(2026) 01 GUJ CK 1435

In the Gujarat High Court

Case No : R/Special Civil Application No. 10617 Of 2025

Kepler Resources Private Limited APPELLANT

Vs

State Of Gujarat & Ors RESPONDENT

Date of Decision : 19-01-2026

Acts Referred:

Bombay Electricity Duty (Gujarat) (Amendment) Rules, 2010 — Rule 11, 11(3)
Gujarat Electricity Duty Act, 1958 — Section 2(a)(i), 2(a)(ii), 3(2)(vii)

Citation : (2026) 01 GUJ CK 1435

Hon'ble Judges : Aniruddha P. Mayee, J

Bench : Single Bench

Advocate : Naman H Kinkhabwala, Nikunj Kanara, SP Hasurkar

Final Decision : Allowed

Judgement

Aniruddha P. Mayee, J

1. RULE. Rule returnable forthwith. Mr. Nikunj Kanara, learned AGP waives service of rule for the respondent Nos.1 and 2 and Mr. S.P.Hasurkar, learned advocate waives service of rule for the respondent No.3.

2. By the present Special Civil Application, the petitioner is praying for the following reliefs:-

“8A) Admit and allow this Petition;

B) Be pleased to quash and set aside the communication dated 25/02/2025 (annexed at annexure-E).

C) Be pleased to direct respondent No.2 to rectify/modify Final 'Certificate for eligibility for exemption from payment of electricity duty' dated 23/09/2024 issued to the petitioner, and thereby change the period of exemption from 27/2/2024 - 28/11/2028 to 29/11/2023 - 28/11/2028

D) By way of ad-interim relief be pleased to restrain the respondent authorities from charging any exempted electricity duty for the period of 29/11/2023 to 26/02/2024 to the petitioner."

3. It is the case of the petitioner that the petitioner is a Private Limited Company and is into the business of manufacturing of FERRO VANDIUM. That since the petitioner was a new industrial undertaking, the petitioner had opted for Certificate of Eligibility for Exemption from Payment of Electricity Duty under the provisions of Section 3(2)(vii) of the Gujarat Electricity Duty Act, 1958 ["Act, 1958" for short]. Learned counsel submits that the petitioner was eligible and entitled for the exemption under the Act, 1958. The petitioner had filed Form-E as per Rule 11 of the Bombay Electricity Duty (Gujarat) (Amendment) Rules, 2010 ["Rules, 2010" for short]. He submits that Form-E has to be submitted to the Collector of Electricity Duty, Gandhinagar within 90 days from the date on which the petitioner company had started manufacturing/production of its goods for the first time. Learned counsel for the petitioner submits that the petitioner started its first production from 29.11.2023 and therefore, the petitioner had to submit Form-E on or before 26.02.2024. He submits that on the 90th day i.e. on 26.02.2024, the petitioner filled the online Form and uploaded the same. However, due to technical error in the website of the respondent No.2 authorities, the Form-E of the petitioner did not get uploaded on 26.02.2024 and is shown to have been submitted on 27.02.2024. He submits that due to the said fact, the respondent No.2 issued the Final Certificate of Eligibility from Exemption from Payment of Electricity Duty for the period from 27.02.2024 to 28.11.2028. He submits that the respondent No.2 has deducted the period 29.11.2023 to 26.02.2024 from the total exemption period because the Form-E was submitted after 90 days. He submits that this action on the part of the respondent No.2 is arbitrary and unjust and the same be quashed and set aside. Learned counsel submits that the belated uploading of the Form cannot be attributed to the petitioner since there was a technical error in the website of the respondent No.2 authorities due to which the Form-E was uploaded only on 27.02.2024. He submits that due to error in the website of the respondent No.2, the petitioner cannot be compelled to incur financial loss. He submits that the petitioner made a representation to the respondent authorities requesting to make correction in the Final Certificate dated 23.09.2024 in respect of the period of exemption duty, however, the same has been rejected. He, therefore, submits that this Court may kindly quash the communication dated 25.02.2025 (Annexure-E to the petition) and modify the Final Certificate of Eligibility for Exemption from Payment of Electricity Duty by making the period of exemption from 29.11.2023 to 28.11.2028.

4. Per contra, Mr. Nikunj Kanara, learned Assistant Government Pleader for the respondent No.2 authorities submits that the petitioner had claimed exemption from payment of electricity duty under the provisions of Section 3(2)(vii) of the Act, 1958. The petitioner had to accordingly make an application to the Collector of Electricity Duty in Form-E within 90 days from the date it begins production of goods for the first time. The petitioner started its production on 29.11.2023 and

therefore, the petitioner had to upload the Form-E on or before 26.02.2024. He submits that the petitioner has uploaded the Form-E only on 27.02.2024 and since the same was beyond the period of 90 days, as stipulated under the Rules, the Final Certificate issued to the petitioner has correctly mentioned the period of exemption from 27.02.2024 to 28.11.2028. He submits that the Certificate has been issued in terms of the Rules, 2010 and the same is just and proper. The petitioner had 90 days to complete the process, however, the petitioner has opted to do so only at the last moment for which the respondent No.2 authorities cannot be faulted with. He submits that since the act of uploading was on the part of the petitioner, no fault can be attributed to the respondent No.2 authorities. He, therefore, submits that the present Special Civil Application is devoid of merits and be dismissed.

5. Heard learned counsels for the parties, considered the submissions and perused the documents on record.

6. Section 3(2)(vii) of the Gujarat Electricity Duty Act, 1958 reads thus:-

“3. [Subject to the provisions of sub-section (2) 4[(2AA), (2AAA), (2B)] and (3)], there 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 caluse (a) of section 2, at the rates specified in Schedule II to this Act.]

(2) Electricity duty shall not be leviable on the units of energy consumed, -

(vii) for motive power and lighting in respect of premises used by a new industrial undertaking for industrial purpose, subject to such terms and conditions as may be prescribed, for a period of five years from the date on which such industrial undertaking begins to manufacture or produce goods for the first time:

Provided that ?? undertaking shall be new industrial entitled for exemption from payment of electricity duty under this clause, unless it has obtained a certificate regarding eligibility for such exemption in prescribed form by making an application therefore in such form, within such period and to such officer as may be prescribed.

Explanation.-For the purpose of this clause "a new industrial undertaking" means any industrial undertaking which-

(a) is not formed by the splitting up or the reconstruction of a business ?? undertaking already in existence in the State; or

(b) is not formed by transfer to a new business or undertaking of 7[*] machinery or plant previously used in India for any industrial purpose, of such value in relation to total value of the aforesaid investments, as the State Government may, by notification in the Official Gazette, specify; or

(c) is not an expansion of the existing business or undertaking in the State);”

7. According to the said provision, any new industrial undertaking which begins manufacturing or production of goods for the first time, then it is entitled to exemption from payment of electricity duty for a period of 5 years. For getting the exemption under Section 3(2)(vii) of the Act, 1958, such an industrial undertaking has to follow the procedure prescribed under Rule 11 of the Bombay Electricity Duty (Gujarat) (Amendment) Rules, 2010, which reads as under:-

“11. Procedure for Getting Exemption under Section 3(2) (vii). -

(1) Any new Industrial undertaking desires to get exemption under clause (vii) of sub-section (2) of section 3 shall make an application to the Collector of Electricity Duty, Gandhinagar in Form ‘E' within ninety days from the date on which such industrial undertaking begins the manufacturing or production of goods for the first time.

(2) On receipt of an application made under sub-rule (1), the Collector of Electricity Duty, Gandhinagar may make such inquiries as he deems necessary and call for such further information as he may think fit and if he is satisfied that the applicant is entitled to get the exemption from payment of electricity duty, he shall grant the certificate of eligibility for exemption from payment of electricity duty in Form 'F'.

(3) Any new Industrial undertaking making an application after the expiry of the period specified in sub-rule (1) shall not be entitled for exemption from payment of electricity duty for the period lapsed between the date of the application and the date of manufacture or production of goods, and the total period of exemption shall be reduced to that extent:

Provided that where the State Government, after making such inquiry as it thinks fit, is satisfied that the applicant could not make the application within the period specified in sub-rule (1) for the reasons beyond his control, it may condone the delay in making the application and in that event the total period of exemption shall not be reduced.”

8. In the present case, Mr. Nikunj Kanara, learned Assistant Government Pleader has placed on record the email communication in respect of the application status of the petitioner. The same reads thus:-

“Sir,

This is to clarify that the date i.e. 27/02/2024 12:00:00 AM, printed on the corner side of Form-E, is the date on which the applicant printed the application form. This Form-E is generated after all necessary documents and details were uploaded on the online portal.

After printing Form-E, the authorized signatory manually signed the form. Thereafter, the duly signed Form-E was scanned and uploaded on the ED Exemption Portal. After the duly signed Form-E was uploaded, the final submit button was pressed, and thereafter the application was received at the department's end.

We further inform you that the application was received at the department's end on 27/02/2024 at 00:06:24 AM"

9. From the record of the respondent No.2 authority, it is seen that the petitioner has printed the application Form on 27.02.2024 at 12:00 a.m. and thereafter, the same is shown to have been uploaded by the petitioner on 27.02.2024 at 00.06 a.m. The proviso to Rule 11(3) states that where the Statement Government after making such an inquiry if thinks fit and satisfied that the applicant could not make the application within the period specified for the reasons beyond his control, it may condone the delay in making application and in that event, total period of exemption shall not be reduced. As seen in the present case, the petitioner has stated that the petitioner was unable to print the Form and upload the same on the website of the respondent No.2 authority due to technical error and hence, there was a delay. The communication placed on record by the learned Assistant Government Pleader reveals that the Form-E was generated after all the necessary documents and details were uploaded only on the online portal at 12:00 a.m. i.e. at the very start of 27.02.2024 and at the end of 26.02.2024 which was the last date for uploading the Form. That thereafter, the petitioner's authorized signatory manually signed the said Form so printed and after scanning the said duly signed Form has uploaded the same on the ED exemption portal which has been received by the department at 00.06 a.m. i.e. after 6 minutes. Therefore, in the present case, it can be seen that there is a delay of only 6 minutes in uploding the Form-E by the petitioner which may be attributed to the technical error, if any, on the website as alleged by the petitioner.

10. Further, as per the proviso to Rule 11 of the Rules, 2010, the State Government has power to condone the delay in making the application. In the present case, the delay in uploading the Form-E by the petitioner is of 6 minutes only. The petitioner has stated that due to some technical glitches on the website of the respondent No.2 authority, the petitioner was prevented from uploading the Form-E within time. In the considered opinion of this Court, the petitioner can be given benefit of doubt in respect of 6 minutes delay in uploading the Form-E. The fact shows that the petitioner was in the process of uploading the Form before 12:00 a.m. and the process has been completed within 6 minutes after 12:00 a.m. which is technically new date i.e. 27.02.2024.

11. This Court, therefore, holds that the delay of 6 minutes in uploading the Form-E by the petitioner herein is liable to be condoned and the petitioner is

entitled to the benefit of exemption from payment of electricity duty for the period specified in the Provisional Certificate i.e. from 29.11.2023 to 28.11.2028.

12. In view of the aforesaid observations, the present Special Civil Application is allowed. The Delay of 6 minutes in uploading the Form-E is condoned. The respondent No.2 authority shall issue Final Certificate of Eligibility for Exemption from Payment of Electricity Duty for the period from 29.11.2023 to 28.11.2028 to the petitioner. The said Certificate shall be issued within 4 weeks from the date of receipt of this order. Rule is made absolute to aforesaid extent. No order as to costs.