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THE STATE OF MAHARASHTRA

v.

SHRI VILE PARLE KELVANI MANDAL & ORS.

(Civil Appeal No. 7319 of 2021)

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JANUARY 07, 2022

[M. R. SHAH AND SANJIV KHANNA, JJ.]

C *Maharashtra Electricity Duty Act, 2016: s.3(2)(iii) – Exemption from electricity duty under – Entitlement of charitable institutions running the educational institutions – Held: Under 2016 Act, electricity duty on the consumption charges or energy consumed for the purposes of, or in respect of a school or college or institution imparting education or training, student's, hostels run by any local bodies shall alone be exempted from levy of electricity duty – The State Government and the Central Government are also specifically*
D *excluded from payment of electricity duty – However, the public sector undertakings are not exempted from payment of electricity Act – Therefore, under s.3(2) of the 2016 Act, the charitable institutions running the educational institutions are not exempted from payment of electricity duty, which as such was specifically*
E *exempted under s.3(2)(iiia) of the 1958 Act – The language and words used in s.3(2) are plain and simple and are capable of only one definite meaning that there is no exemption provided under the 2016 Act from levy of electricity duty so far as the charitable education institutions are concerned.*

F *Interpretation of statutes: Where the words are clear and unambiguous, recourse cannot be had to principles of interpretation other than the literal view – The exemption provision need to be interpreted literally and when the language used in exemption provision is simple, clear and unambiguous, the same has to be applied rigorously, strictly and literally – Maharashtra Electricity*
G *Duty Act, 2016 – s.3(2)(iii).*

Allowing the appeal, the Court

HELD: 1. As per Section 16 of the 2016 Act, on coming into force of the 2016 Act, the Maharashtra Electricity Duty Act, 1958 stood repealed subject to the eventualities mentioned in
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Section 16 of the 2016 Act. None of the eventuality mentioned in proviso to Section 16 shall be attracted and/or applicable to the facts of the case on hand in view of the specific provisions providing for exemption from payment of the electricity duty as per sub-section (2) of Section 3 of the 2016 Act. Therefore, for the purpose of exemption from payment of electricity duty on and after 01.09.2016, sub-section (2) of Section 3 of the 2016 Act shall have to be applied and shall be applicable. [Para 11.1][178-D-E]

2. As per sub-section (2) of Section 3 of the 1958 Act, the electricity duty was not leviable on the consumption charges or the units of energy consumed by or in respect of charitable institution registered under the Bombay Public Trusts Act, 1950, for the purpose of, or in respect of, school or college imparting education or training in academic or technical subjects (save in respect of premises used for residential purposes) [Section 3(2)(iiia)]. Therefore, under the 1958 Act, the electricity duty was not leviable on the consumption charges or the units of energy consumed by or in respect of charitable institutions for the purpose; in respect of school or college imparting education or training in academic or technical subjects. Even as per Section 3(2)(ia), electricity duty shall not be leviable on the consumption charges or the units of energy consumed by or in a respect of any municipal corporation, municipality, municipal committee, town committee, notified area committee, Cantonment Board, Zilla Parishad or village panchyat constituted under any law for the time being in force in the State, for the purpose of, or in respect of a school or college imparting education or training in academic or technical subjects, a hospital, nursing home, dispensary, clinic, public street lighting, public water works and system of public sewers or drains (save in respect of premises used for residential purposes). However, there are material changes under the 2016 Act. As per Section 3(2) of the 2016 Act, even the public undertakings are liable to pay the electricity duty. As per Section 3(2)(iii), electricity duty is not leviable on the consumption charges or energy consumed, for the purposes of, or in respect of a school or college or institution imparting education or training, student's, hostels, hospitals, nursing homes,

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- A dispensaries, clinics, public streets lighting, public water works, sewerage systems, public gardens including zoos, public museums, administrative offices forming whole or, as the case may be, a part of system run by any local bodies constituted under any law for the time being in force in the State of Maharashtra. Therefore, Section 3(2)(iiia), which was there in 1958 Act, is now
- B conspicuously and deliberately absent in Section 3(2) of the 2016 Act. [Paras 11.2, 11.3][178-E-H; 179-A-D]

3. Where the words are clear and unambiguous, recourse cannot be had to principles of interpretation other than the literal view. The exemption provision need to be interpreted literally
- C and when the language used in exemption provision is simple, clear and unambiguous, the same has to be applied rigorously, strictly and literally. Under the 2016 Act, charitable education institutions running the schools or colleges are specifically excluded from the exemption clause/exemption provision –
- D Section 3(2). [Para 11.4][179-G-H; 180-A]

4. If the submissions on behalf of the original writ petitioners is accepted that as per Section 3(2)(iii), with respect to all the schools/colleges or institutions, imparting education or training, the electricity duty is not leviable, in that case it would
- E lead to absurd result. In that case, even the private hospitals, nursing homes, dispensaries and clinics, who are profit making entities shall also claim the exemption from levy of electricity duty. The intention of the legislature as per Section 3(2) of the 2016 Act, is very clear and unambiguous that the electricity duty shall not be leviable on the consumption charges or energy
- F consumed (i) by the State Government excluding the public sector undertakings; (ii) by the Central Government excluding public sector undertakings and (iii) run by the local bodies constituted under any law for the time being in force in the State of Maharashtra. Other than the State Government, Central
- G Government and the local bodies and the Government hostels, no exemption from payment of electricity duty has been provided. [Para 12][180-B-D]

Commr. of Customs v. Dilip Kumar & Co. (2018) 9 SCC
1 : [2018] 7 SCR 1191 – followed.

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Essar Steel India Ltd. & Anr. v. State of Gujarat & Anr., (2017) 8 SCC 357 : [2017] 4 SCR 767; *Novopan India Ltd. v. CCE and Customs*, 1994 Supp (3) SCC 606 : [1994] 3 Suppl. SCR 549; *Hansraj Gordhandas v. H.H. Dave, Assistant Collector of Central Excise Customs, Surat & Ors.*, AIR 1970 SC 755 : [1969] SCR 253; *Star Industries v. Commr. of Customs (Imports)* (2016) 2 SCC 362 : [2015] 11 SCR 570; *Giridhar G. Yadalam v. Commissioner of Wealth Tax & Another* (2015) 17 SCC 664 : [2015] 15 SCR 543; *Godrej & Boyce Mfg. Co. Ltd. v. Deputy Commissioner of Income Tax & Anr.*, (2017) 7 SCC 421; [2017] 3 SCR 602 – relied on. A

Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal, (2020) 5 SCC 481: [2019] 16 SCR 424; *C.W.S. (India) Ltd. v. Commissioner of Income Tax*, 1994 Supp (2) SCC 296 : [1994] 2 SCR 247; *B.R. Enterprises v. State of U.P. & Ors.* (1999) 9 SCC 700 : [1999] 2 SCR 1111; *Byram Pestonji Gariwala v. Union Bank of India & Ors.* (1992) 1 SCC 31 : [1991] 1 Suppl. SCR 187; *Collector of Central Excise, Bombay-I & Anr. v. Parle Exports (P) Ltd.*, (1989) 1 SCC 345 : [1988] 3 Suppl. SCR 933; *Union of India & Ors. v. Wood Papers Ltd. & Anr.* (1998) 4 SCC 256 – referred to. B

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Case Law Reference

[2018] 7 SCR 1191	followed	Para 4.7	
[2019] 16 SCR 424	referred to	Para 4.7	F
[2017] 4 SCR 767	relied on	Para 4.7	
[2015] 11 SCR 570	relied on	Para 4.7	
[2015] 15 SCR 543	relied on	Para 4.7	
[2017] 3 SCR 602	relied on	Para 4.7	G
[1994] 2 SCR 247	relied on	Para 6.2	
[1999] 2 SCR 1111	referred to	Para 6.4	

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| A | [1991] 1 Suppl. SCR 187 | referred to | Para 6.5 |
| | [1969] SCR 253 | referred to | Para 9.1 |
| | [1988] 3 Suppl. SCR 933 | referred to | Para 9.1 |
| | (1998) 4 SCC 256 | referred to | Para 9.1 |
| B | [1994] 3 Suppl. SCR 549 | relied on | Para 9.3 |

CIVIL APPELLATE JURISDICTION: Civil Appeal No.7319 of 2021.

C From the Judgment and Order dated 28.02.2019 of the High Court of Judicature at Bombay in Writ Petition No.2961 of 2018.

Sachin Patil, Rahul Chitnis, Aaditya A. Pande, Geo Joseph, Advs. for the Appellant.

D Shekhar Naphade, Sr. Adv., Gagan Gupta, Mehendra Pratap, Mrs. Manorma Mohanty, Gaurav Kumar, M/s Khaitan & Co., Advs. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

E 1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 28.02.2019 passed by the High Court of Judicature at Bombay in Writ Petition No.2961 of 2018, by which the High Court has allowed the said writ petition preferred by respondents No.1 to 10 herein - original writ petitioners (hereinafter referred to as original writ petitioners – education institutions) and held that the original writ petitioners are exempted from payment of electricity duty, the State of F Maharashtra has preferred the present appeal.

G 2. That the original writ petitioners are the education institutions run and manage by original writ petitioner No.1 – Shri Vile Parle Kelvani Mandal, a society registered under the Societies Registration Act, 1860 and also a public charitable trust registered under the Maharashtra Public H Trusts Act, 1950. That the writ petitioners have taken electricity connections for power supply to their education institutions from respective power supply companies. That prior to 01.09.2016, the charitable education institutions were exempted from payment of electricity duty levied on the consumption charges or the energy consumption for the purposes of or in respect of a school or college or

institution imparting education or training, students' hostels, hospitals, nursing homes etc. as per Section 3(2)(iii) of the Maharashtra Electricity Duty Act, 1958. That in the year 2018, the respective electricity supply companies levied the electricity duty pursuant to a letter from the Industries, Energy and Labour Department, Government of Maharashtra stating that as per Maharashtra Electricity Act, 2016, charitable institutions registered under the Bombay Public Trusts Act, 1950 (now known as Maharashtra Public Trusts Act, 1950) for the purpose of or in respect of school or college imparting education or training in academic or technical subjects are not entitled for electricity duty exemption with effect from 1st September, 2016. The respective power supply companies levied electricity duty at 21% and the bills were raised accordingly on original writ petitioners and their education institutions for the period post 01.09.2016. Aggrieved by the levy of electricity duty on the educational charitable institutions run by the original writ petitioner No.1 – respondent No.1 herein, original writ petitioners preferred the writ petition before the High Court. By the impugned judgment and order, the Division Bench of the High Court has allowed the said writ petition and has set aside the levy of electricity duty on writ petitioners and consequently has set aside respective electricity bills levying the electricity duty on consumption of electricity charge.

3. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, the State of Maharashtra has preferred the present appeal.

4. Shri Sachin Patil, learned counsel appearing on behalf of the State has vehemently submitted that in the facts and circumstances of the case, the High Court has committed a grave error in holding that the original writ petitioners – charitable education institutions are not liable to pay the electricity duty.

4.1 It is further submitted that in absence of challenge to the relevant provisions of the Maharashtra Electricity Act, 2016, the High Court ought not to have allowed the writ petition and ought not to have set aside the levy of electricity duty levied from charitable education institutions like the original writ petitioners.

4.2 It is further submitted by Shri Sachin Patil, learned counsel appearing on behalf of the State that the High Court has not properly appreciated and considered the relevant provisions pre and post the Maharashtra Electricity Act, 2016.

- A 4.3 It is submitted that as per Section 3(2)(a)(iiia) of the Maharashtra Electricity Duty Act, 1958, the charitable institutions registered under the Bombay Public Trusts Act, for the purpose of, or in respect of, school or college, imparting education or training in academic or technical subjects (save in respect of premises used for residential purposes) were exempted from levy of the electricity duty on the consumption charges or the units of energy consumed. It is submitted that however, on enactment of the Maharashtra Electricity Duty Act, 2016 which repealed the earlier the Maharashtra Electricity Duty Act, 1958, no such exemption from levy/payment of electricity duty has been provided to such charitable education institutions.
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- C 4.4 It is submitted that the High Court has failed to consider there is no provision, similar to the Repealed Act of 1958 (the Maharashtra Electricity Duty Act, 1958) in the new Act, 2016 (Maharashtra Electricity Duty Act, 2016), and the charitable education institutions whether registered before or after coming into the new Act of 2016, are not entitled to the exemption from payment of electricity duty.
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- E 4.5 It is further submitted that the High Court has not properly appreciated or considered that by virtue of the statutory provisions under the Repealed Act of 1958, the charitable education institutions were enjoying concession from payment electricity consumption duty/ electricity consumption charges and therefore there was no need to issue a specific order in their favour under the Repealed Act of 1958. It is submitted that therefore, if any order had been issued by the department in favour of any institution, it is neither an order as contemplated under Repealed Act, 1958 nor it is saved from proviso of Section 4 of the Maharashtra Electricity Duty Act, 2016. It is submitted that therefore, after commencement of the new Act of 2016, such order does not confer right upon the charitable education institutions to claim exemption.
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- G 4.6 It is further submitted that as such the language used in the new Act of 2016 with respect to the exemption/levy of electricity duty is very clear and unambiguous. It is submitted that the words used are plain and simple and therefore the same should be read with the intention of the legislature particularly in favour of revenue. It is submitted that as per the law laid down by this Court in catena of decisions a taxing statute is to be construed in favour of assessee but an exception or an exemption provision from a taxing statute has to be construed strictly. It is submitted that even if there is any ambiguity in that regard the issue must be answered in favour of revenue.
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4.7 In support of the above submissions, learned counsel appearing on behalf of the State has relied on the following decisions of this Court:- **Commr. of Customs Vs. Dilip Kumar & Co.**, (2018) 9 SCC 1; **Central Public Information Officer, Supreme Court of India Vs. Subhash Chandra Agarwal**, (2020) 5 SCC 481; **Essar Steel India Ltd. & Anr. Vs. State of Gujarat & Anr.**, (2017) 8 SCC 357; **Star Industries Vs. Commr. of Customs (Imports)**, (2016) 2 SCC 362; **Giridhar G. Yadalam Vs. Commissioner of Wealth Tax & Another**, (2015) 17 SCC 664; **Godrej & Boyce Mfg. Co. Ltd. Vs. Deputy Commissioner of Income Tax & Anr.**, (2017) 7 SCC 421.

5. Making the above submissions and relying on the aforesaid decisions of this Court, it is prayed to allow the present appeal and quash and set aside the impugned judgment and order passed by the High Court.

6. The present appeal is vehemently opposed by Shri Shekhar Naphade, learned Senior Advocate, appearing on behalf of the original writ petitioners – respondents No.1 to 10 herein.

6.1 It is vehemently submitted by Shri Shekhar Naphade, learned Senior Advocate appearing on behalf of the original writ petitioners that in the facts and circumstances of the case and considering the fact that the original writ petitioners are charitable education institutions, the High Court has rightly held that they are exempted from payment of electricity duty.

6.2 It is submitted by Shri Naphade, learned Senior Advocate appearing on behalf of the original writ petitioners that as observed by this Court in the case of **C.W.S. (India) Ltd. Vs. Commissioner of Income Tax**, 1994 Supp (2) SCC 296 (para 10), where a literal interpretation leads to absurd result, the wording of the statute can be modified to accord with the intention of the legislature and to avoid absurdity.

6.3 It is submitted that if the interpretation canvassed by the state is accepted then it will lead to absurdity and manifest injustice as school/ colleges etc. run by the local authority will fall within the purview of Section 3(2)(iii) of 2016 Act, while those run by the statutory university or charitable institution registered under Bombay Trusts Act, 1950 (now known as Maharashtra Public Trusts Act, 1950), would fall outside the ambit of Section 3(2)(iii). It is submitted that as such there is no essential

- A difference between schools/colleges etc. run by the statutory university or institution registered under the Maharashtra Public Trusts Act, 1950 and those run by the local authority. It is submitted that such absurdity or injustice cannot be the intention of the legislature.

- 6.4 It is further submitted by Shri Naphade, learned Senior Advocate appearing on behalf of the original writ petitioners that there is always a presumption that the legislature does not intend to violate Article 14 of the Constitution of India. It is submitted that as per the case on behalf of the State, Section 3(2)(iii) of 2016 Act covers only schools/colleges etc. of the local authority and those run by the statutory university or by private institutions are outside the scope of Section 3(2)(iii) of 2016 Act. It is submitted that this would lead to discrimination and arbitrariness. It is submitted that who runs the educational institution cannot be the intelligible differentia for the purpose of classification. It is submitted that if such an interpretation is accepted then Section 3(2)(iii) would be ultra vires Article 14 of the Constitution. It is submitted that while interpreting Section 3(2)(iii) of 2016 Act, Article 14 must be considered and interpretation which would accord with the mandate of Article 14 should be adopted. Reliance is placed on the decision of this Court in the case of **B.R. Enterprises Vs. State of U.P. & Ors.**, (1999) 9 SCC 700 (para 81).

- E 6.5 It is further submitted that even otherwise there is presumption that legislature does not make radical changes in existing law. Reliance is placed on the decision of this Court in the case of **Byram Pestonji Gariwala Vs. Union Bank of India & Ors.**, (1992) 1 SCC 31 (para 29-38).

- F It is submitted that it is not in dispute that Section 3(2)(iii a) of 1958 Act clearly provided that the electricity duty shall not be imposed on schools/colleges etc. run by charitable institutions registered under the Maharashtra Public Trusts Act, 1950. It is submitted that there is no dispute that the schools/colleges etc. of the writ petitioners fall within the purview of Section 3(2)(iii a) of 1958 Act. It is submitted that therefore there is nothing in 2016 Act which warrants a conclusion that there is a radical change in law leading to duty being imposed on the educational institutions being run by the original writ petitioner.

- H 6.6 Pointing out the following aspects, it is submitted by Shri Naphade learned Senior Advocate appearing on behalf of the original writ petitioners, that as such there are no radical changes between the

Maharashtra Electricity Duty Act, 1958 (1958 Act) and the Maharashtra Electricity Duty Act, 2016 (2016 Act). It is submitted that under Section 3(2) of 1958 Act, no duty could be imposed on the following entities:- A

- (a) Government of Maharashtra [Section 3(2)(i)]
- (b) Local authorities carrying on specified activities [Section 3(2)(ia)] B
- (c) Licensee carrying on specified activities [Section 3(2)(ib)]
- (d) Tramway company [Section 3(2)(ii)]
- (e) Entity generating electricity for the purpose of supplying it for the use of vehicles and vessels. [Section 3(2)(iv)] C

Note- under 1958 Act no duty could be imposed on the Central Government due to the provisions of Article 285 of the Constitution.

6.6.1 It is further submitted that under Section 3(2) of 2016 Act no duty can be imposed on the following entities:- D

- (a) State Government [Section 3(2)(i)]
- (b) Central Government [Section 3(2) (ii)]
- This is by way abundant caution as no duty can be imposed on the Central Government due to Article 285 of the Constitution. E
- (c) Licensee carrying on specified activities. [Section 3(2)(v)]
- (d) Generating Company [Section 3(2)(vi)]
- (e) Entity generating electricity for use of vehicles and vessels [Section 3(2)(vii)] F

Note- At present there is Tramway company in the State of Maharashtra. Thus there is no change in 2016 Act as regards the entities who are not subject to imposition of duty.

6.6.2 Further, under Section 3(2) of the 1958 Act no duty could be imposed on following activities:- G

- (a) Educational institutions run by local authority or statutory university, or charitable institution registered under Bombay Trusts Act, 1950. [Section 3(2)(ia), 3(2)(iii) and 3(2)(iiia)] H

- A (b) Local authority using electricity for hospital, nursing home, dispensary, clinic, public street lighting, public water works, system of public sewers or drains. [Section 3(2)(ia)]
- (c) Use of electricity by licensee for the purpose of construction, maintenance, or operation of any generating, transmitting and distributing system. [Section 3(2)(ib)]
- B (d) Generation of electricity for the purpose of supplying it for the use of vehicles or vessels. [Section 3(2)(iv)]
- (e) Where the energy is generated at a voltage not exceeding 100 volts. [Section 3(2)(v)]
- C 6.7 It is submitted that both under the 1958 Act and 2016 Act, the premises used by entities specified under Section 3(2) for the purpose of residence are subject to imposition of duty.
- 6.8 It is submitted that aforesaid analysis clearly shows that the entities on whom no duty can be imposed have remained the same subject to the rider that if the premises are used for residence, duty can be imposed.
- D 6.9 It is submitted that the only question is whether educational activities carried on by local authorities, statutory university or a charitable institution registered under the Bombay Trusts Act, 1950 are within the purview of Section 3(2) of the 2016 Act?
- E 6.10 It is submitted that it is not in dispute that under the 1958 Act, the educational institutions carried out by local authorities, statutory university, or the charitable institutions were not subject to imposition of duty. The other activities which are not subject to imposition of electricity duty, both under the 1958 Act and 2016 Act are as follows:-
- F (a) Specified activities by local authorities [See Section 3(2)(ia) of 1958 Act Section 3(2)(iii) of 2016 Act.
- (b) Generation of electricity for construction, maintenance and operation of any generating, transmitting and distributing system by licensee. [See Section 3(2)(ib) of 1958 Act and Section 3(2)(v) of 2016 Act.
- G (c) Generation of electricity for the purpose of supplying for the use of vehicles or vessels [See Section 3(2)(iv) of 1958 Act and Section 3(2) (vii) of 2016 Act.
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- (d) Generation of electricity at a voltage not exceeding 100 volts [See Section 3(2)(v) of the 1958 Act and Section 3(2)(viii) of 2016 Act. A

6.11 It is submitted that thus entities who are not subject to imposition of duty have remained the same, both under 1958 Act and 2016 Act and that other activities enumerated herein above have remained same, both under 1958 Act and 2016 Act. It is submitted that therefore, it is difficult to accept that in respect of educational activities a radical change is brought about by 2016 Act by excluding educational institutions run by statutory university or by charitable institutions. It is submitted that either it is a case of Casus Omissus or a case of bad drafting of 2016 Act. B C

6.12 It is submitted that 1958 Act clearly indicates that it was the policy of the legislature to exclude the educational activities run by specified entities from imposition of duty. There is nothing in the 2016 Act which would indicate that there is a radical departure in respect of educational activities. Some of the activities which are not subject to imposition of duty both under the 1958 Act and 2016 Act are commercial in nature. It is submitted that therefore if that be so then why the legislature would depart from its earlier policy in respect of educational activities as promotion of education is in public interest. It is submitted that if the commercial activities are not subject to imposition of duty then it would be unreasonable on the part of the legislature to impose duty on non-commercial activity of imparting education. It is submitted that policy of the legislature is presumed to be reasonable so that it does not fall foul principle of unreasonableness or arbitrariness. D E

6.13 Lastly, it is submitted by Shri Naphade learned Senior Advocate appearing on behalf of the writ petitioners, that in the present case the doctrine of last antecedent may also be applied. It is submitted that first part of Section 3(2) covers all educational activities irrespective of the entity which carries on such activities. It is submitted that in the 1958 Act in Section 3(2), the following words used are “for the purposes of or in respect of school Students hostel” and in the second part of Section 3(2) deals with activities carried on by the local authorities. It is submitted that in the 2016 Act, the expression “Run by any local bodies.....State of Maharashtra” does not qualify the educational activities but it qualifies activities namely “Hospitals, nursing homes.....a part of system”. It is submitted that if the doctrine of Last Antecedent is F G H

A applied to the present case, the only possible conclusion is that the expression “Run by any local bodies” does not qualify educational activities referred to in first part of Section 3(2) but qualifies the second part i.e. the other activities.

B 6.14 It is further submitted that Electricity Duty Act is a taxing statute. Therefore, it must be strictly construed and if there is any ambiguity the same must be resolved in favour of the assessee. The legislature is covering all educational activities in one provision contained in Section 3(2)(iii) irrespective of the entity which carries on the activities. While doing so the ambiguity has crept in drafting. It is submitted that the benefit of ambiguity must lean in favour of the assessee rather than the revenue.

C 6.15 Making the above submissions and relying on the decisions of this Court, it is prayed to dismiss the present appeal.

D 7. We have heard the learned counsel appearing on behalf of the respective parties at length.

E 8. The short question which is posed for the consideration of this Court is whether the original writ petitioners being charitable education institutions registered under the provisions of the Public Trusts Act (the Maharashtra Public Trusts Act, 1950) are entitled to the exemption from payment of electricity duty post 01.09.2016 i.e. as per the provisions of the Maharashtra Electricity Duty Act, 2016?

9. While answering the aforesaid question/issue, law on how to interpret and/or consider the statutory provisions in the taxing statute and the exemption notifications is required to be analysed first.

F 9.1 In the case of **Dilip Kumar & Company** (supra), five-judge bench of this Court has held that in every taxing statute — the charging, the computation and exemption provisions at the threshold stage should be interpreted strictly. In case of ambiguity in case of charging provision, the benefit necessarily must go into favour of the subject/assessee. This means that the subject of tax, the person liable to pay tax and the rate at which the tax is to be levied have to be interpreted and construed strictly.

G If there is any ambiguity in any of these three components, no tax can be levied till the ambiguity or defect was removed by the legislature [See pages 53 to 55 in **Dilip Kumar & Company**]. However, in case of exemption notification or clause, same is to be allowed based wholly by the language of the notification, and exemption cannot be gathered by

H necessary implication, or on a construction different from the words

used by reference to the object and purpose of granting exemption [See **Hansraj Gordhandas Vs. H.H. Dave, Assistant Collector of Central Excise Customs, Surat & Ors.**, AIR 1970 SC 755]. Further it's for the assessee to show by construction of the exemption clause/notification that it comes within the purview of exemption. The assessee/citizen cannot rely on ambiguity or doubt to claim benefit of exemption. The rationale is not to widen the ambit at the stage of applicability. However, once the hurdle is crossed, the notification is constructed liberally [See **Collector of Central Excise, Bombay-I & Anr. vs. Parle Exports (P) Ltd.**, (1989) 1 SCC 345 and **Union of India & Ors. vs. Wood Papers Ltd. & Anr.**, (1998) 4 SCC 256]. Thus, distinction can be made between the substantive requirements that require strict compliance – non-compliance of which would render the assessee ineligible to claim exemption, and the procedural or compliance provision which can be interpreted liberally [See paragraphs 64 to 65 in **Dilip Kumar & Company**].

9.2 **Essar Steel India Ltd. & Anr.** was a case relating to grant of exemption under Section 3(2)(vii)(a) from payment of electricity duty under the 1958 Act. The court relied on several decisions on interpretation of notification in nature of exemption, to hold that the statutory conditions for grant of exemption can neither be tinkered with nor diluted. The exemption notification must be interpreted by their own wordings, and where the wordings of notification with regard the construction is clear, it has to be given effect to. If on the wordings of the notification benefit is not available, then the court would not grant benefit by stretching the words of the notification or by adding words to the notification. To interpret the exemption notification one should go by the clear, unambiguous wordings thereof. These principles were applied in **Essar Steel India Ltd. & Anr.** to deny benefit of Section 3(2)(vii)(a) of the 1958 Act, as the condition of generating energy jointly with another undertaking was not fulfilled.

9.3 In case of **Star Industries**, it was held that the eligibility criteria laid down for exemption notification is required to be construed strictly, and once it is found that applicant satisfies the same, the exemption notification should be construed liberally. Reference was made to the decision **Novopan India Ltd. vs. CCE and Customs**, 1994 Supp (3) SCC 606 and the Constitution Bench decision in **Hansraj Gordhandas vs. H.H. Dave, Assistant Collector of Central Excise Customs, Surat & Ors.** (supra), which decisions have been noted and elucidated

- A by this Court in **Dilip Kumar & Company**. Therefore, in the context of exemption notification there is no new room for intendment. Regard must be to the clear meaning of the words. Claim to exemption is governed wholly by the language of the notification, which means by plain terms of the exemption clause. An assessee cannot claim benefit of exemption, on the principle that in case of ambiguity a taxing statute must be construed in his favour, for an exception or exemption provision must be construed strictly.

9.4 In the case of **Giridhar G. Yadalam**(supra), it is observed and held that in taxing statute, it is the plain language of the provision that has to be preferred where language is plain and is capable of one definite meaning. It is further observed that the strict interpretation to the exemption provision is to be accorded. It is observed that the purposive interpretation can be given only when there is some ambiguity in the language of the statutory provision or it leads to absurd results. In paragraph 16, it is observed and held as under:-

- D “16. We have already pointed out that on the plain language of the provision in question, the benefit of the said clause would be applicable only in respect of the building “which has been constructed”. The expression “has been constructed” obviously cannot include within its sweep a building which is not fully constructed or in the process of construction. The opening words of clause (ii) also become important in this behalf, where it is stated that “the land occupied by any building”. The land cannot be treated to be occupied by a building where it is still under construction. If the contention of Mr Jain is accepted, an assessee would become entitled to the benefit of the said clause, at that very moment, the commencement of construction even with construction the moment one brick is laid. It would be too far-fetched, in such a situation, to say that the land stands occupied by a building that has been constructed thereon. Even Mr Jain was candid in accepting that when the construction of building is still going on and is not completed, literally speaking, it cannot be said that the building “has been constructed”. It is for this reason that he wanted us to give the benefit of this provision even in such cases by reading the expression to mean the same as “is being constructed”. His submission was that the moment construction starts the urban land is put to “productive use” and that entitles the land from exemption of wealth tax. This argument of giving

so-called purposive interpretation has to be rejected for more than one reasons. These are: A

(i) In taxing statute, it is the plain language of the provision that has to be preferred where language is plain and is capable of one definite meaning.

(ii) Strict interpretation to the exemption provision is to be accorded, which is the case at hand. B

(iii) The purposive interpretation can be given only when there is some ambiguity in the language of the statutory provision or it leads to absurd results. We do not find it to be so in the present case.” C

9.5 In the case of **Godrej & Boyce Mfg. Co. Ltd.** (supra), it is observed and held by this Court that where the words of the statute are clear and unambiguous, recourse cannot be had to principles of interpretation other than the literal view. It is further observed that it is the bounden duty and obligation of the court to interpret the statute as it is. It is further observed that it is contrary to all rules of construction to read words into a statute which the legislature in its wisdom has deliberately not incorporated. D

10. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, it is required to be considered whether post 01.09.2016 and on coming into force the 2016 Act, still, the writ petitioners – charitable education institutions registered under the Public Trusts Act and or the Societies Registration Act are entitled to the exemption from payment of electricity duty? E

11. For the aforesaid purpose, the charging sections/exemption provisions under the pre Act of 2016 and post Act of 2016 are required to be referred to. Section 3 of the Maharashtra Electricity Duty Act, 1958, which was applicable prior to coming into force of the Maharashtra Electricity Duty Act, 2016, relevant for our purpose reads as under:- F

“3. (1) Subject to the provisions of sub-section (2), there shall be levied and paid to the State Government on the 1[consumption charges or the] units of energy consumed (excluding losses of energy sustained in transmission and transformation by a licensee before supply to a consumer), a duty (hereinafter referred to as” electricity duty”) at the rates specified in the Schedule to this Act. G
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- A (2) (a) Electricity duty shall not be leviable on the 3[consumption charges or the] units of energy consumed,—
- (i) by the Government of Maharashtra (save in respect of premises used for residential purposes);
- B (ia) by or in a respect of any municipal corporation, municipality, municipal committee, town committee, notified area committee, Cantonment Board, Zilla Parishad or village panchayat constituted under any law for the time being in force in the State, for the purpose of, or in respect of ⁵[a school or college imparting education or training in academic or technical subjects, a hospital, nursing home, dispensary,
- C clinic, public street lighting, public water works and system of public sewers or drains (save in respect of premises used for residential purposes);
- (ib) by any licensee for purposes directly connected with construction, maintenance or operation of any generating, transmitting and distributing system of the licensee;
- D (ii) by a tramway company, save in respect of premises used for residential and office purposes;
- (iii) by or in respect of any statutory University and institutions run by the statutory University for the purpose of or in respect of education, research and training (save in respect of premises used for residential purposes);
- E (iia) by or in respect of charitable institution registered under the Bombay Public Trusts Act, 1950, for the purpose of, or in respect of, school or college imparting education or training in academic or technical subjects (save in respect of premises used for residential purposes);”
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That thereafter the Maharashtra Electricity Duty Act, 2016 has been enacted, which has come into effect from 08.08.2016. Section 3 of the 2016 Act, relevant for our purpose reads as under:-

- G “3. (1) Subject to the provisions of sub-section (2), there shall be levied and paid to the State Government, on the consumption charges or the units of energy consumed, a duty (hereinafter referred to as “Electricity Duty”) at the rates classified as per the Tariff Schedule of the Commission, from time to time, on the basis
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of use of the premises by the consumer on whose name energy is supplied by the licensee, or a consumer who is consuming energy produced from an independent source other than that supplied by the licensee, for his own use as specified in the Schedules, which are based on the following classifications :—

(a) the consumption charges where energy is supplied by the licensee; A

Explanation.— For the purpose of this sub-section, “use of the premises by the consumer on whose name energy is supplied” means the basis of purpose for which the consumer in whose name supply has been released and measured by the meter installed at point of supply by the licensee, on which the consumption charges are billed as per the tariff, however, in huge industrial parks, commercial premises or malls where electricity is supplied at single point or as bulk consumers and further it is re-distributed as one of the utility service provided by the owner of the premises to the end users occupying the area on lease or rent or otherwise, whose purpose of use of electricity at the user’s end may vary categorically; B

(b) units of energy consumed by a person and energy produced through the— C

(i) Captive generation; D

(ii) Co-generation;

(iii) Standby generation;

(iv) Renewable Energy; or

(v) Independent Power Producer (IPP); E

(c) units of energy consumed which are not covered under clauses (a) and (b), that is, open access or other sources. F

(2) Electricity duty shall not be levied on the consumption charges or energy consumed,— G

(i) by the State Government excluding the public undertakings;

(ii) by the Central Government excluding the public undertakings;

(iii) for the purposes of, or in respect of a school or college or institution imparting education or training, student’s, hostels, H

A hospitals, nursing homes, dispensaries, clinics, public streets lighting, public water works, sewerage systems, public gardens including zoos, public museums, administrative offices forming whole or, as the case may be, a part of system run by any local bodies constituted under any law for the time being in force in the State of Maharashtra;

B (iv) by the Government hostels;

(v) by any licensee, or by any other person engaged in the business of supplying electricity to the public under the Electricity Act, for the purposes directly connected with construction, maintenance, operation of any transmitting and distributing system, including the losses incurred therein;”

C 11.1 As per Section 16 of the 2016 Act, on coming into force the 2016 Act, the Maharashtra Electricity Duty Act, 1958 stood repealed subject to the eventualities mentioned in Section 16 of the 2016 Act.

D None of the eventuality mentioned in proviso to Section 16 shall be attracted and/or applicable to the facts of the case on hand in view of the specific provisions providing for exemption from payment of the electricity duty as per sub-section (2) of Section 3 of the 2016 Act. Therefore, for the purpose of exemption from payment of electricity duty on and after 01.09.2016, sub-section (2) of Section 3 of the 2016

E Act shall have to be applied and shall be applicable.

11.2 As per sub-section (2) of Section 3 of the 1958 Act, the electricity duty was not leviable on the consumption charges or the units of energy consumed.....by or in respect of charitable institution registered under the Bombay Public Trusts Act, 1950, for the purpose of, or in respect of, school or college imparting education or training in academic or technical subjects (save in respect of premises used for residential purposes) [Section 3(2)(iiiia)]. Therefore, under the 1958 Act, the electricity duty was not leviable on the consumption charges or the units of energy consumed by or in respect of charitable institutions for the purpose; in respect of school or college imparting education or training in academic or technical subjects. Even as per Section 3(2)(ia), electricity duty shall not be leviable on the consumption charges or the units of energy consumed by or in a respect of any municipal corporation, municipality, municipal committee, town committee, notified area committee, Cantonment Board, Zilla Parishad or village panchyat

H constituted under any law for the time being in force in the State, for the

purpose of, or in respect of a school or college imparting education or training in academic or technical subjects, a hospital, nursing home, dispensary, clinic, public street lighting, public water works and system of public sewers or drains (save in respect of premises used for residential purposes.

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11.3 However, there are material changes under the 2016 Act. As per Section 3(2) of the 2016 Act, even the public undertakings are liable to pay the electricity duty. As per Section 3(2)(iii), electricity duty is not leviable on the consumption charges or energy consumed, for the purposes of, or in respect of a school or college or institution imparting education or training, student's, hostels, hospitals, nursing homes, dispensaries, clinics, public streets lighting, public water works, sewerage systems, public gardens including zoos, public museums, administrative offices forming whole or, as the case may be, a part of system run by any local bodies constituted under any law for the time being in force in the State of Maharashtra. Therefore, Section 3(2)(iiia), which was there in 1958 Act, is now conspicuously and deliberately absent in Section 3(2) of the 2016 Act.

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11.4 On true interpretation of Section 3(2)(iii), under 2016 Act, electricity duty on the consumption of charges or energy consumed for the purposes of, or in respect of a school or college or institution imparting education or training, student's, hostels.....run by any local bodies shall alone be exempted from levy of electricity duty and the State Government and Central Government are also specifically excluded from payment of electricity duty. However, the public sector undertakings are not exempted from payment of electricity Act. Therefore, under Section 3(2) of the 2016 Act, the charitable institutions running the educational institutions are not exempted from payment of electricity duty, which as such was specifically exempted under Section 3(2)(iiia) of the 1958 Act. The language and words used in Section 3(2) are plain and simple and are capable of only one definite meaning that there is no exemption provided under the 2016 Act from levy of electricity duty so far as the charitable education institutions are concerned. As observed herein above, where the words are clear and unambiguous, recourse cannot be had to principles of interpretation other than the literal view. As observed hereinabove, the exemption provision need to be interpreted literally and when the language used in exemption provision is simple, clear and unambiguous, the same has to be applied rigorously, strictly and literally.

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- A Under the 2016 Act, charitable education institutions running the schools or colleges are specifically excluded from the exemption clause/exemption provision – Section 3(2).

12. If the submissions on behalf of the original writ petitioners is accepted that as per Section 3(2)(iii), with respect to all the schools/ colleges or institutions, imparting education or training, the electricity duty is not leviable, in that case it would lead to absurd result. In that case, even the private hospitals, nursing homes, dispensaries and clinics, who are profit making entities shall also claim the exemption from levy of electricity duty. The intention of the legislature as per Section 3(2) of the 2016 Act, is very clear and unambiguous that the electricity duty shall not be leviable on the consumption charges or energy consumed (i) by the State Government excluding the public sector undertakings; (ii) by the Central Government excluding public sector undertakings and (iii) run by the local bodies constituted under any law for the time being in force in the State of Maharashtra. Other than the State Government, Central Government and the local bodies and the Government hostels, no exemption from payment of electricity duty has been provided.

13. In view of the above findings recorded hereinabove, there is no question of applying the doctrine of Last Antecedents as canvassed by Shri Naphade, learned Senior Advocate, appearing on behalf of the original writ petitioners.

14. In that view of the above the original writ petitioners – charitable education institutions registered under the provisions of the Societies Registration Act and/or under the Maharashtra Public Trusts Act, are not entitled to any exemption from levy/payment of the electricity duty on or after 08.08.2016 i.e. from the date on which the Maharashtra Electricity Duty Act, 2016 came into effect. Therefore, the High Court has committed a grave error in setting aside the levy of electricity duty levied on the original writ petitioners – respondents No.1 to 10 herein. The impugned judgment and order passed by the High Court is unsustainable both, on law and on facts and the same deserves to be dismissed.

- In view of the above and for the reasons stated above, the present Appeal Succeeds. The impugned judgment and order dated 28.02.2019 passed by the High Court in W.P. No.2961 of 2018, is hereby quashed and set aside and it is held that the original writ petitioners – respondents

No.1 to 10 herein – charitable education institutions registered under the Societies Registration Act and the Maharashtra Public Trusts Act, are not exempt from levy/payment of electricity duty levied on the consumption charges or the energy consumed even with respect to the properties used by such charitable education institutions for the purpose of or in respect of the school/college imparting education or training in academic or technical subjects. The present Appeal is accordingly allowed. There shall be no order as to costs.

Devika Gujral

Appeal allowed.