company") was promoted in the year 1982 as a joint sector Company by M/s Gujarat Industrial Investment Corporation Ltd. ("GIIC" for short), a Government of Gujarat Undertaking. The Company was so promoted with the object of promoting hotels. On 18.1.1984, a shareholders agreement was reached by GIIC regarding the 1st Petitioner

Company with ITC Ltd., by which it was agreed between GIIC and ITC Ltd. that GIIC shall take up 26.1% of the equity share capital of the 1st Petitioner Company and ITC Ltd. shall take up 24.9% of the equity share capital. The balance of the equity was to be offered for public subscription in India. Further case of the Petitioners is that the aforesaid step of establishment of the 1st Petitioner Company (hotel) was taken up at the instance of the State Government, through GIIC. The joint sector Company-the 1st Petitioner Company became sick for the reasons recorded in the meeting dated 4.10.1990. In the said meeting, in presence of the Chief Secretary of the Government of Gujarat, Chairman and Managing Director of GIIC, representatives of financial institutions and ITC Ltd., it was agreed that the 1st Petitioner Company, a joint sector Company be revived and the promoters alongwith the financial institutions agreed to make contributions/sacrifices in net present value terms as mentioned hereunder:

(i) Government of Gujarat/GIIC Rs. 110 lacs

(ii) ITC Ltd. Rs. 126 lacs

(iii) Financial Institutions Rs. 83 lacs

The parties further decided how they are going to make their agreed contributions and as such the financial institutions made their contributions by reduction/waiver of interest charged. ITC Ltd. made contribution by deferment of fee which was due and payable and further made loans to pay financial institutions. Besides, ITC Ltd. agreed to purchase GIIC''s investment in the 1st Petitioner Company @ 12.50 per share also to operate the hotel for 30 years @ a minimum lease rental of Rs. 60 lacs. The Government of Gujarat through GIIC agreed to make their contributions by providing interest free loans in the shape of deferment of taxes for a period of four years to be retained by the 1st Petitioner Company as interest free loans which was worked out to be Rs. 110 lacs as agreed. Pursuant to the said minutes of the meeting, the financial institutions were paid off by ITC Ltd. giving loans to the 1st Petitioner Company, and bought over the equity of GIIC at the price agreed and took the hotel on operating license basis with minimum guarantee. The Government of Gujarat after noticing that GIIC is relieved of equity burden, and having off loaded the shares to ITC Ltd. at the agreed price, withdrew all the deferment of taxes which included sales tax, luxury tax, purchase tax and electricity duty on the ground that the Government was not authorized to do so under the Act by issuing two resolutions.

3. By one resolution dated 8.6.1993 issued from Industries and Mines Department, the concession of deferment of luxury tax was withdrawn by the Government of Gujarat. By another resolution dated 11.11.1993, issued from the Ministry of Industries and Mines Department, the concessions regarding deferment of electricity duty, deferment of sales tax and deferment of purchase tax were withdrawn by the Government of Gujarat.

4. The aforesaid resolutions withdrawing the deferment of taxes were challenged by the Petitioners by filing two writ petitions-Special Civil Application Nos. 6896 and 13969 of 1993. As noticed above, partial relief was granted by the learned Single Judge in favour of the Petitioners, but no relief having granted so far as it relates to deferment of duty, the present appeal has been preferred.

5. By the impugned judgment dated 14.6.2010, the learned Single Judge accepted the contention raised on behalf of the Petitioners that there was an assurance given on behalf of the State Government to grant concessions and/or financial benefits to the Petitioners. Having so held, the learned Single Judge allowed the Special Civil Application challenging the resolution withdrawing the concession of luxury tax (SCA No. 6896 of 1993) and quashed the circular withdrawing the deferment of luxury tax and purchase tax and observed as follows:

The Petitioner had changed his position and has made their sacrifices in terms of agreement between the parties and, therefore, so far as Resolution withdrawing the concessions for luxury tax, sales tax and purchase tax concerned are quashed.

The learned Single Judge, however, did not grant the same benefit in respect of deferment of electricity duty.

The learned Single Judge held that the State Government was not vested with power to grant concession of deferment of electricity duty and, therefore, rejected the writ petition.

6. Mr S.N. Shelat, learned Senior Counsel with Mr. A.S. Asthavadi, appearing on behalf of the Appellant-Petitioners would contend that the learned Single Judge failed to deal with the submissions made on behalf of the Petitioners on the basis of the contract contained in the minutes of the meeting dated 4.10.1990 which deal with the individual contributions to be made by various contributories in the present day terms; the Government of Gujarat chose to make such contributions in the deferment of taxes. The said minutes, besides dealing with deferment of taxes, deal with many other rights and obligations amongst the parties and the learned Single Judge erred in considering while rejecting the claim of the Petitioners on the powers of the State Government to defer electricity duty under the statute and ignoring the plea of the Petitioners with regard to the contract that it would cause serious prejudice to the Petitioners as that raises the basic issue relating to the existence of the contract between the parties which has already been acted upon by the contributories. The State Government sought to recile from the said agreement to the prejudice of the other party which it was not permitted to do so and in case the State Government decided that it was not so entitled to do the same, it was obliged to make good the shortfall agreed to be contributed by the State Government.

7. The learned Counsel for the Petitioners relied upon the judgment of the Supreme Court in the case of Gujarat State Financial Corporation Vs. Lotus

Hotels Pvt. Ltd., wherein the Supreme Court held that the Appellant of the said case would be unreasonable if after having entered into an agreement to rehabilitate the industry did not discharge its obligation to perform its duty as the State.

8. The learned Counsel for the Petitioners would submit that the State Government in the present case had given an assurance and entered into an agreement in its meeting dated 4.10.1990. If the case of the State Government is that by statutory law it cannot grant concession, it was the obligations of the State Government to assist and rehabilitate the 1st Petitioner Company-Gujarat Hotels Ltd. by granting monetary benefit and/or subsidy, as the agreement by the State was not in the sovereign capacity. The obligations under the commercial agreements were required to be discharged by the State.

9. It was submitted that the learned Single Judge was not right in law in holding that the Bombay Electricity Duty Act, 1958 (hereinafter referred to as "the Act") did not empower the State Government to grant concession for deferment of electricity duty. u/s 3 of the Act, it is the State Government which levies electricity duty and the amount collected by the licensee is to be paid to the State Government. Therefore, according to the counsel for the Appellant-Petitioners, the State Government having levied tax if the collection is to be offered to the State Government, the State Government was justified in granting concession of deferment of electricity duty.

Under Sub-section (3) of Section 3 of the Act, provision has been made that the State Government by official gazette may reduce the rate of duty or remit the duty in case of such class of consumers or such class of premises in such area and for such period as the State Government may specify in the notification. The State Government has considered the hotels for grant of remission in the present case by notification dated 26.12.1991.

10. Referring to the decision of the Supreme Court in the case of Ceat Tyres of India Ltd. v. Union of India, reported in JT 2001 (Supp-2) 107, the learned Counsel would contend that normal meaning of the expression "remission" would, under the circumstances, be a reduction or even exemption of duty which would otherwise be payable.

11. It was submitted that the subsequent amendment introduced by the Gujarat Act 8 of 1999 in the existing Section 3(2AAA) being explanatory, is retrospective in its operation and the principle laid down therein would apply in respect of the deferment granted by the State Government in favour of the Petitioners in 1991.

The said argument can be reinforced because immediately after grant of benefit in favour of the 1st Petitioner Company, the State Government has come out with an incentive scheme for tourism by notification dated 20.12.1995 wherein deferment from electricity duty is provided. Under the said resolution, hotels have been granted benefit of deferment of electricity duty. It is, therefore, not open to the State Government now to contend that it was not competent for the

State Government to grant such concession in 1991.

In view of the above, the State Government was justified in issuing the resolution granting benefit of deferment to comply with the assurance given in favour of the Appellants.

12. The learned Counsel for the Appellants would contend that the State Government has treated the 1st Petitioner Company as a class of consumers itself which requires to be rehabilitated because it was promoted on behalf of the State Government in order to promote tourism industry. According to him, a single consumer can also be treated as a class by itself, in absence of any contrary provision. He relied on the Supreme Court decision in the case of State of Himachal Pradesh and another Vs. Kailash Chand Mahajan and others, wherein the Supreme Court upheld the legislation relating to one person being a class by itself. Reliance was also placed on the Supreme Court decision in the case of State of Bihar v. Kalyanpur Cements Ltd. reported in JT 2010 (1) SC 225 wherein the Supreme Court has after considering all the earlier judgments on the subject, held that for grant of concession, the doctrine is not limited to contractual relationship, but even it would apply to the promise intended to create legal relation.

13. Reliance was also placed by the learned Counsel for the Appellants on the decision of the Supreme Court in the case of U.P. Power Corporation Ltd. and Another Vs. Sant Steels and Alloys (P) Ltd. and Others, wherein the Supreme Court accepted the plea of estoppel.

14. It was contended that the State Government has not come out with any plea as regards public interest and it was in the public interest to promote tourism industry. Therefore, it cannot be said that the State Government had no competence to grant benefit under the Act.

15. Ms Manisha Lavkumar, learned AGP appearing on behalf of the State, referring to the provisions of law and the notifications, would contend that the State Government had no power to grant deferment of electricity duty when the notification dated 22.3.1991 was issued. Only in the year 1999, the legislatures empowered the State Government to grant deferment of electricity duty in respect of individual matters. Thus, the benefit conferred by an authority de-hors the statute in favour of the Appellants would not construe estoppel. The learned Counsel for the State would further contend that the estoppel, acquiescence and waiver are principles of equity and would not apply against a statute. There can be no estoppel against a statute. The action of the State Government in extending the deferment to the 1st Petitioner Company-Gujarat Hotels Ltd. by notification dated 22.3.1991 was clearly beyond the powers of the State.

She would further contend that under Sub-section (3) of Section 3 of the Act, the State Government has been empowered to grant reduction and remission in respect of "a class of consumers", but it cannot grant it in individual cases. The package offered to the 1st Petitioner Company was exclusively for Gujarat Hotels

Ltd. and not for all those who are in the hotel business industry.

16. So far as the State Government resolution dated 20.12.1995 is concerned, it was contended that the said resolution was issued pursuant to a new tourism policy. Therein, tourism has been accorded status of an industry in order to give boost to the tourism sector by attracting higher investments and to generate employment opportunities. The said new package scheme of incentives remained for the period from 1995 to 2000. The benefit was extended to every new tourism unit. The Appellants cannot derive any benefits of the same as it has not been given retrospective effect.

She placed reliance on the Supreme Court decision in the case of AP Pollution Control Boar II v. M.V. Nayudu reported in (2001) 2 SCC 62. In the said case, granting exemption to a particular polluting industry was held to be violative of Article 14 of the Constitution as favour was shown to a particular industry by granting exemption from the provisions of a prohibitory order u/s 3(2)(v) of the Environment (Protection) Act against establishment of polluting industries in an area.

Reliance was also placed on the Supreme Court decision in the case of State of Rajasthan and Another Vs. J.K. Udaipur Udyog Ltd. and Another, wherein the Supreme Court held that the right to enjoy benefits of exemption is defeasible and, unless barred by principle of estoppel, can be withdrawn in exercise of the very power of granting it.

17. The only question requires to be determined in the present case is whether the impugned resolution dated 11.11.1993 withdrawing the benefit of electricity duty deferment is illegal and bad in law.

18. For determination of such issue, it is necessary to notice the minutes of the meeting dated 4.10.1990 in which Rehabilitation Plan of Gujarat Hotels Ltd. was taken up and approved by persons including the Chief Secretary, Government of Gujarat and some of the officers of the GIIC, a Government of Gujarat Undertaking, including its Managing Director, Executive Director, General Manager, apart from the Chairman, Vice Chairman and Director of ITC Ltd., Chairman of IFCI, Director Incharge of Gujarat Hotels Ltd., Vice President, Finance, Welcome Group. Taking into consideration the sickness of the 1st Petitioner Company - Gujarat Hotels Ltd., the parties agreed to grant certain concessions, relevant portion of which reads as follows:

3. In view of the important role of the hotel industry in the promotion of tourism in the State and given the economic impetus that the hotel industry brings about with its high multiplier effect, all parties agreed that GHL must be revived without any further delay and that all parties must contribute equitably for such a revival. After considerable evaluation of various options, it was agreed that the following will be the respective sacrifices of each party in net present value terms:

(a) Financial Institutions Rs. 83 lakhs

(b) Govt. of Gujarat/GIIC Rs. 110 lakhs

(c) ITC Rs. 126 lakhs

4. It was also agreed that the above sacrifices will be brought about through the following concessions from each party. There may be changes in the exact nature of these concessions, but the net present value of sacrifices as indicated above will be protected.

CONCESSIONS FROM THE FINANCIAL INSTITUTIONS

(a) One time settlement of outstanding loan at the reduced interest rate of 12% simple per annum retrospectively, (as against 14%)

(b) Payment of settlement amount by GHL in two installments, 50% in the first year and the balance 50% in two quarterly installments in the second year carrying 14% simple interest.

(c) Consequent automatic waiver of compounded interest, liquidated damage and additional interest.

CONCESSION FROM THE STATE GOVERNMENT

Deferment of Luxury Tax for four years.

Deferment of Sales Tax for four years.

Deferment of Purchase Tax (State Sales Tax on Input purchases) for four years.

Deferment of electricity duty for four years.

The total quantum of these deferred taxes will be repaid in four annual installments beginning 1995/96.

CONCESSION FROM ITC

(a) ITC to freeze amounts due to it from GHL as at 31.3.91- Rs. 78 lakhs. This amount to be repaid to ITC interest free after repayment of dues to Financial Institutions and State Government.

ITC to contribute a revival advance of Rs. 240 lakhs in two installments interest free to enable payment of dues to Financial Institutions. This will be repaid to ITC from 1993/94 in three annual installments.

ITC to take GHL on an Operating License/lease initially for a period of 30 years and pay a minimum lease rental of Rs. 60 lakhs.

ITC or its nominees to purchase GIIC''s Investment to GHL at the agreed rate of Rs. 12.50 per share or the average of the market price during the six months preceding 31st October, 1990 whichever is higher. Purchase will be concluded as at 31.10.90 and payment made to GIIC immediately.

5. GHL will formally apply to IFCI as lead institution seeking appropriate

concessions.

6. GHL will also formally submit to the Govt. of Gujarat, the revised rehabilitation proposal as agreed herein.

19. In view of the aforesaid decision taken in the rehabilitation plan meeting held on 4.10.1990, the Government of Gujarat issued resolution dated 22.3.1991 granting package of concessions to Gujarat Hotels Ltd. deferring purchase tax, electricity duty, sales tax and luxury tax as quoted hereinbelow:

Grant of package of concessions to Gujarat Hotels Limited jointly promoted by Welcome Group and Gujarat Industrial Investment Corporation Limited.

Government of Gujarat

Industries, Mines and Energy Department,

Government Resolution No. IIC/1090/2283/P,

Sachivalaya, Gandhinagar

Dated the 22nd March, 1991.

Read: 1. Letter dated 6/8/90 from the Director-in-charge

Gujarat Hotels Limited, Vadodara.

2. Letter No. GIIC/P.M.(F)/650 dated 6/9/90 from Managing Director, Guj. Industrial Investment Corporation Limited, Ahmedabad.

Preamble:

The Gujarat Industrial Investment Corporation and Welcome Group (Hotels Division of I.T.C. Limited) jointly formed a company called Gujarat Hotels Ltd. and set up a 5 Star Hotel at Vadodara. During the last 4 years operation of the company has run into severe financial problems. It is incurring cash losses and as on 31/3/90, carry forward losses came to Rs. 292 lakhs as against the total share capital of Rs. 378 lakhs. To rehabilitate the company the promoters have agreed to bring Rs. 124 lakhs, financial institution (IFCI) has agreed to give relief in respect of past interest dues to the tune of Rs. 83 lakhs. The Government of Gujarat sacrifices through deferment of sales-tax, luxury tax and electricity duty etc. comes to Rs. 278 lakhs which is Rs. 91 lakh in terms of net present value.

2. RESOLUTION

After careful consideration, Government is pleased to extend the following concessions as a part of the rehabilitation plan to the Gujarat Hotels Ltd. for a period of 4 years from 1991-92 (i.e. from 1991-92 to 1994-95).

Deferment of purchase-tax by way of interest free loan through GIIC for an equivalent amount of sales-tax paid by the company for purchase of raw materials etc. This loan will be disbursed by the GIIC and GIIC is authorized to make such disbursement on behalf of State Government.

Deferment of Electricity Duty.

Deferment of Sales-tax.

Deferment of Luxury tax.

3. The deferred amount of purchase-tax, sales tax, Electricity duty and luxury tax, mentioned above, will be paid to the State Government in four years from 1995-96 (i.e. from 1995-96 to 1998-99) without interest.

4. This issues with the concurrent of F.D''s note dated 17.3.91 on this Department file of even number.

By order and in the name of the Governor of Gujarat,

Sd/-

Under Secretary to Government of Gujarat,

Industries, Mines and Energy Department.

20. After more than two years, concession of deferment of luxury tax was withdrawn by the Government of Gujarat by its resolution dated 8.6.1993, but in the present appeal, we are not concerned with the same, the learned Single Judge having interfered with the said resolution.

21. By another resolution i.e. impugned resolution dated 11.11.1993, the Government of Gujarat from its Industries and Mines Department, withdrew the concession regarding deferment of electricity duty apart from deferment of sales tax and deferment of purchase tax. It is relevant to notice the said resolution dated 11.11.1993, relevant portion of which is as under:

Gujarat Hotels Limited jointly promoted by Welcome Group and Gujarat Industrial Investment Corporation Limited.

Government of Gujarat

Industries and Mines Department,

Government Resolution No. IIC/1090/2283/P,

Sachivalaya, Gandhinagar

Dated the 11th November, 1993

Read: 1. Government Resolution Industries and Mines Departments No. IIC/1090/2283/P., dated 22/3/91

2. Government Resolution Industries and Mines

Department, No. IIC/1090/1278/P., dated 10/9/1992

3. Government Resolution Industries and Mines Department, No. IIC/1090/2283/

P., dated 8/6/93.

RESOLUTION:

The State Government under Government Resolution dated the 22nd March, 1991 cited in preamble have granted a package of concessions to Gujarat Hotels Limited jointly promoted by Welcome Group and Gujarat Industrial Investment Corporation Limited.

2. The concession regarding deferment of luxury tax has been withdrawn vide GR dated 8/6/93 stated at Sr. No. (3) in preamble and the matter regarding withdrawal of other concessions granted vide GR dated 22/3/91 was under consideration of Government for some time past. Now after careful consideration Government has decided to withdraw the concessions regarding deferment of Electricity Duty, Deferment of Sales-tax and Deferment of purchase-tax by way of interest fee loan through GIIC for an equivalent amount of sales-tax paid by the company for purchase of raw materials etc. with immediate effect.

By order and in the name of the Governor of Gujarat,

Sd/-

(Rajendra Bhatt)

Joint Secretary to Government,

Industries and Mines Department.

22. The writ petitions were preferred in the year 1993. During pendency of the writ petitions, the following developments took place. The Government of Gujarat from its Information, Broadcasting and Tourism Department, issued "New Package Scheme of Incentives for Tourism Projects, 1995 - 2000" by resolution dated 20.12.1995. Therein, by way of incentive, new units and expansion of existing units were granted exemption of taxes i.e. (i) exemption from sales tax, (ii) exemption from turnover tax, (iii) exemption from electricity duty, (iv) exemption from luxury tax and (v) exemption from entertainment tax. The relevant portion of the resolution dated 20.12.1995 is quoted hereinbelow:

NEW PACKAGE SCHEME OF INCENTIVES FOR TOURISM PROJECTS 1995-2000.

Government of Gujarat,

Information, Broadcasting and Tourism Department

Resolution No. NTP-1095/1983-C

Sachialyaya, Gandhinagar

Dated: 20.12.1995.

Read: I.B. and T. Department Resolution No. DTT/1099/307/C dated 4.2.1991

RESOLUTION

The State Government have declared "New Tourism Policy 1995" wherein Tourism has been accorded the status of an industry, with a view to make available all fiscal and non fiscal incentives, benefit reliefs and concessions available to industries. Based on the "New Tourism Policy" and in order to give a boost to tourism sector by attracting higher investment in the areas with tourism potential and to generate employment opportunities, the State Government is pleased to introduce the following new package scheme of incentives for tourism projects for the period 1995-2000 scraping the old incentive scheme of 1991 announced vide Government Resolution cited in the preamble.

1. TITLE

This scheme shall be known as "New Package Scheme of Incentives for Tourism Projects, 1995-2000.

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8. INCENTIVES

A period of 5-10 years will be available to new units and expansion of existing units (as per condition set out earlier) respect of the following taxes, and upto 100% of capital investment. The tax Holiday will be available to units conforming to the list in Appendix- B and falling within the eligible areas.

List of Taxes:

1. Exemption from Sales Tax.

2. Exemption from Turnover Tax.

3. Exemption from Electricity Duty,

4. Exemption from Luxury Tax,

5. Exemption from Entertainment Tax.

xxx xxx xxx

23. ''Electricity duty'' is charged and payable under the Bombay Electricity Duty Act, 1958. Section 2(a) of the Act defines ''consumer'' as under:

2(a) ''consumer'' means any person who is supplied with energy on payment of charges or otherwise by a licensee or by any other person who generates energy and includes-

(i) a licensee in relation to energy either generated by himself or supplied by any other licensee,

any other person in relation to energy generated by himself,

and used by such licensee or person for any purpose excluding that of construction, maintenance or operation of his generating, transmitting or distributing system but including office, commercial or residential purpose connected with such system;

and the word ''consume'' with its grammatical variations and cognate expression shall be construed accordingly.

Section 2(c) defines ''licensee'' as under:

2(c) ''Licensee'' means any person licensed under Part- II of the Indian Electricity Act, 1910, to supply energy and includes any person who has obtained the sanction of the State Government u/s 28 of that Act, the State Government when it is engaged in a business of supplying energy, the generating company as defined in Sub-section (4-A) of Section 2 of the Electricity (Supply) Act, 1948 and the State Electricity Board constitute u/s 5 of that Act of 1948.

From the aforesaid provisions, it will be evident that though the Appellant-Petitioners are the consumer, the State Government is not the licensee as it is not a generating Company as defined under Sub-section (4-A) of Section 2 of the Electricity (Supply) Act, 1948.

24. Sub-section (1) of Section 3 deals with duty on units of energy consumed, which reads as follows:

3. Duty on units of energy consumed,- (1) Subject to the provisions of Sub-sections (2), (2AA), (2AAA), (2B) and (3), thee shall be levied and paid to the State Government a duty on the consumption of electricity (hereinafter in this Act referred to as "electricity duty") at the rates specified below:

(a) the electricity duty shall be payable by consumers other than those referred to in Sub-clauses (i) and (ii) of Clause (a) of Section 2, at the rates specified in Schedule I to this Act, and

(b) the electricity duty shall be payable by consumers referred to in Sub-clauses (i) and (ii) of Clause (a) of Section 2, at the rates specified in Schedule II to this Act.

Under Sub-section (3) of Section 3, the State Government can reduce the rate of duty or remit the duty in respect of certain class of industrial undertakings or class of consumers or class of premises, as quoted hereinbelow:

3(3). The State Government may by notification in the Official Gazette, and subject to such terms and conditions as may be specified therein, reduce the rate of duty or remit the duty in respect of-

electro-chemical, electro-lytical, or electro-metallurgical process carried on by an industrial undertaking, or

such class of consumers or such class of premises in such areas and for such period as the State Government may specify in notification.

Under Sub-section (1) of Section 4, every licensee shall collect and pay to the State Government at the time and in the manner prescribed the proper electricity duty payable under the Act, as evident from the said provision which reads as follows:

4. Payment of Electricity Duty,- (1) Every licensee shall collect and pay to the State Government at the time and in the manner prescribed the proper electricity duty payable under this Act, in respect of energy supplied by him to consumers. The duty so payable shall be a first charge on the amount recoverable by the licensee for the energy supplied by him and shall be a debt due by him to the State Government.

Provided that where the licensee has been unable to recover his dues for the energy supplied by him, he shall not be liable to pay the duty in respect of the energy so supplied.

Under Sub-section (3) of Section 4, if the consumer fails or neglects to pay the amount of electricity duty to the licensee, the person supplying energy may without prejudice to the right of the State Government recover the amount from the amount, if any, deposited by the consumer with the licensee, as quoted hereinbelow:

4(3). Where any consumer fails or neglects to pay, at the time and in the manner prescribed, the amount of electricity duty due from him, the licensee, or as the case may be, the person supplying energy free of charge, may, without prejudice to the right of the State Government to recover the amount u/s 8, deduct such amount of electricity duty from the amount, if any, deposited by the consumer with the licensee or such person or after giving not less than seven clear days notice in writing to such consumer cut off the supply of energy to such consumer; and he may, for that purpose, exercise the power conferred on, licensee by Sub-section (1) of Section 24 of the Indian Electricity Act, 1910, for recovery of any charge or sum due in respect of energy supplied by him.

25. From the aforesaid provisions, it will be evident that as on 4.10.1990 when the meeting was held or as on 22.3.1991 when the resolution granting concession of deferment of electricity duty was issued in favour of the 1st Petitioner Company, the State Government was not authorized to defer payment of electricity duty, though under Sub-section (3) of Section 3, the State Government was empowered to reduce the rate of duty or remit the duty to a class of consumers or to a class of premises for a specific period. It is only after issuance of the impugned resolution dated 8.6.1993 withdrawing the concession of deferment of electricity duty and during pendency of the writ petitions, the legislatures amended the Bombay Electricity Duty Act, 1958 and by Gujarat Act 8 of 1999 inserted Sub-section (3A) in Section 4 of the said Act authorizing the State Government to allow deferment of payment of electricity duty, as evident from the said provision as quoted hereunder:

4.(3A) The State Government or an officer authorized by the State Government in this behalf, may, in respect of any consumer,-

(a) Extend the date of payment or allow him to pay electricity duty by installments in such manner and on such conditions as may be prescribed.

(b) allow deferment of payment of electricity duty under such circumstances on such conditions and for such period not exceeding five years in aggregate, if deferment is allowed for hundred per cent of the payment liability of electricity duty and not exceeding seven years in aggregate, if deferment is allowed for fifty percent, of the payment liability of electricity duty as may be prescribed.

26. The submission made by the learned Senior Counsel appearing on behalf of Appellant-Petitioners that under Sub-section (3) of Section 3, the State Government was empowered to grant deferment of electricity duty, the Petitioners being a class of consumers itself, cannot be accepted. We have already noticed that Sub-section (3) of Section 3 empowers the State Government (i) to reduce the rate of duty, or (ii) remit the duty. It does not empower deferment of duty. ''Deferment of electricity duty'' is distinct and different from reducing the rate of electricity duty or remitting the duty. The legislatures in the year 1999 empowered the State to allow deferment of payment of electricity duty by inserting Sub-section (3A) to Section 4 of the Act. In this background, if the learned Single Judge came to a conclusion that the State Government had no jurisdiction under the statute to grant deferment of electricity duty, and the principle of estoppel is not applicable against a statute, such decision being in accordance with law, requires no interference. Thus, we hold that the Appellant-Petitioners are not entitled to the benefit of deferment of electricity duty and thereby direct the Petitioners to pay the duty with interest as claimed by the State. In absence of any merit, the appeal is dismissed, but there shall be no order as to costs.

