

(2024) 03 CHH CK 0001
In the Chhattisgarh High Court
Case No : Writ Appeal No. 567 Of 2018

Jindal Steel And Power Ltd.

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 01-03-2024

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Chhattisgarh High Court Rules, 2007 — Rule 158(10)
Chhattisgarh State Electricity Duty Rules, 1949 — Rule 3, 13
Chhattisgarh High Court (Appeal to Division Bench) Act, 2006 — Section 2(1)
Chhattisgarh Electricity Duty Act, 1949 — Section 3, 3A, 3B

Citation : (2024) 03 CHH CK 0001

Hon'ble Judges : Ramesh Sinha, CJ;Arvind Kumar Verma, J

Bench : Division Bench

Advocate : Ashish Shrivastava, Manish Kharbanda, Biju Mattam, Ankita Bafna, Pranav Sood, Gurpreet Singh Bugga, Aman Pandey, Angad Sandhu, Ranbir Singh Marhas

Final Decision : Dismissed

Judgement

1. This is an appeal under Section 2(1) of the Chhattisgarh High Court (Appeal to Division Bench) Act 2006 read with Rule 158(10) of the Chhattisgarh High Court Rules, 2007 seeking to challenge the order dated 08.05.2018 passed by the learned Single Judge in WP(C) No. 6819 of 2008 by which his challenge to order dated 28.06.2008 by which the appellant / Company's appeal was rejected and further the challenge to the demand notice dated 09.12.2005 by which a demand of Rs. 1,64,69,790, has been dismissed.

2. The facts, in brief, as projected by the appellant / Company had set up a captive power plant (for short, the CPP) of 265.70 MW at its Steel Plant at Raigarh to meet its power requirement. The said power plant of appellant comprises of three units, Power Plant ? I, Power Plant ? II and Power Plant ? III which in turn, comprise with 9 TG sets generating power at 11 KV each. The appellant's new industrial unit was granted exemption from payment of

electricity duty under Section 3-B of the Chhattisgarh Electricity Duty Act, 1949 (for short, 'the Act of 1949') on 29-7-2000 exempting the appellant Unit for a period of ten years from payment of electricity duty from the date of commissioning, as the appellant-Unit was a new industrial unit. It was the case of the appellant Company that it had consumed the electricity generated from TG-7 which was admittedly exempted from payment of electricity duty and as the auxiliary consumption was made by TG sets 1, 3, 5 & 6 and exemption from paying electricity duty of TG sets 1, 3, 5 & 6 had already expired, the appellant / Company was paying electricity duty in terms of the Act of 1949 for the said other TG sets. It was the further case of the appellant Company that the system of power plant of appellant is so designed that except for TG-7 all other TGs are in parallel with the Grid of the CSEB. TG-7 caters to house load of appellant and also to the auxiliary requirements of TGs 1, 3, 5 and 6, which are part of Unit I of the power plant of appellant. Thus, in effect an auxiliary bus has been created in the system of the appellant. The entire set up / arrangement has been made with the knowledge and technical approval of the CSEB and the office of the Electrical Inspector of the Government of Chhattisgarh.

3. It is also the case of the appellant that the system of auxiliary bus has been designed in the system with the sole purpose that in the event a grid failure occurs for the Grid experiences any fluctuations or disturbances, the TGs 1, 3, 5 & 6 of appellant do not stop altogether and the TG sets at least keep on running at a minimum power supplied by TG-7. TG-7 is designed to take care of the auxiliary requirements of the TGs 1, 3, 5 & 6 of Unit I of the power plant of the appellant Company. On 9.12.2005, respondent No.3 issued the demand notice demanding Rs. 1,64,69,790/- as arrears of electricity duty pertaining to the period from December, 2001 to March, 2005 in respect of the TG sets whose exemption period had expired stating that respondent No.2 totally ignored the fact that the power sought to be taxed was being generated by TG-7, which was clearly within the exempted period of ten years at the relevant point of time. The aforesaid notice was replied by the appellant and inspection was carried out and again, on 2.3.2006 another demand notice was issued directing to pay electricity duty on auxiliary consumption of TG sets whose exemption has expired leading to filing of appeal under Rule 13 of the Chhattisgarh Electricity Duty Rules before respondent No.1 but the same was dismissed vide the order dated 28.06.2008. The same was subjected to challenge before the learned Single Judge.

4. The learned Single Judge, after hearing learned counsel for the parties, dismissed the writ petition vide order dated 08.05.2018 observing that undisputedly, exemption from electricity duty with respect to TGs 1, 3, 5 & 6 had already come to an end. However, TG-7 was enjoying exemption from electricity duty and TGs 1, 3, 5 & 6 were getting electricity from TG-7 for its auxiliary consumption. As per the conditions enumerated in the notification regarding exemption, it was clear that such exemption was granted to captive generation station which was to be established for new industrial Unit only with respect to consumption of electrical energy by new industrial units established by the

appellant and TGs 1, 3, 5 & 6 which were already existing on the date of grant of exemption in respect of TG-7 do not come within the meaning of new industrial unit in terms of exemption notification and auxiliary consumption made by TGs 1, 3, 5 & 6 is not subject to exemption from electricity duty and is liable to electricity duty. The appellant was entitled to exemption from electricity duty for TG-7 and new industrial unit, if any. The auxiliary consumption made by TGs 1, 3, 5 & 6 was not entitled for exemption from electricity duty. Installation of auxiliary bus with the approval of the respondent authority cannot be a ground to claim exemption from electricity duty. Thus, the Chief Electrical Inspector and the appellate authority are absolutely justified in charging electricity duty from the appellant.

5. Mr. Ashish Shrivastava, learned Senior Advocate, assisted by Mr. Manish Khabanda, Mr. Biju Mattam, Ms. Ankita Bafna, Mr. Pranav Sood, Mr. Gurpreet Singh Bugga, Mr. Aman Pandey and Mr. Angad Sandhu, learned counsel appearing for the appellant-Company would submit that the Respondent No. 3 failed to notice that the Act of 1949 is silent on the source of auxiliary consumption and does not specify from which source auxiliary power should come for auxiliary consumption. However, the Respondent insists that the auxiliary consumption for a TG should come from the same TG despite the fact that there is no technical specification regarding source of auxiliary power and any such auxiliary power for a TG can be drawn from any source depending upon the arrangement of a power plant. It has been shown that technically it is possible to design and source the power of auxiliary consumption from another TG and it need not be drawn from the same TG. Therefore, the Instance of the respondents that the power from auxiliary consumption for a TG should come from the same TG is wholly arbitrary and for the same reason is not maintainable whatsoever. In view of the unique configuration of the CPP of appellant's system which has been duly approved by the office of the Electrical Inspector Govt. of Chhattisgarh the contention of the Respondents that the power for auxiliary consumption for a TG should come from the same TG is not tenable and the demand notices dated 9.12.2005 and 2.3.2006 have no legs to stand.

6. Mr. Shrivastava would also submit that the appellant-Company been regularly paying Electricity duty on the gross generation of TG-1, 3, 5 & 6. Further, TG-7 is exempt from electricity duty till 15.10.2013 and since TG-7 is catering to the auxiliary consumption of the four TGS 1, 3, 5 & 6 therefore, the appellant was not required to pay alleged arrears of electricity duty which has been calculated by the respondent towards the auxiliary consumption. The Chhattisgarh State Electricity Regulatory Commission (for short, the CSERC) in its Tariff Order dated 13.9.2006 for Chhattisgarh State Electricity Board (CSEB) for the year 2006-2007 had recommended to the State Government that Electricity Duty on auxiliary consumption in CSEB's generating stations should be waived as this results in charging the Electricity Duty twice from the consumers. The CSERC in para 7.4.3 of the said order has stated as follows:

"7.4.3 ED on auxiliary consumption in CSEB's generating stations approximately 9.5% of power generated by the generating units in a thermal power station is required for the auxiliary equipments used for the purpose of generation of electricity. CSEB is required to pay electricity duty on this consumption at the rate of 22.48 paise per unit. In addition there is a cess of 5 paise per unit. Since auxiliary consumption is required for generation of power, the commission feels that levy of electricity duty on this consumption may not be appropriate. This is also to be noted that the expenditure incurred by the Board on this account is loaded on the expenses of the Board towards generation of electricity which is subsequently passed on to the consumers. When this energy is sold to any consumer, the consumer is again required to pay electricity duty to the State Government at the prevailing rate. Thus, electricity duty is charged to the consumer twice which is not justified. The Commission therefore, recommends that ED on auxiliary consumption in CSEB's generating stations should be waived.?"

7. Further, the power generated by CPPs are also being subjected to cess 10 paise per unit which is payable as per the Chhattisgarh Upkar (Sanshodhan) Adhiniyam, 2004 (i.e. C.G. Act No. 28 of 2004). The appellant filed an appeal under Rule 13 of the Chhattisgarh State Electricity Duty Rules, 1949 challenging the said demand notices which has been rejected by the respondent No. 2 and upheld the demand notices dated 9.12.2005 and 2.3.2006 issued by the Respondent No. 3 being the Chief Electrical Inspector. The appellate authority rejected the appeal on the ground that the power for auxiliary equipment has to necessarily come from the same generating set and cannot be continuously taken from any other source. Against the same, the writ petition preferred by the appellant / Company was rejected by the learned Single Judge which is unjust and improper. The learned Single Judge has ignored the fact of concurrence provided by the Respondents herein by way of providing approval to the designs and drawings of the TG No. 7 which is specially designed for the Auxiliary supply and consumption of the auxiliary equipment only and is not connected with the Grid or the Steel Plant and any such levy of electricity duty, especially after a noticeable time gap, is completely barred as the Respondents are estopped from raising such demands after (acquiescing) to the design and engineering of the TG No. 7 and attached Auxiliary bus. The learned Single Judge has failed to notice that the auxiliary bus is designed with a unique configuration wherein the auxiliary equipments of other TG Sets are attached to the same for drawing necessary power for which necessary approvals and sanctions were provided by the respondents and in view of the same the Respondents are estopped from raising any such demand towards electricity duty at a subsequent stage which is completely arbitrary and unjustified. The TG No. 7 unlike the other TG Sets is not connected with the grid since it is earmarked to supply power only to the Auxiliary consumption and cater to the house load and there is exemption from payment of any electricity duty on TG No. 7 and said TG is specially designed to provide supplies to auxiliary equipment of the power plant and has been

supplying power to the ingeniously designed auxiliary bus. The learned Single Judge further erred by not noticing that the power supplied from TG No. 7 and consumed through the auxiliary bus by different TG sets is not separately distinguishable and the very fact of absence of possibility of separate determination of duty TG set wise makes any such demand of duty bad and unsustainable and makes it liable to be set aside on this ground alone.

8. Mr. Shrivastava would also submit that the appellant is entitled to arrange its affairs in a manner such that the least amount of duty is payable, provided that it is technically possible and permissible. He would further submit that the learned Single Judge has wrongly placed its reliance on the decision of the Supreme Court in *Swaroop Vegetables v. State of Uttar Pradesh* (1983) 4 SCC 24 as the same was not applicable in the facts and circumstances of this case. Further, the learned Single Judge failed to notice the language of the charging section of the Act of 1949 wherein the duty is either on the supply or consumption, whereas the respondents tend to levy duty on the supply as well as the consumption on the electricity duty which is beyond the mandate of the Act. It is not necessary that auxiliary power to a generating set has to come from the same generating set. There is no technical / legal bar in providing auxiliary power to a generation set from some other sources of power and to arrive at a conclusion that auxiliary power for a generating set or station has to be necessary the one which is taken or drawn from the same generating set or station is erroneous and cannot be sustained.

9. The appellant-Company was supplying auxiliary power to its various generating sets namely, TG-1, 3, 5 & 6 from TG-7 by installing an auxiliary bus which was technically permissible to do and has been with the express concurrence and after due approval process of the engineering designs of the TG-7 and upon the same the respondent can not turn around. Further the Office of the Chief Electrical Inspector was duly informed about such an arrangement and an inspection was duly carried out by the office of Chief Electrical Inspector and as such, there was no occasion for the Chief Electrical Inspector to raise demand of Electricity Duty on the auxiliary power consumed by TG-1, 3, 5 & 6 and the Respondent No. 3 is estopped from raising any such demand notice in view of unambiguous clearance provided to the TG-7 and the associated inter-connection with respect to the creation of Auxiliary bus at an additional capital expenditure.

10. Mr. Shrivastava would also submit that a wrong conclusion is drawn that if the auxiliary equipment of any generating set gets power from other sources continuously, then as per the definition, it cannot be called auxiliary consumption of that generating set. Any reliance on the definition of auxiliary consumption as given by the Central Electricity Regulatory Commission does not spell out and clarify that auxiliary power being the only one which is being supplied to the auxiliary equipment of the generating set from it only. In other words, the definition of auxiliary consumption given by Central Electricity Regulatory

Commission does not provide that if a generating set receives auxiliary power from other source then it will not be called auxiliary consumption. The conclusion of the appellate authority in this regard is *ex facie* erroneous and cannot be sustained. Further, there is no bar technically or otherwise to supply auxiliary power to a generating set from any other source. In fact the impugned order passed by the learned Single Judge itself notices that it has been done by the appellant and it is technically possible as also inspected and approved by the team of Electrical Inspectors. Thus, the order of the learned Single as well as the order of the respondent No. 2 and impugned demand notices issued by the respondent No. 3 are not only arbitrary and illegal but also without any authority of law and is in serious contravention of the provisions of Section 3 of the Act of 1949. The CSERC in its Tariff Order dated 13.09.2006 for Chhattisgarh State Electricity Board (CSEB) for the year 2006- 2007 has recommended to the State Government that Electricity Duty on auxiliary consumption in CSEB's generating stations should be waived as this results in charging the Electricity Duty twice from the consumers. It is submitted that since the CSERC which a statutory regulator has recommended to the State Government to waive of Electricity Duty which was clearly in the knowledge of the Respondents it was the imperative upon them to not to demand Electricity Duty from the appellant for its auxiliary consumption and thus the impugned demand notices are also discriminatory and violative of Article 14 of the Constitution of India and hence therefore deserves to be quashed. Even the calculations arriving at a figure of Electricity Duty have been unilaterally done by the respondent No. 3 which are not correct. Such demand based on the calculations done unilaterally by the respondents is also violative of principles of natural justice and thus cannot be sustained on this count also.

11. Mr. Shrivastava would next submit that Section 3 of the Act of 1949 provides for incidence of taxation and delineates the power of the State to Levy Electricity Duty which reads as follows:

3. Levy of duty on sale or consumption of electrical energy. (1) Subject to the exceptions specified in Section 3-A, every distributor of electrical energy and every producer shall pay every month to the State Government at the prescribed time and in the prescribed manner a duty calculated at the rates specified in the table below on the units of electrical energy sold or supplied to a consumer or consumed by himself for his own purposes or for purposes of his township or colony, during the preceding month?

12. It is submitted that the Section also provides for table A and B wherein the rates for charging of electricity duty has been prescribed. The Section does not deal with or includes auxiliary consumption as the same cannot be read into any of the entries made in Table A or B. For the aforesaid purposes, Explanation (e) was inserted bringing in Auxiliary Consumption under Clause 5(b) of Table B of Section 3 of the Act. It is submitted that by way of explanation, the Legislature has made an attempt to add an entry which otherwise was not amenable to

taxing under Section 3 of the Act.

(a) Levy of ED on Auxiliary Consumption is beyond the scope, ambit and intent of Section 3 of the Madhya Pradesh Electricity Duty Act, 1949 ("Act") and as such, the impugned demand is devoid of any support of law.

Section 3 and Part B thereto of Act, as amended by Madhya Pradesh Electricity Duty (Amendment) Act, 1995 reads as under:

(1) "Subject to the exceptions specified in Section 3A, every distributor of electrical energy and every producer shall pay every month to the State Govt. at the prescribed time and in the prescribed manner a duty calculated at the rates specified in the Table below on the units of electrical energy sold or supplied to a consumer or consumed by himself for his own purposes or for purposes of his township or colony, during the preceding month."

PART-B

Electrical energy sold, supplied or consumed for the purposes as shown below:

S.No

Purpose

Rate of duty as percentage of the electrical tariff per unit

1.

On low tension tariff:

For domestic consumption

(i) Upto 100 units

(ii) In excess of 100 units upto 200 units

(iii) In excess of 200 units

Per month

14

15

23

2.

On low tension tariff

For non-domestic consumption:

(i) Upto 200 Units

(ii) In excess of 200 Units

Per month

11

11.5

3.

Mines (other than captive mines of cement industry)

40

4.

Cement industry (including its captive mines)

10.5

5.

For other industries not covered under other categories-

(a) industries receiving electricity at low tension tariff:

(i) Upto 25HP

(ii) In excess of 25 HP upto 75 HP In excess of 75 HP upto 100 HP In excess of 100 HP upto 150 HP

(b) Other Industries

3

4

3.5

3

8.0

6.

For Non-Industrial purposes not including under any of the above categories

24

7. for consumers who generate energy for their own consumption for the purposes included under any of the above categories, the rate of duty shall be calculated as if the electrical energy is supplied by the Madhya Pradesh Electricity Board: [...]

Explanation: for the purposes this section:-- (a) "Month" means [...]

(b) "Mine" means [...]

(c) [?]

(d) [...]

(e) For the consumption of Power Plant Auxiliaries, the rate of electricity duty shall be such as shown against item 5 (b) of the table.

(f) [...]"

(b) Section 3 casts upon the "producer" (of electrical energy), amongst others, an obligation to pay Electricity Duty on the electrical energy consumed by such producer himself for his own purposes or purposes of his township or colony as per the rate specified in the Table thereto. Apparently, Part B under Section 3 specifies the rate of ED qua the electricity used for specified purpose i.e., category. Further, as provided in Table B, the rate is specified in terms of specific percentage of electricity Tariff as applicable to the respective tariff category. As per Clause (d) of Explanation to Section 3, Tariff means the rate of energy per unit made applicable from time to time by the MP Electricity Board (DISCOM) on various categories of consumers.

Firstly, Section 3 does not categorize the Auxiliary Consumption as a "purpose" or category of "own consumption" so as to fix the incidence of ED. On a true and rational construction, the "purpose" as provided in Section 3 has to be construed as either of the following:

(a) Purposes for which the Producer [i.e., the legal person that owns the generating station(s) or power plant(s) in contradistinction to "generating station(s)" or "Power plant(s)"] that consumes the power. In view of the provisions of Part B table thereto, the purpose necessarily has to be any or all of the purposes / tariff categories provided in clause 1 to 6 thereof for which the "producer" (i.e., the person / legal person) uses the power;

(b) Township of producer; or

(c) Colony of producer.

Secondly, part B Table indicated specific categories (purposes as provided in Section 3) viz; (1) domestic consumption, (2) Non-domestic consumption, (c) Mines, (4) cement industry and (5) other industries.

As per Clause 7 thereof, the "own consumption" has to be for the purposes included in any of the categories of Clause 1 to 6 of Table B.

Thirdly, as per Table B, the ED rate has been specified for all categories in terms of the Tariff applicable for the concerned category. Thus, to fall in any of the Tariff Category is quintessential for computation of ED rate and levy thereof. Meaning thereby, ED is not to be applied to any consumption that falls outside the Tariff Category. It is pertinent to state that the Auxiliary Consumption is not a Tariff Category at all. Thus, rightly, the substantive provisions of Part B Table that specifying the ED rate has omitted the Auxiliary Consumption from its ambit.

Fourthly, as it appears from the provisions of Section 3 read with Part B table,

the legislature has made a totally unfounded attempt to widen the scope of the term "own purpose" of producer of electricity as seen in Section 3 by including the Auxiliary Consumption of generating station also in the statute book. This contradictory and so is unsustainable addition was made by the legislature by way of adding an "Explanation" [Explanation (e)] to Section 3. However, as shown above, clause 7 of Table B made an unambiguous indication to the meaning and purport of the term "own consumption" ("own purpose, as provided in Section 3) by referring the same only to the "proposes" / tariff categories provided in Clause 1 to 6 thereof.

13. It is well settled that, ?explanation? cannot widen the scope of principal provision. It is stated that explanation (e) cannot add a substantive category to the main provision where Section 3 or Part B thereof chose not to exclude Auxiliary Consumption as an "own purpose". In view of the well-settled principles of ejusdem generis, the term ?own purpose? of produce as provided in Section 3 has to be read as the purpose similar to that of the specific purpose specified therein i.e. the purposes like township or colony of the producer. The general terms has to take its meaning, purport and ambit from the term ?own purposes? or producer has to be read as use of power by the producer for its own use in any of the said tariff categories and not the use by any individual generating station for its auxillary consumption.

14. Further, as per Section 3, the terms ?consumed by himself for its own purposes? means the power consumed by the producer; and not individual generating stations/units. Thus the legal requirement is to consider the gross use of power by the producer i.e. the legal person that own the generating stations or power plants and as such, the fact that whether a given generating station uses the power that generated by the very same generating station or any other generating station owned by the very same for the purpose of auxiliary consumption, is irrelevant as the use of all generating station owned by the same producer has to be construed together and not individually.

15. In support of his contentions, Mr. Shrivastava relies on decisions of the Supreme Court in S. Sundaram Pillai & Ors. v. V.R. Pattabiraman & Ors. {1985 1 SCC 591}, Bihta Cooperative Development Cane Marketing Union Ltd. & Another v The Bank of Bihar and Others, {AIR 1967 SC 389}, Maharashtra University of Health Sciences v. Satchikitsa Prasarak Mandal {(2010) 3 SCC 786}.

16. Mr. Shrivastava would also submit that as per Section 3 of the Act of 1949, the terms "consumed by himself for is own purposes" means the power consumed by the producer, and not individual generating stations / units. Thus, the legal requirement is to consider the gross use of power by the producer [(i.e., the legal person that own the generating station(s) or power plant(s)] and as such, the fact that whether a given generating station uses the power that generated by the very same generating station or any other generating station owned by the very same for the purpose of auxiliary consumption, is irrelevant. Because, the use of all generating station owned by the same producer has to be

construed together, and not individually. Section 3 along with its Table A and B provides for inclusive definition for charging of electricity on the units of electrical energy sold or supplied to a consumer or consumed by himself for his own purposes or for purposes of his township or colony however, "Auxiliary Consumption" which is not specifically mentioned in the Section, cannot be read in to with the general words even using the principle of ejusdem generis. In the present case, the explanation which was inserted as Explanation (e) is itself ultra-vires the section as the section does not envisages charging of any electricity duty on auxiliary consumption.

17. On the other hand, Mr. Ranbir Singh Marhas, learned counsel for the respondents No. 1 to 3 would submit that the power to levy electricity duty is as per the Act of 1949. Section 3 of the provides for levy of duty on sale or consumption of electrical energy and it states that "(1) subject to the exceptions specified in Section 3A, every distributor of electrical energy and every producer shall pay every month to the State Govt. at the prescribed time and in the prescribed manner a duty calculated at the rates specified in the Table below on the units of electrical energy sold or supplied to a consumer or consumed by himself for his own purposes or for purposes of his township or colony, during the preceding month."

18. Section 3A of the Act of 1949 is an exception to Rule 3 of the Chhattisgarh Electricity Duty Rules, 1949, whereas Section 3B is power of the State Government to exempt the industrial establishment or any industries from payment of electricity duty. Section 3 B of the Act of 1949 reads as under:

"Where the State Government is of the opinion that-

(1) in order to encourage the establishment of any particular industry or class of industries In the State; or

(II) having regard to the particular circumstances of any industry or class of industries; or

(?) in order to extend facilities to such persons or class of persons and for purposes, as the State Government may, by notification, specify; it is necessary or expedient so to do in public interest, it may, by notification and subject to such conditions, if any, as it may specify in the notification,

(a) exempt from payment of duty in whole or in part.?

19. The Act of 1949 suffered amendment by the Madhya Pradesh Electricity Duty (Amendment) Act, 1995 with effect from 01.04.1995 and in Section 3 of the Act of 1949, Part B was inserted. Part B- Item 4 Sr. No.(5) Sub Clause b prescribes rate of duty charged is 8% for other industries. From the said provisions it is very clear that electricity duty shall be payable for consumption of power plant auxiliary as per Item No. 5-B of Table Part B of section 3 of the Act, 1949 amended with effect from 01.04.1995 Further Clause 14 (iv) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations,

2004 defines Auxiliary Energy Consumption as under:-

"(iv) "Auxiliary Energy Consumption" or "AUX" in relation to a period means the quantum of energy consumed by auxiliary equipment of the generating station and transformer losses within the generating station, and shall be expressed as a percentage of the sum of gross energy generated at the generator terminals of all the units of generating station."

20. The Chhattisgarh Electricity Duty (Amendment) Act, 1995, Part-B, item No.5(b) of the Table read with Explanation (e) provides that for the purpose of consumption of Power Plant Auxiliaries, the rate of electricity duty shall be 8%. Thus, auxiliary consumption of TG set is separately defined and charged as per the rate shown against item No.5(b) of the Table that is 8%. Admittedly the appellant has made an application for grant of sanction of drawing for establishing of 1 X 24 MW TG Set (TG-7) including the new Industrial Unit for supply of electricity for such newly industrial unit of JSPN vide letter dated 26.06.2003 (Annexure-D-1). Thereafter detailed scrutiny and inspection was done and the permission for establishing and operating / running of one 1X24 MW Turbo Generator was granted vide letter dated 30.06.2003. After the permission was granted for operating / running of electrical installation the appellant submitted application regarding exemption from electricity duty for 1X24 MW TG-7 before the Chief Electrical Inspector on 07.10.2003. Pursuant to which the exemption for payment of electricity duty was granted for the period of 10 years from the date of commencement of generation by Captive Generation established for new industrial unit from 15.10.2003 as per notification dated 29.07.2000. The aforesaid sanction letter was issued on 17.08.2004 (Annexure-D-10) for period of 10 years commencing from 15.10.2003 to 04.10.2013. Therefore, auxiliary consumption of a TG set / Generating Plant / Producer is different than self consumption for meeting the condition defined in the Central / State Electricity Regulatory Commission ie "Auxiliary Consumption or Aux" in relation to a period means the Quantum of Energy consumed by Auxiliary equipments of the generation stations and transformers used in the generation stations and shall be express as a percentage of the sum of gross energy generated at the generator terminal of all units of the generating station. At this juncture it is noteworthy to quote the relevant portion of the notification dated 29.07.2000 (Annexure-P-3) to establish that as to which unit will be entitled for exemption from payment of Electricity Duty. The same is reproduced as under:

"In exercise of the powers conferred by Section 3-B of the Madhya Pradesh Electricity Duty Act, 1949 (No. X of 1949), the State Government hereby exempts from the payment of electricity duty for the period of 10 years, from the date of commencement of generation by the Captive Generating Station, established for new industrial units, the electricity energy consumed by such new industrial units established by M/s. Jindal Steel and Power Limited, Raigarh."

21. Mr. Marhas further submits that a reply was filed by the State before the learned Single Judge opposing the claim of the appellant and justifying the levy

and stating that exemption to TG-7 is admittedly still in force and the appellant Company has deliberately attempted to avoid payment of electricity duty under the garb of, by constructing a "pool" and has been supplying the electricity to the auxiliary pool by TG-7 to TGS1, 3, 5 & 6, but since the exemption period for TG-7 is still in force and the exemption period for TGS 1, 3, 5 & 6 granted has already expired, hence, any electricity consumed by auxiliary equipments of TGS 1, 3, 5 & 6, though attached in the form of "auxiliary bus", the electricity supplied by TG-7 still be liable for payment of electricity duty under the law as procurement of power produced by TG-7 for operating / running of TG-1, TG-3, TG-5 & TG-6 is not meeting the provision defined in the CSERC / CERC Regulations Regarding Definition of Auxiliary consumption of a TG Set. There for it is pertinent to place on record that the use of Electricity produced by TG-7 for Operating of Running of TG-1, TG-3, TG- 5 & TG-6 is to be treated as supply of electricity for self-consumption and not as the Auxiliary consumption of these units. Hence supply of electricity from TG-7 to the said TG sets invites levy of electricity duty as the exemption period in respect of TG-1, TG-3, TG-5 & TG-6 has since expire as indicated in the affidavit filed by Special Secretary Energy in compliance to the directives of the hon'ble court. As the exemption granted in respect of TG-7 for payment of electricity duty is restricted only for its Auxiliary consumption the supply of electricity produced by it for Operating / Running of the other units of the Captive power plant cannot be extended nor any benefit thereof in respect of the consumption of electricity, which was consumed through other equipments in regard to which the granted exemption period has already expired, can be given. Therefore, on the basis of aforesaid submission the appeal has rightly been dismissed and demand has rightly been raised and thus, the writ petition had no force and deserved to be dismissed.

22. In compliance of the order dated 09.07.2018 passed by this Hon'ble Court, the appellant Company was directed to fully pay the principal outstanding balance amount against Electricity Duty calculated as payable till 31 July, 2018 and 50% of the outstanding interest payable on the outstanding principle amount to the Office of Chief Electrical Inspector, Chhattisgarh. However, it is humbly brought to the notice of this Court that the Company has not complied with the direction of the Hon'ble Court in this regard.

23. In compliance of the direction of the Hon'ble Court dated 06.03.2018 the Special Secretary (Independent Charge) Energy Department has filed an affidavit dated 14th March, 2018 before this Hon'ble Court on 24.03.2018 in WP(C) No. 6819/2008. As per the said affidavit 8 No. TG Sets were accorded exemption from payment of Electricity Duty for a period of 10 years from the date of declaration of Commercial Operation Date (COD in short) for the respective TG Sets. The appellant Company is seeking exemption from payment of duty on the Auxiliary consumption of the TG Sets after expiry of the exemption period on the basis that "the auxiliary consumption of the units for which the exemption period has since expired is being supplied by TG7. Further it is claimed that the electrical units generated by TG 7 being fully exempted from payment of

electricity duty, therefore, company is right full seeking the exemption." In this regard it is respectfully submitted that the appellant company is not consistent with the definition of Auxiliary Energy Consumption" or "AUX" as provided in the provisions regarding stipulated in Chhattisgarh State Electricity Regulatory Commission (Terms and Conditions of Determination of Tariff according to Multi Year Tariff Principles) Regulation, 2015 which reads as under:

"3.7 Auxiliary Energy Consumption" of "AUX" in relation to a period in case of generating station means the quantum of energy consumed by auxiliary equipments of the generating station, such as the equipment being used for the purpose of operating plant and machinery including switchyard of the generating station and transformer losses within the generating station, expressed as a percentage of the sum of gross energy generated at the generator terminals of all the units of the generating station;

Provided that auxiliary energy consumption shall not include energy consumed for supply of power to housing colony and other facilities at the generating station and the power consumed for construction works at the generating station."

24. The appellant company has stated that the entire set up of this arrangement has been made with the knowledge and technical approval of the Chhattisgarh State Electricity Board and the Office of the Electricity Inspector of the Government of Chhattisgarh, wherein, no objection of any nature was put forth by the respondents and other relevant authorities at any point of time during the engineering and installation of TG Set No.7 and the attached auxiliary bus. In this regard it is respectfully submitted that the above submission is misconceived as same is not consistent with the definition of auxiliary consumption provided in the relevant regulation of CSERC. As per the regulation Auxiliary consumption of any generator / TG cannot be supplied by another Generator / TG Sets. In view of the above it is thus clear that the demand by Chief Electrical Inspector for payment of Electricity duty on the Auxiliary consumption in respect of any such TG Set on expiry of exemption period as per the relevant provision of Madhya Pradesh (Chhattisgarh) Electricity Duty Act, 1949.

25. Any arrangement / establishment of electrical installation which includes TG also is only a statutory requirement for operating / running of the electrical installation TG in a safe manner and does not accord any authority to the Appellant to claim exemption from payment of electricity duty for TG-1, TG-3, TG-5 & TG-6 which does not have the entitlement for claiming Exemption from electricity duty. As such the claim of the Appellant cannot be concluded as modification / amendment with regard to computation of auxiliary consumption. Hence, the submission of the applicant is misconceived and stands rejection.

26. Mr. Marhas would further submit that the learned Single Judge after meticulously examining the submissions by both the parties has observed at paragraphs 25 and 26 that taxable event for levy of electricity duty is

consumption of energy. The learned Single Judge, at paragraphs 26, 29, 30 and 31 has given its reasoning while dismissing the writ petition of the appellant Company. After the order was passed by the learned Single Judge, a total demand outstanding amount as on June 2018 vide letter dated 31.08.2018 was Rs. 16,20,43,576/- (Principal amount of Rs. 5,36,21,509/- plus interest amount payable on the outstanding principal i.e. Rs. 10,84,22,067/-). Pursuant to the order dated 09.07.2018 passed in instant appeal it was directed that the principal amount and the 50% of the interest calculated for non-payment be deposited by the appellant within a period of four weeks. The appellant-Company has till date only deposited Rs.4,58,99,417/-. (Principal Rs.1,64,69,800/- and interest Rs. 2,94,29,617/-) and accordingly had not deposited balance amount of Rupees 6,19,33,126/- (Principal Rs. 3,71,51,709/- plus 50% interest of Rs. 2,47,81,417/-) till date.

27. Mr. Marhas also submits that since a factual finding has been recorded by the appellate authority upholding the demand raised which was further upheld by the Learned Single Judge resulting in concurrent finding of fact, there is no illegality in the same. The writ appeal is liable to be dismissed.

28. Relying on the additional return filed, Mr. Marhas would submit that the instant appeal preferred by the appellant is devoid of merit and is liable to be dismissed. The learned Single Judge has passed the order on the basis of the grounds taken and the arguments raised and further the new grounds raised, if any, is not tenable and deserves outright rejection. In so far as the contention of the appellant made in paragraph (viii) that the Table -A and Table -B provided under Section 3 of the Act, 1949 do not include the auxiliary consumption, is per-se misconceived as clause 5(b) of Table B of Section 3 categorically specifically refers other industries and in the explanation to clause 5(b) vide explanation (e), it has been clearly provided that the rate of electricity duty for power plant auxiliaries shall be such as shown in clause 5 (b) and clause 5(b) although applies to other industries, but, by virtue of explanation provided in Table B vide explanation (e), the power plant auxiliaries are included under the category of other industries. A conjoint reading of Section 3 read with Table B as a whole would clearly establish that the power plant auxiliaries are amenable to charge of the electricity duty in accordance with clause 5(b) of Table -B.

29. The appellant has indirectly challenged the jurisdiction of the Legislature by questioning the insertion of explanation in Table-B particularly sub-clause (e) of the explanation and since there is challenge to the competence or the intention of the Legislature, therefore, indirectly, the appellant is challenging the vires of insertion of the explanation. As such the instant writ appeal for bringing out the entirely a new ground which has not been raised in the writ petition, as also challenging the vires for the first time in the instant writ appeal, is not maintainable as the challenge to vires of any provision of law can be made only on the original jurisdiction of the Hon'ble High Court under Article 226 of the Constitution of India and in accordance with the provisions of the Chhattisgarh

High Court Rules and orders.

30. Further, the appellant has contended that the levy of electricity duty on auxiliary consumption is beyond the scope, ambit and intent of Section 3 of the Act, 1949 whereas reading of Section 3 alongwith Table A and Table B would clearly show that the levy of electricity duty on auxiliary consumption is very much permissible and under due authority of law, it has been inserted in the Act, 1949. The further contention of the appellant that obligation of paying the electricity duty is upon the producer of the electrical energy, is not denied as the appellant itself is the producer of electrical energy and therefore, is liable for payment of electricity duty under the head of auxiliary consumption because the electricity produced by the appellant herein is used for auxiliary consumption. It is further submitted that the rate of electricity duty is subject to amendment and periodically the amendments are carried out in the rate of electricity duty either in terms of percentage or in terms of tariff per unit. The provision of Section 3 does not categorize the auxiliary consumption as a 'purpose' or category of 'own consumption', is also misconceived as there is no dispute to the context that the generation of electricity done by the appellant is for auxiliary consumption and by virtue of clause (e) of the explanation in consonance with clause 5(b) of Table -B shows that the auxiliary consumption of electricity is chargeable in terms of electricity duty. The appellant has also raised the issue in respect of expression 'purpose' and 'own consumption' contending that the auxiliary consumption is not categorized either as 'purpose' or 'own consumption' and has interpreted the same provisions contending that the purposes ought to be necessarily within the four corners of clause 1 to 6 in Part B Table of Section 3 and township of producer or colony of producer. Further according to the appellant, the categories of consumption would be the domestic consumption, non domestic consumption, mines, cement industry and other industries and therefore, the electricity duty rate provided under Table -B in respective categories have to be taken into consideration and anything falling beyond the aforesaid categories cannot attract the electricity duty and since the auxiliary consumption is not mentioned as tariff category, therefore, auxiliary consumption is beyond the scope. Further the appellant has questioned the inclusion of auxiliary consumption under the head of own purpose referring to clause 7 of Table B. It is reiterated that auxiliary consumption of electricity has been clearly envisaged in Table -B that the auxiliary consumption of electricity would fall under the category of other industries and other industries have been included for levy of electricity duty.

31. Mr. Marhas would also submit that the appellant herein had been operating TG-1 to TG-6 during the exemption period and it is only when the appellant had shifted its electricity generation in TG 7 stage, the appellant although was granted exemption for auxiliary consumption in accordance with the Industrial Policy for TG-7 stage also, but, the appellant herein has misused the exemption by transferring the electricity of TG7 to TG 1 to TG 6 generators. The appellant intends to re-state the generators which have already used the exemption by using the electricity of TG 7 generator which have been exempted till the end of

exemption period. Thus, the appellant intends to use the exempted electricity for operation of the industrial unit connected with TG 1 to TG 6 generators. It is submitted that the exemption of electricity duty cannot be made to misuse the electricity under exemption to be utilized illegally in different units. In other words, the exemption granted in TG 7 generator for consumption of electricity has to be consumed for the connections of TG 7 generator only. There is no dispute to the contention raised by the appellant herein as the own purpose or self consumption are coterminous in the context of the instant case and the appellant has been duly granted exemption as is provided under the Industrial Policy for use of electricity for own purpose. However, the exempted electricity has to be used for the purpose of exemption categorically and herein the instant case, the exemption of electricity duty for operation of TG 7 generator cannot be extended to other generators and therefore, the appellant is from using the electricity which is under exemption of electricity duty in other generators, apart from TG 7 generator.

32. Consumption for own purpose means power consumption by the producer and not individual generating stations / units. From TG 1 generator to TG 6 generator, the appellant itself had used the auxiliary consumption and the exemption of electricity duty limiting to the units of said generator,s meaning thereby the electricity under the exemption cannot be transferred from one generator to another generator, therefore, it is incorrect to contend that the consumption for own purpose would mean the consumption by the producer and not individual generating station or unit. Although the appellant has referred to certain decision rendered by the Hon'ble Supreme Court and the ratio laid down by the Hon'ble Supreme Court is not disputed. However, is distinguishable so far as the instant case is concerned, since the Act itself provides for charging of electricity duty and by way of the explanation, it has been visibly envisaged that the power consumption for electricity duty for auxiliary consumption is chargeable and since the appellant has intended to challenge the vires of explanation particularly explanation (e) in Table -B of Section 3, therefore, the instant appeal is liable to be dismissed as not maintainable. Since the vires has not been challenged by the original jurisdiction of the Hon'ble Court rather it has been brought by way of the amendment in the instant writ appeal which is not permissible in the eyes of law.

33. We have heard learned counsel for the parties, perused the pleadings and documents appended thereto.

34. The admitted facts in this case is that the appellant Company made an application for grant of sanction of drawing for establishment of new 1x24 MW TG set (TG-7) including the new industrial unit for supply of electricity to the appellant's new industrial unit, before the Chief Electrical Inspector on 26.06.2003, which was granted by the said authority after due scrutiny approving the drawing. Thereafter, completing formalities regarding new electrical installation, the Chief Electrical Inspector granted temporary permission

for establishment and running of part of 1x24 MW Turbo Generator on 16.03.2004. The appellant-Company submitted application to the Chief Electrical Inspector for exemption from electricity duty for 1x24 MW (Sl.No.1456) on 07.10.2003 seeking exemption from electricity duty for a period of 15 years i.e. for 15.10.2003 to 04.10.2018. The Chief Electrical Inspector after due scrutiny, granted exemption by order dated 17.08.2014 for payment of electricity duty only for a period of ten years from the date of commencement of generation by the Captive Generating Station established for new industrial unit as per the notification dated 29-7-2000.

35. The learned Single Judge, at paragraph 20 has discussed the issue with regard to taxable event and after taking note of Section 3 of the Act of 1949, has observed that the taxing event would be the sale or consumption by the producer or the distributor as the case may be. Further, after taking note of the decisions rendered by a Division Bench of the Madhya Pradesh High Court in J.C. Mills, Gwalior v. State of M.P. {AIR 1959 MP 365} wherein the constitutional validity of Section 3 of the Central Provinces and Berar Electricity Duty Act, 1959 as amended by the Madhya Pradesh Taxation Law (Amendment) Act, 1956 was considered, and the decision of the Supreme Court in Jayajeerao Cotton Mills Ltd. Birlanagar Gwalior v. State of M.P. {AIR 1963 SC 414} and further the decision in Swaroop Vegetables (supra), has observed that taxable event for levy of electricity duty is consumption of energy.

36. Fact of the matter remains that the appellant-Company has a captive power plant of 265.70 MW at its Steel Plant to meet its power requirement. The said Power Plant comprises of three units, Power Plant-I, Power Plant-II and Power Plant-III which in turn, comprise of 9 TG sets generating power at 11 KV each and exemption from payment of electricity duty of Power Plant-I for TGs 1, 3, 5 & 6 has already come to an end, however electricity duty exemption for TG-7 was operative for ten years by notification dated 29.07.2000 from the date of commencement of its generation. The appellant/Company's contention is that TG-7 is designed to take care of auxiliary power consumption of TGs 1, 3, 5 & 6 of Power Plant-I for which auxiliary power consumption has also been provided without protest by the respondent authorities, therefore, electricity duty on auxiliary consumption of TGs 1, 3, 5 & 6 is not payable. This plea is based on the fact that the Act of 1949 is silent on the source of auxiliary consumption and has not specified from which source the power should come for auxiliary consumption.

37. The learned Single Judge has rightly taken note of Clause 14(iv) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 which defines 'Auxiliary Energy Consumption' as the quantum of energy consumed by auxiliary equipment of the generating station and transformer losses within the generating station, and shall be expressed as a percentage of the sum of gross energy generated at the generator terminals of all the units of generating station, and also the Chhattisgarh Electricity Duty (Amendment) Act, 1995, Part-B, item No.5(b) of the Table read with Explanation

(e) which provides that for the purpose of consumption of Power Plant Auxiliaries, the rates of electricity duty shall be 8%. Hence, auxiliary consumption of TG set is separately charged as per the rate shown against item No.5(b) of the Table i.e. 8%.

38. The learned Single Judge has further rightly discussed at paragraph 29 of its judgment that while a generating set generates electricity, a fraction of power generated is consumed by power generating equipments /auxiliaries of the generating set such as fans, motors etc., and in the process of production of power, there will be some self consumption of power by the generating set itself that is called auxiliary power consumption.

39. The exemption from electricity was granted to the new industrial unit as mentioned in D-06 and to be consumed by that new industrial unit established by the appellant/Company and that exemption and its conditions are to be construed strictly and exemption from payment of electricity duty can be enjoyed by the appellant/Company subject to conditions enumerated in the said exemption notification. The exemption from electricity duty with respect to TGs 1, 3, 5 & 6 had already come to an end. However, TG-7 had been enjoying exemption from electricity duty and TGs 1, 3, 5 & 6 were getting electricity from TG-7 for its auxiliary consumption. As per the conditions enumerated in the notification regarding exemption, it is clear that such exemption was granted to captive generation station which was to be established for new industrial unit only with respect to consumption of electrical energy by new industrial units established by the appellant / Company and TGs 1, 3, 5 & 6 which were already existing on the date of grant of exemption in respect of TG-7 do not come within the meaning of new industrial unit in terms of exemption notification and auxiliary consumption made by TGs 1, 3, 5 & 6 is not subject to exemption from electricity duty and is liable to electricity duty. The appellant/Company is entitled to exemption from electricity duty for TG-7 and new industrial unit, if any. The auxiliary consumption made by TGs 1, 3, 5 & 6 are not entitled for exemption from electricity duty. Installation of auxiliary bus with the approval of the respondent authority cannot be a ground to claim exemption from electricity duty and as such, the Chief Electrical Inspector and the appellate authority are absolutely justified in charging electricity duty from the appellant / Company.

40. The learned Single Judge, while assigning the reasons at paragraphs 26 to 31 has rightly upheld the order passed by the Chief Electrical Inspector and the appellate authority. Further, as has been rightly pointed out by the learned State counsel, the appellant, in this appeal is indirectly trying to challenge the jurisdiction of the Legislature by questioning the insertion of explanation in Table-B particularly sub-clause (e) of the explanation and since there is no challenge to the competence or the intention of the Legislature, therefore, the appellant is indirectly challenging the vires of insertion of the explanation. As such the instant writ appeal for bringing out the entirely a new ground which has not been raised in the writ petition, as also challenging the vires for the first time in the instant

writ appeal, is not maintainable as the challenge to vires of any provision of law can be made only on the original jurisdiction of the Hon'ble High court under Article 226 of the Constitution of India and in accordance with the provisions of the Chhattisgarh High Court Rules and orders.

41. In view of the above discussion, we do not find any infirmity or illegality in the order passed by the learned Single Judge and as such, this appeal, being devoid of merit, is accordingly dismissed.