

(1995) 05 SC CK 0051

In the Supreme Court Of India

Case No : Civil Appeal No. 5507 of 1995 with W.P. No. 2739 of 1995 (Arising out of SLP (c) No. 8870 of 1982)

State of M.P. and Others

APPELLANT

Vs

Birla Jute Manufacturing Co. Ltd. and Another
Birla
Jute Manufacturing Co. Ltd. and Another Vs State of Madhya
Pradesh and Others

RESPONDENT

Date of Decision : 10-05-1995

Acts Referred:

Constitution of India, 1950 — Article 136, 32
Madhya Pradesh Electricity Duty Act, 1949 — Section 3

Citation : (1996) 2 MPJR 350

Hon'ble Judges : Venkatachala, J;Kuldip Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Venkatachala, J.—Special leave sought for in S. L. P. No. 8870 of 1982 is granted.

2. The State of Madhya Pradesh, its Electrical Adviser and Regional Accounts Officer of the Madhya Pradesh Electricity Board, have filed the above Civil Appeal under Article 136 of the Constitution of India, impugning of Division Bench judgment and order dated May 1, 1982, of the High Court of Madhya Pradesh in Misc. Writ Petitioner. No. 320/80 reported in AIR 1982 Madhya Pradesh 225). wherein it has been held that the rate of duty payable on consumption of the electrical energy under the Madhya Pradesh Electricity Duty Act. 1949 - "the 1949 Act" in premises of M/s. Birla Jute Manufacturing Company Limited - M/s. Birla Ltd." to which the Mines Act, 1952 - "the Mines Act" applied, was required to be calculated under Item (2) and not Item (1) of Table in Section 3 of the 1949 Act.

3. M/s. Birla Ltd. and its Director Shri M. M. Gadodia, have filed the abovoc win petition under Article 32 of the Constitution of India, impugning the constitutionality of the Madhya Pradesh Electricity Duty (Amendment and

Validation; Act, 1984 - 'the Validation Act" which amended certain provisions of the 1949 Act, validating duty levied on consumption of electrical energy imposed under the 1949 Act in respect of premises to which the Mines Act applied. Since questions arising for our consideration and decision in the Civil Appeal and the Writ Petition relate to sustainability of levy imposed under the 1949 Act on electrical energy consumed in a premises to which the Mines Act applied, they could be disposed of together.

4. Facts which are material for proper consideration of the question arising for our decision in the said appeal and writ petition, could be stated thus:

M/s. Birla Ltd, has set up several industries all over the country for the manufacturing and sale of consumable goods. One of such industries set up by M/s Birla Ltd, is M/s. Satna Cement Works with lime-stone mines at one place and a cement factory at another place, in the State of Madhya Pradesh. Huge lime-stone boulders extracted from the mines known as dhokas are broken into small sized lime-stones known as gittis for being used as raw-material for manufacture of cement in the cement factory by a lime-stone crusher erected in a premises located at the mines-head of lime-stone mines to which the Mines Act applies. For the electrical energy consumed by the lime-stone crusher in that premises at mines-head during the year 1979-1980, the Government Madhya Pradesh levied duty u/s 3 of the 1949 Act at a rate calculated under Item (1) of Table below that section and raised demands thereon, against M/s. Birla Ltd. by contending that it was liable for levy of duty on electrical energy consumed for breaking dhokas into gittis by the lime-stone crusher in the premises at mines-head only at a rate calculated in Item (2) of Table to Section 3 of the 1949 Act, notwithstanding the applicability of the Mines Act to the said premises, in that premises had to be regarded as a factory for fixing the rate of duty payable on electrical energy consumed therein because of inclusive meaning of factory given in Explanation (c) to Section 3 of the 1949 Act itself. Since the Government of Madhya Pradesh persisted in its demands made against M/s. Birla Ltd., the latter filed a Writ Petition. Misc. W. P. No. 520 of 1980, (reported in Birla Jute Manufacturing Co. Ltd. Vs. The State of Madhya Pradesh and Others,), in the Madhya Pradesh High Court challenging the said levies and demands. A division Bench of the High Court taking the aid of Explanation (c) to Section 3 of the 1949 Act, quashed the levies and demands challenged by M/s. Birla Ltd., by upholding the contention that its liability to pay duty was only at the rate calculated under Clause (2) of Table to Section 3 of the 1949 Act, by its judgment and order dated May 1, 1982 rendered in that writ petition. It is the correctness of that judgment and order which has been under challenge in the present appeal filed by the State of Madhya Pradesh, its Electrical Adviser and Regional Accounts Officer of the Madhya Pradesh Electricity Board.

5. While, the correctness of the said judgment and order of the High Court in the present appeal was pending consideration and decision by this Court, the State of Madhya Pradesh enacted and brought into force (the aforesaid Validation Act,

what has been impugned in the present writ petition by M/s. Birla Ltd., is the constitutional validity of that Validation Act.

6. We have heard learned Counsel for the contesting parties in the appeal as well as the. it petition. We have been taken through the judgment of the High Court under appeal and the relevant provisions of the 1949 Act and the Validation Act. Whether the duty leviable on consumption of electrical energy by M/s. Birla Ltd. u/s 3 of the 1949 Act in their premises to which the Mines Act applies is at the rate specified in Item (1) or Item (2) of the Table given below that Section being the main question which needs to be answered by us in deciding the present appeal and the writ petition, we shall proceed to find the answer threfore, at the first instance.

7. Since the answer to the said question has necessarily to depend on a proper construction to be placed by us on Section 3 of the 1949 Act, as a whole, as to its ambit and application, it could be reproduced for the sake of easy reference and proper examination, thus ;

3. Levy of duty on sale of consumption of electric energy - Subject to the exceptions specified in Section 3-A every distributor of (contd. on col. 2) 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 rate specified in the Table below on the units of electrical energy sold or supplied to a cosumer or consumed by himself for his own purposes or for purposes of his township or colony, during the preceding month:

TABLE

(Rate of Duty)

(1) Electrical energy sold or supplied for cosumption premises used

(a) for business, trade or 8 paise per units of energy upto 50 commercial purposes or for units of energy sold or supplied in a purposes of professional pursuits month,

other than for flour nulls.

10 paise per unit for each additional unit sold or supplied in a month in excess of 50 units but not in excess of 100 units of energy.

12 paise per unit for each additional unit sold or supplied in a month in excess of 100 units of energy.

(b) for flour mills

2 paise per unit of energy.

(2) Elcctircal energy sold or supplied for consumption in premises of a factory excluding energy supplied for cosumption for domestic or non-factory purposes where the connected load- 2 paise per unit of energy.

(a) does not exceed 100 H. P. 1.5 paise per unit of energy.

(b) exceeds 100 H.P.

(3) Electrical energy sold or supplied for purposes of illumination on the occasion of marriages or other social functions. 3 paise per unit of energy.

65 paise per unit of energy upto 50 units of energy sold or supplied on any one occasion.

Re. 1 per unit for each additional unit sold or supplied on any one occasion in excess of 50 units but not in excess of 100 units of energy.

Rs. 2.50 paise per unit for each additional unit sold or supplied on any one occasion in excess of 100 units of energy.

(4) Electrical energy sold or supplied for consumption in - 10 paise per unit of energy.

(a) a township or colony attached to a factory, mine or institution; or

(b) a premises getting supply at high voltage or extra high voltage but not covered under items (1) and (2) in above.

(5) Electrical energy sold or supplied for consumption in premises and for purposes not covered under items (1) to (4) above. 6.5 paise per unit of energy up to 50 units of energy sold or supplied in a month.

7. paise per unit for each additional unit sold or supplied in a month in excess of 50 units but not in excess of 150 units of energy.

12 paise per unit for each additional unit sold or supplied in a month in excess of 150 units of energy.

Provided that if the electrical energy sold or supplied for consumption for any one purpose is used either wholly or partly, without the consent of the distributor of energy or producer or electricity, as the case may be, for consumption for any other purpose for which a higher rate of duty is chargeable, the entire energy sold or supplied shall be charged at the highest rate applicable.

Explanation - For the purpose of this section -

(a) Months means such period as may be prescribed and till such period is prescribed, the filing month;

(b) Premises used for business, trade, commercial purposes or for purpose of professional pursuits shall include the premises used -

(1) for the purposes of mines to which Mines Act, 1952 (No. 35 of 1952) applies;

(2) for the purposes of industries which do not require raw materials for carrying on the industries but which are carried on for rendering services such as flour mill, repair workshop and the like and are not registered as factories under the

Factories Act, 1948 (No. 63 of 1948)

(c) Factory means a factory registered under the Factories Act 1948 (No. 67 of 1948); and includes, premises used for the purposes of Industries which require raw materials for carrying on the manufacturing process and prepare finished goods for sale.

8. As seen from Section 3 above, duty leviable thereunder and payable to the State Government every month on electrical energy sold or supplied or consumed during the preceding month is required to be calculated at the rate per unit specified in the Table given below that section. As per the Table, duty payable for the electrical energy sold or supplied for consumption varies from item to item, depending upon the purpose for which it is consumed. When Item (1) of the Table is seen, (he rate of duty payable for electrical energy sold or supplied for consumption in a premises covers premises used for business, trade or commercial purposes of for purposes or professional pursuits other than for flour mills. Because of the Explanation (h) to the section which says that for the purpose of the section premises used for business, trade, commercial purposes or for purposes of professional pursuits shall include the premises used for the purpose of mines to which the Mines Act, 1952 applies, any premises in or adjacent to a mine which is used for processing the mineral extracted from the mine, becomes the premises covered under Item (1) of the Table. When Item (2) of the Table is seen, the rate of duty payable for electrical energy sold or supplied for consumption in a premises covers a factory, because of explanation (c) which says that for the purposes of the section factory not only means a factory registered under the Factories Act, 1948, but also includes a premises used for the purpose of industries which require raw materials for carrying on the manufacturing process and prepare finished goods for sale. When Item (3) of the Table is seen, it refers to the rate of duty payable on electrical energy sold or supplied for purposes of illumination on the occasion of marriages or other social functions. When Item (4) of the Table is seen, it refers to the rate of duty payable for electrical energy sold or supplied for consumption in a township or colony attached to a factory, mine or institution or a premises getting supply at high voltage or extra high voltage but not covered under Items (1) and (2) of the Table. The rates fixed in respect of electrical energy sold or supplied for consumption in a premises covered by Item (4) cannot be regarded as a premises covered by Item (1) or Item (2) of the Table because of the specific exclusion of those items, as mentioned in Item (4) itself. As seen from Item (5) of the Table, the rate of duty payable for electrical energy sold or supplied for premises or purposes covered thereunder cannot apply to premises or purposes covered in Items (1) to (4) of the Table because of their specific exclusion as mentioned thereunder. When the rates of duty leviable under various items in the Table are seen, each of them applies, according to the purpose for which electrical energy is sold or consumed. Then, comes the proviso to the Table which declares that the electrical energy sold or supplied for consumption for any one purpose is used either wholly or partly, without the consent of the distribution of

energy or producer of electricity, as the case may be, for consumption for any other purpose for which a higher rate of duty is chargeable, the entire energy sold or supplied shall be charged at the highest rate applicable. This, proviso, Uierefore, expressly states taht the rates of duty leviabe for electrical energy consumed by premises or purpose covered by more than one item, it is the highest rate Fixed under them which is levialbe where the consumer, of electrical energy docs not obtain the consent from the distribution of electrical energy or producer of electricity for change in such user. Hence, according to the proviso if consent is obtained by the consumer of electrical energy from the distributor of energy or producer of electricity for using electrical energy in a premises of a factory covered by itme (3) it cannot be used for premises covered under Item (1) and if such thing is done without obtaining such consent, instead of lower duty payable for a premises covered under Item (2), higher duty for a premises covered under Item (1) becomes payable. In other words, proviso to the Table requires that a consumer of electrical energy must declare before such consumption as to the purpose for which it would be consumed in the sense whether it would be consumed for the prupose covered under Item (1) or Item (2) or Item (3) or Item (4) or Item (5) of the Table. The requirement of the proviso when is understood in the context of the provisions under different items, the purpose for which electrical energy is consumed, if falls under more than one item, the rate at which duty becomes levialbe would be of the item for which highest rate of duty is fixed.

9. If regard is had to be aforesaid analysis of Section 3, its Table and explanations to their ambit and applicability, can it be held that the rate of duty payable for electrical energy consumed in premises covered by itme (2) of Table to Section 3 of the 1949 Act is the rate provided for thereunder, even where for such premises (factory), the Mines Act is made applicable, is the question.

10. No dobut, as we have already pointed out a factory under Clause (c) in the explanation to Section 3 since includes premises used for purposes of industries which require raw materials for carrying on the manufacturing process and prepare finished goods for sale, the premises of M/s. Birla Ltd. at the mines mess of their lime-stone mines of the State of Madhya Pradesh when- / lime-stone dhokas extracted from the mines are broken into small piecs, i. e. gittis for being used in their cement factory or factory requiring raw-material for carrying on the manufacturing process and prepare fnished goods of cement for sale, falls within the description of premises covered by Itme (2) of the Table to Section 3 of the 1949 Act. But the question is when such premises also falls within the description of premises covered by Itme (1) because of Clause (b) (1) to the Explanation whether the duty payable for electrical energy used therein could only be what is payable for premises under Item (2) of Table to Section 3. Since a premises for which Mines Act is made applicable becomes a premises covered by Itme (1) of Table to Section 3 of the 1949 Act which provides for highest rate of duty leviabe for electircal energy consumed in such premises question of leviability of lower duty for such consumption merely because of that

premises answering the description of premises in other item of the Table respecting which lower duty is leviable can never arise, for as we have pointed out already, when once highest rate under an item is leviable, lower rate leviable under other items is excluded. It is, therefore, our considered view that premises covered by Item (1) to the Table to which Mines Act is made applicable being the premises of M/s. Birla Ltd, at their minesite gets covered by Item (1) of Table and hence the duty payable for consumption of electrical energy in that premises shall be at the rate payable for the premises covered under Item (1) of the Table to Section 3 of the 1949 Act.

11. Hence, the view taken by the High Court in the judgment and order under appeal that the premises of M/s. Birla Ltd, at the mines-site being a factory premises covered by Item (2) of the Table to Section 3 of the 1949 Act the payment of duty leviable in respect of electrical energy consumed in the premises is covered by Item (2) of the Table, becomes unsustainable and calls to be interfered with.

12. The next question which arises for our consideration is as to sustainability of the provisions in the Validation Act which validate the levy of duty imposed under Item (1) to the Table to Section 3 of the 1949 Act in respect of electrical energy consumed in the premises of M/s. Birla Ltd, at their mines site to which Mines Act is applicable under the 1949 Act and in respect of similar premises of other persons or companies to which Mines Act is applicable.

13. Although learned counsel for the Petitioners for the writ petitions sought to question the provisions of the Validation Act which purport to retrospectively validate levy of duty on electrical energy consumed in their premises under the 1949 Act because of the view taken of Section 3 of the 1949 Act by the High Court in its judgment and order under the present appeal, the learned Counsel for the State of Madhya Pradesh sought to support the sustainability of the validation Act placing reliance on the decision of this Court in *Govt. of The Government of Andhra Pradesh and Another Vs. Hindustan Machine Tools Ltd.*, where this Court had upheld provisions of a validation Act by which duty made payable in respect of a building premises retrospectively. Prima facie, the decision of this Court appears to support the stand of learned Counsel for the State. But, when the judgment and order of the High Court under the present appeal which is sought to be made ineffective by the Validation Act, is held to be unsustainable by us in the present appeal, we find it unnecessary, to examine the constitutionality of the validation Act.

14. In the result, we not merely allow this Civil Appeal, set aside the judgment and order of the High Court in W. P. No. 520 of 1980, (reported in AIR 1982 Madhya Pradesh 225, appealed against and dismiss that writ petition, but also dismiss the writ petition filed in this Court No. costs.