
(2017) 08 MP CK 0036
In the Madhya Pradesh High Court
Case No : 8643 of 2012

Omkar Mahule

APPELLANT

Vs

The State of Madhya Pradesh & ors

RESPONDENT

Date of Decision : 04-08-2017

Acts Referred:

Constitution of India, Article 254(2) -
Inconsistency between laws made by Parliament and laws made by the Legislatures of
States
Madhya Pradesh Upkar Adhiniyam, 1981, Sect

Citation : (2017) 08 MP CK 0036

Hon'ble Judges : Sanjay Yadav, S.K. Awasthi

Bench : Single Bench

Advocate : Pawan Dwivedi, Praveen Newaskar, Vivek Jain

Judgement

1. Petitioner challenges the legality and validity of Section 3 of Madhya Pradesh Upkar Adhiniyam, 1981 (for short "Act, 1981") substituted vide Madhya Pradesh Upkar (Sanshodhan) Adhiniyam, 2011 (for short "Adhiniyam, 2011"), whereby for sub-section (1) of Section 3, following sub-section has been substituted:- "(1) Every Generating Company or any person owning or operating a captive generating plant shall pay to the State Government at the prescribed time and in the prescribed manner an energy development cess at the rate of fifteen paise per unit on the total units of electrical energy sold or supplied to a distribution licensee or consumer in the State of Madhya Pradesh or consumed by itself or its employees during prescribed period:

Provided that no cess shall be payable in respect of electrical energy sold or supplied by any Generating Company in which the Government of Madhya Pradesh has fifty one percent or more equity.

2. This legislation, i.e., Madhya Pradesh Upkar Adhiniyam, 1981 has a chequered history.

3. The amendment was initially made by an ordinance promulgated on

29.06.2001 by the State Government titled as the Madhya Pradesh Upkar (Sanshodhan) Adhyadesh, 2001. "By amendment a cess @ 20 paise per unit was imposed on the captive power producer on the total units of electrical energy produced. The Act subsequently replaced the ordinance, known as Madhya Pradesh Upkar (Sanshodhan) Adhiniyam, 2001 (referred to Amending Act, 2001)

4. Amendment Act, 2001 came to be challenged by the Madhya Pradesh Cement Manufactures Association vide Writ Petition No. 3547/2001. A Division Bench of this Court vide order dated 21.11.2001 repelled the challenge and upheld constitutional validity of Amending Act, 2001. That, Act of 1981 further underwent amendment vide Madhya Pradesh Upkar (Dwitiya Sanshodhan) Adhiniyam, 2001, whereby the rate of energy on the distributors of electrical energy under sub-section (1) of Section 3 was increased from 1 paise to 10 paise.

5. That order in Madhya Pradesh Cement Manufactures Association (supra) was challenged in the Supreme Court in M.P. Cement Manufacturers' Association Vs. State of M.P. and others reported in (2004) 2 SCC 249 wherein it was held: "14. A plain reading of Sub-Section (2) of Sub Section 3 by the amendment to the 1981 Adhiniyam makes it clear that the levy of cess was "on the electrical energy produced". The phrase "whether for sale or supply" merely clarified that all electricity produced irrespective of its destination would be liable to cess at the specified rate. The use of the word "whether" after the phrase "energy produced" means that the cess would apply on units produced, whichever of the alternatives mentioned after the word "whether", namely, sale or supply or consumption is the case. There is no reason to assume that the words used did not reflect the intention of the Legislature. The imposition envisaged was on the production of electricity units. The charge was on generation and not on the sale or consumption of electricity. There is a conscious linguistic departure from the language used in Section 3 of the Electricity Duty Act, 1949 and indeed the language used in Section (1) of the same Act where the cess is levied on the total units of electrical energy sold or supplied by distributors of electrical energy. When dealing with producers under sub- Section (2) of the same section, the cess is required to be paid "on the total units of electrical energy produced". If, as is contended by the respondents, the incidence of levy under sub-Section (1) and subsection (2) were identical, the same language should have been used in both sub-sections. The deliberate change in language reflects an intention to alter the subject matter of levy as far as producers were concerned.

15. Our interpretation of sub-section (2) of Section 3 is buttressed by and in keeping with the language and effect of the proviso to the said subsection. It has been held that the normal function of the proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. The proviso to Section 3(2) excepts "electrical energy produced" from payment of the cess in five cases. This would show that the general application of Section 3(2) to which an exception was being carved by the proviso was in respect of the production of electrical

energy. Were it not for the exception in the proviso to Section 3(2), what would be subjected to tax would be electrical energy produced by the five categories mentioned under the proviso. Although in categories (i), (ii), (iii) and (v) the exemption is granted with reference to the utilisation of the electrical energy produced, under exception (iv) significantly, all electrical energy produced by a Rural Electrical Co-operative Society registered under the M.P. Co-operative Societies Act, 1960 is exempted. The difference of language between the proviso to sub-section (2) of Section 3 and the proviso to sub-section (1) of Section 3 is also telling. Under the proviso to sub-section (1), the exception is of electrical energy sold or supplied to specified authorities.

16. That the intention of the Legislature was to levy cess on the production of electricity is also borne out from the Statement of Objects and Reasons which accompanied the Act which replaced the Ordinance. It says:

"With a view to impose cess on the electricity generated by the producers from their Captive Power Plants/Diesel Generating Sets for self consumption or for sale at the rate of 20 paise per unit on all generated electricity units, it has been decided to amend the Madhya Pradesh Upkar Adhiniyam, 1981 (No. 1 of 1982) suitably." (emphasis supplied)

17. There can, in the circumstances, be no doubt that the levy was sought to be imposed on the generation of electricity by the amendment, a levy which the State admittedly was incompetent to impose.

6. Further taking note of further amendment effected to 1981 Adhiniyam by the Madhya Pradesh Upkar (Sanshodhan) Adhiniyam, 2003, whereby an explanation was added at the end of sub-section (2) of Section 3 in the terms that: "Explanation - for the purpose of this subsection, the cess shall be levied on the units of electrical energy, sold or supplied from the captive power units or diesel generators sets to a consumer or consumed by the producer or his employees.

7. It was held:- "(25) The expression used by the Explanation is "for the purpose of sub-section (2) of Section 3, the cess shall be levied on units of electrical energy sold or supplied". Since the purpose of sub-section (2) of Section 3 continues to be a levy on production, the word "levied" in the context would at the highest mean "assessment" and not "imposition". It is not the respondents' case that any new or additional or alternative cess was sought to be introduced by the Explanation. Thus despite the Explanation, the charge in Section 3(2) continues to be on the production of the electrical energy units and nothing else. The proviso to subsection (2) of Section 3 continues to except electrical energy produced from the cess in certain cases. The Explanation, if it is read with the main provision, introduces certain contradictions and vagueness. A charging provision should be explicit, certain and clear in order to bind the subject. The outcome of the introduction of the Explanation to an otherwise unchanged Section 3(2) is a singularly ill drawn provision. The 2003 amendment was obviously introduced for the purpose of rectifying the obvious error in Section

3(2), an object which cannot be achieved by introducing an Explanation since an Explanation cannot be read as changing or as interfering with the incidence of the levy. It is not for us, particularly when legislative clarity is required since the statutory provision imposes a tax, to untangle the legislative confusion.

(26) The legislature could have avoided the controversy, if it had wished to make the incidence of tax explicitly on sale or consumption, by the simple expedient of so providing. The Legislature in its wisdom did not choose to do so. To use the words voiced by Jessel M.R.:

"I must say that whoever is responsible for drafting .. of this Act ... has taken a great deal of trouble to raise a very difficult question, when he might with the greatest ease by using appropriate and well-known terms have avoided any question whatever."

(27) We are, therefore, of the opinion that the cess chargeable at all material times under Section 3(2) is only on the production of electrical energy units as far as producers of electricity for captive consumption are concerned and the Explanation does not serve to change the character of the tax from an impermissible to a permissible levy."

8. Thus, incidence of tax on production was held beyond the competence of the State legislature. The provision was thus declared ultra vires (Paragraph 43 of the report).

9. After the decision in M.P. Cement Manufactures Association, the State legislature in order to save the loss caused to the exchequer enacted Madhya Pradesh Upkar (Sanshodhan Tatha Vidhimanyatakarana) Adhiniyam, 2004, the constitutionality whereof came to be challenged in Prism Cement Ltd. Satna Vs. State of M.P. and others reported in 2008 (II) MPJR 269, in which the validity was upheld and it was held:- "47. In view of the aforesaid analysis we record our conclusions in seriatim as under:

(a) The stand and stance that the levy is still on production and, therefore, the State Legislature does not have legislative competence is unacceptable as the language of the statute is unambiguous and clear and relates exclusively to sale, supply and consumption and there is no colourable exercise of power.

(b) The proponement that in a captive power plant what is produced and generated is consumed and, therefore, in quintessentiality, it is levy of cess on production or manufacturing is sans substratum as a distinction has been drawn between the terms "production" on one hand and sale, consumption and supply on the other.

(c) The submission that the Parliament alone could have passed the Validation Act in respect of levy and to remove the base of the decision rendered in M.P. Cement Manufacturer's Association (supra) is neither sound nor correct.

(d) The State Legislature has correctly amended the provision contained in

Section 2(1) of the Validation Act which is within its domain and, therefore, the ground that it lacks the legislative competence is bereft of any substance.

(e) The assailability to the effect that the Validation Act is not valid as the amount realized still relates to production, the provision being retrospective in nature, has no substantiality and substance and hence, deserves to be rejected, and as a logical and natural corollary it is held that the Validation Act has been validly passed by the State Legislature.

(f) The Validation Act is not hit by Article 14 of the Constitution as the classification is reasonable and further the provisions do not suffer from any arbitrariness. The Validation Act cannot be regarded to be ultra vires because of non-compliance of the conditions precedent as engrafted under Section 12(3) of Vidyut Sudhar Adhiniyam because as both the statutes operate in different spheres and, in any case, a piece of legislation cannot be regarded as invalid because the Regulatory Commission as contemplated under Vidyut Sudhar Adhiniyam has not been consulted.

(g) The assiduous asseveration that there can be passing of a legislation to convert impermissible levy to a permissible levy within the parameters of legislative competence but in the case at hand the conversion or change does not meet the conversion equivalence in an apposite manner, for the amount of energy cess collected on production cannot be adjusted with retrospective effect for the sum payable for sale, consumption and supply there is lot of difference in the amount, is without merit inasmuch as Sub-section 2 of Section 3 takes care of it by providing that sub-section shall be construed as preventing any person - (a) from questioning in accordance with the provisions of principal Act, the imposition of energy development cess for any period; or (b) for claiming refund of the cess paid by him in excess under the principal Act.

(h) Each of the petitioners is entitled to get the differential sum computed as per Sub section 2 of Section 3 in respect of amount of energy cess on production and the amount presently realized under the heads sale, supply and consumption.

(i) The conclusion recorded at Sr. No. (g) above does not necessarily mean that this Court has recorded a finding that there is differential sum in each case as this Court has not dwelled upon this facet the same being not necessary while the constitutional validity has been addressed to.

(j) If any sum after computation falls due, as per law, the same shall carry interest as per the direction given by the Apex Court in M.P. Cement Manufacturers" Association (supra)."

10. It is informed that a Special Leave Petition bearing SLP No. 17748/22007 is pending before Supreme Court.

11. When the matter stood thus the State Legislature further amended Section 3 of 1981 Adhiniyam vide Madhya Pradesh Upkar (Sanshodhan) Adhiniyam, 2011 in the following terms:- "2. In Section 3 of Madhya Pradesh Upkar Adhiniyam,

1981 (No. 1 of 1982), for sub-section (1), the following sub-section shall be substituted, namely:-

"(1) Every Generating Company or any person owning or operating a captive generating plant shall pay to the State Government at the prescribed time and in the prescribed manner an energy development cess at the rate of fifteen paise per unit on the total units of electrical energy sold or supplied to a distribution licensee or consumer in the State of Madhya Pradesh or consumed by itself or its employees during prescribed period:

Provided that no cess shall be payable in respect of electrical energy sold or supplied by any Generating Company in which the Government of Madhya Pradesh has fifty one percent or more equity.

Explanation: For the purpose of this subsection "Generating Company", "person", "captive generating plant", "distribution licensee" and "consumer" shall have the same meaning as assigned to them in Section 2 of the Electricity Act, 2003 (No. 36 of 2003)."

12. Subsequently, vide Madhya Pradesh Upkar (Sanshodhan) Adhiniyam, 2012, the State Legislature substituted sub-section (1) of Section 3 of Adhiniyam, 1981 as under:- "2. In Section 3 of the Madhya Pradesh Upkar Adhiniyam, 1981 (No. 1 of 1982), for subsection (1), the following sub-section shall be substituted, namely:-

"(1)(a) Every Generating Company shall pay to the State Government at the prescribed time and in the prescribed manner an energy development cess at the rate of fifteen paise per unit on the total units of electrical energy sold or supplied to a distribution licensee or consumer in the State of Madhya Pradesh or consumed by itself or its employees during prescribed period:

Provided that no cess shall be payable in respect of electrical energy sold or supplied by any Generating Company in which the Government of Madhya Pradesh has fifty one percent or more equity.

(b) Every person owning or operating a captive generating plant shall pay to the State Government at the prescribed time and in the prescribed manner an energy development cess at the rate of fifteen paise per unit on the total units of electrical energy sold or supplied to a distribution licensee or consumer in the State of Madhya Pradesh or consumed by its employees during prescribed period.

Provided that no cess shall be payable in respect of electrical energy consumed himself by any person owning or operating a captive generating plant.

Explanation: For the purpose of this subsection "Generating Company", "person", "captive generating plant", "distribution licensee" and "consumer" shall have the same meaning as assigned to them in Section 2 of the Electricity Act, 2003 (No. 36 of 2003)."

13. The validity of Sanshodhan Adhiniyam, 2012 is not questioned; we are,

therefore, presently concerned with the validity of Sanshodhan Adhiniyam, 2011.

14. The amendment is challenged broadly on the following grounds, firstly, that it is beyond legislative competence of the State legislature to levy cess on the utilization of the electricity as the same is inseparable and incidental of the captive generation of electricity and, therefore, the consumption / utilization of electricity is dormant part of manufacturing activity. In essence, it is urged that the impugned levy is on manufacturing / production which is beyond legislative competence of the State legislature. Secondly, that subject of captive electricity generated / produced by captive power generating plants relates to entry 38 of list III of the VII Schedule of the Constitution. It is urged that since source of production of electricity is wholly immaterial and does not alter the real taxing subject; and since the law relating to production of electricity by captive power generating plant is covered by the Act of 2003 and the field of legislation being occupied, it is beyond the competence of the State legislature with taking recourse to Article 254(2) of the Constitution to enact to Sanshodhan Adhiniyam, 2011.

15. The petitioner, however, has confined his submissions only to the extent that it is beyond the legislative competence of the State legislature to levy cess on the utilization of the electricity as the same is inseparable and incidental of the captive generation of electricity which is a dormant part of manufacturing activity. To substantiate the submission, learned counsel for the petitioner has taken pain to explain the process of generation of electricity from captive generation plant. Evidently, after the generation of electricity which cannot be stored there has to be consumption which is done through distribution, thus these three are separate in nature and not inseparable as contended on behalf of the petitioner. That, State under Entry 53 of list II of Schedule VII of the Constitution can levy tax on consumption of the electricity so generated. The taxing event is thus consumption which cannot be separated from the event of supply.

16. In the case at hand the taxing event is the sale, supply and consumption of electricity. Though true it may be that the petitioner is also producing the electricity but is consuming himself. Since the incident of tax is not on production which is separate then the distribution, supply or consumption as can be said to be beyond legislative competence of the State legislature.

17. In *Jiyajeerao Cotton Mills Ltd., Birlanagar, Gwalior Vs. State of Madhya Pradesh* reported in AIR 1963 SC 414, it is held: "5. For the purpose of appreciating the first ground it would be useful to reproduce the terms of S. 3 of the Act. The section runs thus:

"Levy of duty on sale or consumption of electrical energy-Subject to the exceptions specified in S. 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 or his employees during the preceding month.

Rates of Duty

(i) Electrical energy supplied for consumption for lights, fans or any other appliances normally connected to a lighting circuit. 6 nP per unit of energy.

(ii) Electrical energy supplied for purposes other than those specified in item (i) above. 1 nP. per unit of energy."

This is the charging section. It is not disputed by Mr. Sastri that under this provision a producer of electrical energy is made liable to pay duty for the units of electrical energy consumed by himself. He, however, contends that rates of duty have been prescribed in the Table below S. 3 only with respect to electrical energy "supplied for consumption" to others and that no rates have been prescribed with respect to electrical energy consumed by the producer himself. Section 2(a) of the Act defines "consumer". The definition, so far as relevant, runs thus:

"`Consumer" means any person who consumes electrical energy sold or supplied by a distributor of electrical energy or a producer....."

`Producer" as defined S.2(d-1) of the Act means "a person who generates electrical energy at a voltage exceeding hundred volts for his own consumption or for supplying to others". If we read the two definitions together, omitting the non-essentials, "consumer" would include ""any person who consumes electrical energy supplied by a person who generates electrical energy for his own consumption". Under S.3 a person who generates electrical energy over hundred volts for his own consumption is liable to pay duty on the units of electrical energy consumed by himself. A producer consuming the electrical energy generated by him is also a consumer, that is to say, he is a person who consumes electrical energy supplied by himself. The Table prescribes rates of duty payable with respect to electrical energy supplied for consumption and, therefore, the levy on the appellant falls squarely within the Table under S. 3 of the Act and M/s. Viswanatha Sastri's argument is devoid of substance.

(6) It is difficult to see how the levy of duty upon consumption of electrical energy can be regarded as duty of excise falling within Entry 84 of List I. Under that Entry what is permitted to Parliament is levy of duty of excise on manufacture or production of goods (other than those excepted expressly by that entry). The taxable event with respect to a duty of excise is "manufacture" or "production". Here the taxable event is not production or generation of electrical energy but its consumption. If a producer generates electrical energy and stores it up, he would not be required to pay any duty under the Act. It is only when he sells, it or consumes it that he would be rendered liable to pay the duty prescribed by the Act. The Central Provinces and Berar Electricity Act was enacted under Entry 48-B of List II of the Government of India Act, 1935. The

relevant portion of that Entry read thus:

"Taxes on the consumption or sale of electricity..... "

Entry 53 of List II of the Constitution is to the same effect. The argument of Mr. Sastri is that the word "consumption" should be accorded the meaning which it had under the various Act, including the Indian Electricity Act, 1910. Under that Act and under the various Provincial and State Acts, consumption of electricity means, according to him, consumption by persons other than producers and that both in the Government of India Act and under the Constitution the word "consumption" must be deemed to have been used in the same sense. The Acts in question deal only with a certain aspect of the topic "electricity", and not with all of them. Therefore, in those Acts the word "consumption" they may have a limited meaning, as pointed out by learned counsel. But the word "consumption" has a wider meaning. It means also "use up" "spend" etc. The mere fact that a series of laws were concerned only with a certain kind of use of electricity, that is consumption of electricity by persons other than the producer cannot justify the conclusion that the British Parliament in using the word "consumption" in Entry 48B and the Constituent Assembly in Entry 53 of List II wanted to limit the meaning of "consumption" in the same way. The language used in the legislative entries in the Constitution must be interpreted in a broad way so as to give the widest amplitude of power to the legislature to legislate and not in a narrow and pedantic sense. We cannot, therefore, accept either of the two grounds urged by Mr. Viswanatha Sastri challenging the vires of the Act."

18. In *Indian Aluminum Co. etc. Vs. State of Kerala and others* reported in AIR 1996 SC 1431, it is held: "19. In view of the legal position referred to hereinbefore, it must be held that the words "sale or consumption" used in Entry 53 of the State List and the Act made in exercise of the power under Article 246(3) of the Constitution, would receive wide interpretation so as to sustain the constitutionality of the Act unless it is affirmatively established that the Act is unconstitutional.

25. It is common knowledge that for HT and EHT industries a sub-station at the place of manufacture or establishment or at its convenient place is set up and electricity is supplied to the sub station and a minimum guarantee of payment is ensured therefor under the contract. But the question is whether the word "supply" used in Section 3 of the Act would be construed to mean "consumption" or "sale" of electricity. From the sub-station, electricity is connected to the industrial units through the meter put up in the factory. Continuity of supply and consumption starts from the moment the electrical energy passes through the meters and sale simultaneously takes place as soon as meter reading is recorded. All the three steps or phases take place without any hiatus. It is true that from the place of generating electricity, the electricity is supplied to the sub-station installed at the units of the consumers through electrical higher-tension transformers and from there electricity is supplied to the meter. But the moment electricity is supplied through the meter, consumption and sale simultaneously

take place. It is true that in the definitions given in the New Encyclopaedia Britanica, Vol. 4, p.842 cited before us, distinction between supply and consumption is stated but adopting a pragmatic and realistic approach, we are of the considered view that as soon as the electrical energy is supplied to the consumers and is transmitted through the meter, consumption takes place simultaneously with the supply. There is no hiatus in its operation. Simultaneously sale also takes place. Charge will be quantified at a later date as per the recorded meter reading or escaped metering, as the case may be. The word `supply" used in the charging Section 3 should, therefore, receive liberal interpretation to include sale or consumption of electricity as envisaged in Entry 53 of the State List."

19. In State of A.P. Vs National Thermal Power Corpn. Ltd. and others reported in (2002) 5 SCC 203, their lordships while dwelling on the scope of entry 53 in list II of the seventh schedule were pleased to hold:- "22. We now come to the question on the interpretation of Entry 53 in List II of Seventh Schedule. It provides for taxes on the consumption or sale of electricity. The word "sale" as occurring in Entry 52 came up for the consideration of this Court in *Burmah Shell Oil Storage & Distributing Co. of India Ltd. Vs. The Belgaum Borough Municipality* AIR 1963 SC 906; 1963 Supp.(2) SCR 216. It was held that the act of sale is merely the means for putting the goods in the way of use or consumption. It is an earlier stage, the ultimate destination of the goods being "use or consumption". We feel that the same meaning should be assigned to the word "sale" in Entry 53. This is for a fortiori reason in the context of electricity as there can be no sale of electricity excepting by its consumption, for it can neither be preserved nor stored. It is this property of electricity which persuaded this Court in *Indian Aluminium Co.* case to hold that in the context of electricity, the word "supply" should be interpreted to include sale or consumption of electricity. Entry 53 should therefore be read as "taxes on the consumption or sale for consumption of electricity".

23. With these two things in mind, namely, that electricity is goods, and that sale of electricity has to be construed and read as sale for consumption within the meaning of Entry 53, the conflict, if any, between Entry 53 and Entry 54 ceases to exist and the two can be harmonized and read together. Because electricity is goods, it is covered in Entry 54 also. It is not disputed that duty on electricity is tax. Tax on the sale or purchase of goods including electricity but excluding newspapers shall fall within Entry 54 and shall be subject to provisions of Entry 92-A of List I. Taxes on the consumption or sale for consumption of electricity within the meaning of Entry 53 must be consumption within the State and not beyond the territory of the State. Any other sale of electricity shall continue to be subject to the limits provided by Entry 54. Even purchase of electricity would be available for taxation which it would not be if electricity was not includible in the meaning of term "goods". A piece of legislation need not necessarily fall within the scope of one entry alone; more than one entry may overlap to cover the subject-matter of a single piece of legislation. A bare consumption of electric

energy even by one who generates the same may be liable to be taxed by reference to Entry 53 and if the State Legislature may choose to impose tax on consumption of electricity by the one who generates it, such tax would not be deemed to be a tax necessarily on manufacture or production or a duty of excise, as held by Constitution Bench in *Jiyajeerao Cotton Mills Ltd., Birlanagar, Gwalior Vs. State of Madhya Pradesh* 1962 Supp.(1) SCR 282. A mere consumption of goods (other than electricity), not accompanied by purchase or sale would not be taxable under Entry 54 because it does not provide for taxes on the consumption and Entry 53 does not speak of goods other than electricity. Thus in substance Entries 53 and 54 can be and must be read together and to the extent of sale of electricity for consumption outside the State, the electricity being goods, shall also be subject to provisions of Entry 92-A of List I. This, in our opinion, is the best way of reading the two entries. In *C.P. Motor Spirit Act, re., Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938, Re,* AIR 1939 FC 1, it was held that two entries in the lists may overlap and sometimes may also appear to be in direct conflict with each other. It is then the duty of this Court to reconcile the entries and bring about harmony between them. The Court should strive at searching for reasonable and practical construction to seek reconciliation and give effect to all of them. If reconciliation proves impossible the overriding power of Union Legislature operates and prevails. Gwyer, C.J. Observed: (AIR p.7)

"A grant of the power in general terms, standing by itself, would no doubt be construed in the wider sense; but it may be qualified by other express provisions in the same enactment, by the implication of the context, and even by considerations arising out of what appears to be the general scheme of the Act." And again he said: (AIR p.8)

"An endeavour must be made to solve it, as the Judicial Committee have said, by having recourse to the context and scheme of the Act, and a reconciliation attempted between two apparently conflicting jurisdictions by reading the two entries together and by interpreting, and, where necessary, modifying the language of the one by that of the other. If needed such a reconciliation should prove impossible, then and only then, will the non-obstante clause operate and the federal power prevail."

In *Calcutta Gas Co. (Proprietary) Ltd. Vs. The State of West Bengal & Ors.*, 1962 Supp (3) SCR 1, the Constitution Bench has held that the same rules of construction apply for the purpose of harmonizing an apparent conflict between two entries in the same list." (emphasis supplied)

20. While applying the principle of law culled out from pronouncement in *Jiyajeerao Cotton Mills Ltd., Birlanagar, Gwalior Vs. State of Madhya Pradesh* (supra), *Indian Aluminum Co. etc. Vs. State of Kerala and others* (supra), and *State of A.P. Vs National Thermal Power Corpn. Ltd. and others* (supra) in the present context, wherein by virtue of *Sanshodhan Adhiniyam, 2011* the taxing event being the supply, sale and consumption of electricity the enactment

thereof being well within the legislative competence of the State legislature, we negative the challenge and uphold the validity of Section 3(1) of Sashodhan Adhiniyam, 2011.

21. No other grounds are raised, subsequently, petition fails and is dismissed. No costs.