

Swaroop Vegetable Products Industries ... vs State Of U. P. And Others Etc on 19 August, 1983

Equivalent citations: 1984 AIR 20, 1983 SCR (3) 666, AIR 1984 SUPREME COURT 20, 1983 ALL. L. J. 1135, (1983) 3 COM LJ 1, 1983 UJ (SC) 668, 1983 SCC (TAX) 241, 1984 UPTC 1108, 1983 TAXATION 71 (7) 9, 1983 (4) SCC 24, (1983) 9 ALL LR 568, (1983) ALL WC 905

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Bench: M.P. Thakkar, Syed Murtaza Fazalali, A. Varadarajan

PETITIONER:

SWAROOP VEGETABLE PRODUCTS INDUSTRIES ETC,

Vs.

RESPONDENT:

STATE OF U. P. AND OTHERS ETC.

DATE OF JUDGMENT 19/08/1983

BENCH:

THAKKAR, M.P. (J)

BENCH:

THAKKAR, M.P. (J)

FAZALALI, SYED MURTAZA

VARADARAJAN, A. (J)

CITATION:

1984 AIR 20 1983 SCR (3) 666

1983 SCC (4) 24 1983 SCALE (2) 167

ACT:

U.P. Electricity (Duty) Act, 1952-Sec. 3(1) (a), (b) and (c) and sec. 4(1) (a), (b) and (c)-Levy and payment of electricity duty-Interpretation of. Person consuming electrical energy from own source and also purchasing from another source is liable to pay duty on energy consumed from own source.

U. P. Electricity (Duty) Act, 1952-Notification dated 17.3.1973 under sec. 3(4)-Exemption from payment of duty to persons consuming electrical energy from own source of generation installed after 2.1.1973-Validity of.

HEADNOTE:

The appellants who had their own source of generation of electrical energy (generating machinery having been installed and commissioned before 2.1.1973) and were also purchasing electrical energy from another source challenged the correctness of the decision of a Full Bench of the High Court reversing the decision of a Division Bench and holding that a user of electricity was liable to pay electricity duty on consumption of energy from his own source of supply regardless of whether or not he also purchased electricity from some other source indicated in sec. 3(1) (a) and (b). The appellant contended that in view of the user of the expression 'another person' in sec. 3(1) (c) and sec. 4(1) (c) only those consumers who wholly fell outside the orbit of sec. 3(1) (a) and (b) were exigible to electricity duty under sec. 3(1) (c). The appellant submitted that under Notification dated March 17, 1973 exemption must be granted to all persons having their own source of electricity regardless of the date on which the source generation is installed to save it from challenge under Art. 14 of the Constitution of India. In Civil Appeal 1312 the State of U.P. challenged the correctness of the decision of the Division Bench.

Allowing the Appeal No. 1312 and dismissing other appeals,

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HELD: The duty was chargeable in respect of energy consumed by a person from his own source of generation regardless of the fact that he 'also' purchased electricity from other source indicated in sec. 3(1) (a) and sec. 4(1) (a). [671 G]

On a plain reading of sec. 3(1) (c) it is evident that duty has been levied on the energy consumed by a person from his own source of generation without anything more. The fact that the user of electricity from his own source of generation purchases electricity from some other source as well, is an altogether irrelevant factor from the stand point of liability imposed by the said provisions. Be it realized that duty is levied on the consumption of energy

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taxing event being the consumption of energy, the source from which the electricity is acquired would become altogether irrelevant. Sec. 3(1) as also Sec. 4(1) has to be read as a whole and has to be interpreted in a harmonious and meaningful manner. A person having his own source of energy who also purchases energy from another source indicated in sec. 3(1) (a) will be covered by 3(1) (a) to the extent he purchases electricity from such a source, and will be equally covered by sec. 3(1) (c), in so far as he consumes energy from his own source of generation. He will be covered by both the provisions read conjointly. The same reasoning applies in the context of clauses (a) (b) and (c) of sec. 4(1). There is no rational basis for exonerating a

person from payment of duty merely because he has his own source of generation and he also purchases electricity from some other source. In fact it will be irrational to do so and it would give rise to an anachronism. Why make him pay 'only' if he generates his own energy and why exempt him altogether merely because he 'also' purchases from some other source ? [670 D-H]

As acute shortage of power was being experienced there was a need to encourage the consumers to acquire their own source of energy with a view to reduce or lessen the burden on the existing sources of electricity generation. Obviously this purpose can be achieved only by granting the exemption prospectively to those consumers who install their own source of generation of energy pursuant to the concession being granted under the provision for exemption. Those who already had their own source of generation of energy need no such encouragement in respect of the source of generation, already installed. If they wanted to further augment their own source or generation of energy they would also be entitled to exemption in respect of the 'additional' source of generation installed 'after' the date specified in the notification. The classification is, therefore, rational, purposeful, as also meaningful, and it is calculated to effectively serve the real purpose of granting exemption. Article 14 cannot be invoked in a situation like this to successfully assail that part of the notification whereby the date of installation has been made the precondition for qualifying the exemption. [672 G-673 B]

State of Uttar Pradesh v. Jageshwar, [1983] SCC 305 referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. *1312 of 1976, 519, 1146, 537 and 2639 of 1979. 773 and 2032 of 1980.

Appeals by *Certificate and Special leave Petitions from the Judgment and order dated the 8.10.74, 9.11.78, 22.12.78, and 5th March. 1980 of the Allahabad High Court in Civil Writ Petitions Nos. 3039/74, 89/76, 760/75, 759/75, 442/76, 2630/77 and 547/75.

P. R. Mridul, G. L Sanghi, Dr. Praveen Kumar, Praveen Kumar, and H. K Puri for the appearing Appellants.

S. C. Manchanda, Sobha Dikshit, Pradeep Misra and Sudhir Kulshreshta for the appearing Respondents The Judgment of the Court was delivered by THAKKAR, J. The main controversy in this group of appeals centres around the question whether Electricity Duty on the consumption of electrical energy in Uttar Pradesh is payable by a person who has his own source of generation and also purchases electrical energy from a licensee, or the Board, or the State Government, or the

Central Government. The contention has been raised in the context of Section 3(1) and 4(1) of the U. P. Electricity (Duty) Act, 1852. The view is canvassed on behalf of the consumers of electrical energy that while under Section 3(1) (c) read with Section 4(1) (c) of the Act Electricity Duty is indubitably leviable and payable on electrical energy consumed by a person from his own source of generation, such duty is not payable by him in case he consumes energy from his own source of generation and also purchases energy from a licensee, the Board, the State Government or the Central Government.

This question initially came up before a Division Bench of the Allahabad High Court in Sherwani Sugar Syndicate Pvt. Ltd. v. State of U.P. (C. M. W. P. No. 3039 of 1974). The Division Bench by its judgment dated October 8, 1974 upheld the contention that in as much as the petitioner company had its own source of generation of energy and was also purchasing energy from another source indicated in Section 3 (1) (a) and 3 (1) (b), the petitioner company was not liable for payment of duty on the energy generated from its own source of supply. The State of Uttar Pradesh has called into question the legality and validity of this decision by way of an appeal by certificate of fitness granted by the High Court (C. A. No. 1312 of 1977). Meanwhile M/s. Deoria Sugar Mills Ltd. also approached the High Court of Allahabad by way of C.M.W.P. No. 9990 of 1975 on an identical plea. The matter came up before another Division of the Allahabad High Court. This Division Bench was of the opinion that the decision in Sherwani Syndicate case (supra) required reconsideration. The matter was therefore referred to a Full Bench. The Full Bench was of the opinion that the view taken earlier in Sherwani's Case was not correct and dismissed the Writ Petition filed by M/s Deoria Sugar Mills, taking the view that a user of electricity was liable to pay electricity duty on the consumption of energy from his own source of supply regardless of whether or not he also purchased electricity from some other source indicated in Section 3 (1) (a) and (b). In view of this decision of the Full Bench, petitions instituted by six other companies raising the identical question were dismissed by the High Court of Allahabad. These companies have approached this Court by way of six separate appeals by special leave granted by this Court.

Sections 3 (1) and Section 4(1) of the Act in so far as material read thus:-

"3. Levy of Electricity Duty-(I) Subject to tho provisions herein after contained, there shall be levied for and paid to the State Government on the energy:

(a) Sold to a consumer by a licensee, the Board, the State Government or the Central Government, or

(b) Consumed by a licensee or the Board in or upon premises used for commercial or residential purposes, or in or upon any other premises except in the construction, maintenance or operation of his or its works; or

(c) Consumed by any other person from his own source of generation; a duty (hereinafter) referred to as 'electricity Duty') x x x x x x x x x

4. Payment of electricity duty and interest thereupon:-

(1) The electricity duty shall be paid, in such manner and within such period as may be prescribed, to the State Government.

(a) Where the energy is supplied or consumed by a licensee, by the licensee:

(b) Where the energy is supplied by the State Government or the Central Government or is supplied or consumed by the Board, by the appointed authority; and

(c) Where the energy is consumed by any other person from his own source of generation by the person generating such energy."

The original writ Petitioners who canvass the view that electricity duty is not leviable or payable by a person consuming energy from his own source of generation under section 3 (1) (c) read with Section 4 (1) (c) of the Act lay great stress on the expression 'another person' occurring in Section 3 (1) (c) and Section 4 (1) (c) of the Act. It is contended that in view of the user of this expression only those consumers who wholly fall outside the orbit of Sections 3 (1) (a) or 3 (1) (b) are eligible to electricity duty under section 3(1) (c). In case a consumer fails 'both' under Sections 3 (1) (a) and 3 (1) (c) or sections 3 (1) (b) and 3 (1) (c) (it is so argued such a person would not be exigible to electricity duty. The same argument is urged protanto in the context of clauses (a), (b) and (c) of Section 4(1). In our opinion this submission is altogether untenable and has been rightly repelled by the Pull Bench of the Allahabad High Court in its well considered judgment. On a plain reading of Section 3 (1) (c) it is evident that duty has been levied on the energy consumed by a person from his own source of generation without anything more. There is no rider or qualification engrafted in Section 3 (1) (c) or Section 4 (1) (c). The fact that the user of electricity from his own source of generation purchases electricity from some other source as well, is an altogether irrelevant factor from the stand point of the liability imposed by the said provisions. Be it realized that duty is levied on the consumption of energy. The taxing event is the consumption of energy The source from which the electricity is acquired is altogether irrelevant. . A person having his own source of energy who also purchases energy from another source indicated in Section 3 (1) (a) will be covered by 3 (1) (a) to the extent he purchases electricity from such a source, and will be equally covered by Section 3 (1) (c), insofar as he consumes energy from his own source of generation. He will be covered by both the provisions read conjointly. The same reasoning applies in the context of clauses (a) (b) and

(c) of Section 4 (1). There is no rational basis for exonerating a person from payment of duty merely because he has his own source of generation and he also purchases electricity from some other source. In fact it will be irrational to do so and it would give rise to an anachronism. Why make him pay 'only if he generates his own energy and why exempt him altogether merely because he 'also' purchases from some other source ? Duty is levied as a measure of taxation in order to raise additional revenue as is made abundantly clear by the prefatory note and the extract from the statement of objects and reasons published in U. P. Gazette Extraordinary dated September 1, 1952 which reads as under:

"The minimum programme of development which this State must carry out within the next three or four years for the attainment of the objective of a welfare State is set

out in the Five Year Plan drawn up by the Planning Commission. This plan provides for an expenditure of 13.58 crores of rupees on power development projects. Such a huge expenditure cannot be met from our present resources. It is, however essential for the welfare of the people that the expenditure should be incurred and that nothing should be allowed to stand in the way of the progress of the plan. Additional resources have therefore to be found, the bulk of which can be raised only by means of fresh taxation.

A tax on the consumption of electrical energy will impose a negligible burden on the consumer and is a fruitful source of additional revenue. The bill has been so prepared as to ensure that the tax payable by a person will be related to the quantity of electricity consumed by him. The bill is being introduced with the above object. Vide Statement of Objects and Reasons published in U. P. Gazette. Extra. dt. September 1, 1952."

How would this object be promoted or served by adopting such an irrational course ? The taxing event being the consumption of energy, the source from which the electricity is acquired would become altogether irrelevant. Section 3 (1) as also Section 4 (1) has to be read as a whole and has to be interpreted in a harmonious and meaningful manner. To do otherwise would be to defeat the legislative intent which is abundantly clear, whilst at the same time exposing the provision to the charge of being irrational and arbitrary, by placing such an unwarranted construction thereon. The Full Bench of the Allahabad High Court, was, therefore, perfectly justified in taking the view that duty was chargeable in respect of energy consumed by a person from his own source of generation regardless of the fact that he 'also' purchased electricity from some other source indicated in Section 3 (1) (a) and Section 4 (1) (a). The appeal preferred by the State, being Appeal No. 1312/77 will therefore have to be allowed and the appeals preferred by the consumers of electricity challenging the correctness of the decision rendered by the Full Bench must therefore be dismissed.

The next question agitated in five out of the seven appeals comprised in the group (it does not arise in C.A. 1312/77 and C.A. 1146/79) arises thus:- The State of U.P. issued a notification dated March 17, 1973 whereby in exercise of powers under sub-section (4) of Section 3 of the Act a person consuming energy from his own source of generation installed 'after' January 2, 1973 was exempted from payment of electricity duty. The appellants in the appeals before us are persons who have their own source of generation of electricity. The generating machinery was however installed and commissioned by them 'before' January 2, 1973. It is their contention that exemption could not have been lawfully granted to a person installing his own source of generation 'after' January 2, 1973 unless exemption was also granted to the persons consuming electricity from their own source of generation installed 'prior' to January 2, 1973. In other words the argument is that exemption must be granted to all persons having their own source of electricity regardless of the date on which the source of generation is installed, in order to be able to successfully face the challenge from the platform of Article 14 of the Constitution of India. Exemption, (it is argued in effect), must be granted to all or to none irrespective of the date of installation of the equipment for generation of electricity to save the provision from the peril of being held as unconstitutional by reason of its being discriminatory and violative of Article 14 of the Constitution. This argument has been rightly

negated by the High Court for the very good reason that the Notification ex-facie made it abundantly clear that exemption was being granted "having regard to the need to promote industrial production generally and to the prevailing acute power shortage in the State." It is evident that in view of the felt-need for augmenting the sources of supply of electrical energy an incentive needed to be provided by way of granting exemption to those who installed their own source of generation of energy. As acute shortage of power was being experienced there was a need to encourage the consumers to acquire their own source of energy with a view to reduce or lessen the burden on the existing sources of electricity generation. Obviously this purpose can be achieved only by granting the exemption prospectively to those consumers who install their own source of generation of energy pursuant to the concession being granted under the provision for exemption. Those who already had their own source of generation of energy need no such encouragement in respect of the source of generation already installed. If they wanted to further augment their own source of generation of energy they would also be entitled to exemption in respect of the 'additional' source of generation installed 'after' the date specified in the notification. The classification is, therefore, rational, purposeful, as also meaningful, and it is calculated to effectively serve the real purpose of granting exemption. Article 14 cannot be invoked in a situation like this to successfully assail that part of the notification where by the date of installation has been made the precondition for qualifying for exemption.

State of Uttar Pradesh v. Jageshwar(1) on which reliance is placed cannot buttress the view canvassed by the writ petitioners having regard to the fact that exemption was granted with a view to encouraging consumers of electricity to become self-sufficient hence-forth and with the end in view to lessen the burden on the other source of generation prospectively. As against this those who had already acquired their own source for generating electricity were in need of no retroactive encouragement by way of concession or exemption for doing what they had already done. There would have been no augmentation of the existing resources by extending the exemption to them. Under the circumstances we are of the opinion that the High Court was fully justified in repelling the plea urged by the writ petitioners in this behalf.

In the result the appeal preferred by the State of Uttar Pradesh (C.A. 1312 of 1977) is allowed, the judgement and order of the High Court are set aside, and the writ petition giving rise to the said appeal is dismissed with costs throughout.

The rest of the appeals are dismissed with costs. All interim orders will stand vacated.

H.S.K

Civil Appeal No. 1312/72 allowed
and all other Appeals dismissed.