

2010 (2) GLR 1263

GUJARAT HIGH COURT

Hon'ble Judges:K.S.Jhaveri, J.

Essar Steel Limited Versus State Of Gujarat

SPECIAL CIVIL APPLICATION No. 10946 of 2009 ; *J.Date :- FEBRUARY 25, 2010

- [BOMBAY ELECTRICITY DUTY ACT, 1958](#) Section - [3\(2\)\(vii\)\(a\)](#)
- [ELECTRICITY \(SUPPLY\) ACT, 1948](#) Section - [44](#)
- BOMBAY ELECTRICITY DUTY RULES, 1986 Rule - 11

Bombay Electricity Act, 1958 - S. 3(2)(vii)(a) - Electricity (Supply) Act, 1948 - S. 44 - Bombay Electricity Duty Rules, 1986 - R. 11 - petitioner claimed exemption from payment of electricity duty as per notification giving exemption in case, generating set is purchased, installed or Commissioner in specified period - Government refused to grant exemption - petitioner had commissioned the generating set after expiry of the period specified - held, considering facts of the case, conditions laid down in the notification are not satisfied - petition dismissed.

Imp.Para: [[5](#)] [[6](#)] [[7](#)]

Cases Referred To :

1. A.P. Gas Power Corporation Ltd. V/s. A.P. State Regulatory Commission And Another, 2004 10 SCC 511
2. Commr. Of C.E. V/s. Hari Chand Shri Gopal, 2005 188 ELT 353
3. Eagle Flask Industries Ltd. V/s. Commr. Of C.E. Punie, 2004 7 SCC 377
4. Mangalore Chemicals And Fertilizers Limited V/s. Deputy Commissioner Of Commercial Taxes And Others, 1992 Supp1 SCC 21
5. State Of U.P. And Others V/s. Renusagar Power Co. And Others, 1988 4 SCC 59

Cited in :

1. (Referred To) :- [Shakti Bio Science Limited Vs. Assessment Officer Gandhinagar, 2014 \(1\) GLR 545 : 2013 JX\(Guj\) 877 : 2013 AIJEL_HC 230266](#)

Equivalent Citation(s):

2010 (2) GLR 1263 : 2010 JX(Guj) 126

JUDGMENT :-

1 The petitioner herein has challenged the order dated 24th September 2009 passed by Principal Secretary to Government of Gujarat, Energy & Petrochemicals Department, Gandhinagar, pursuant to the order dated 18th December 2006 passed by this Court in Special Civil Application No.2836 of 2003 and also the notice dated 6th October 2009 issued by respondent no.2 demanding payment of Rs.1,038.27 crores from the petitioner no.1 in accordance with the aforesaid order dated 24th September 2009.

2 The facts as they emerge from the records are as under:

2.1 The petitioner no.1 is engaged in the business, inter alia, of manufacturing and selling steel products such as Hot Briquetted Iron (HBI) and Hot Rolled Coils (HRC), etc. The petitioner no.2 is engaged in the business of generating and selling/supplying electrical energy. The petitioner no.1 company set up its gas based steel plant at Hazira in the year 1990 or thereabout for production of HBI. It also set up a 20 MW Open Cycle Power Plant for captive consumption of power for its HBI plant.

2.2 On the application made by the petitioner no.1 Company, the State Government granted exemption from payment of electricity duty for a period of 10 years commencing from 21st July 1990 with respect to the said Open Cycle Power Plant.

2.3 Subsequently the petitioner no.1 Company converted the said Open Cycle Power Plant of 20 MW into 30 MW combined Cycle Mode Power Plant by adding steam turbine. Upon such conversion, the petitioner no.1 Company was granted exemption from payment of electricity duty for a period of 15 years commencing from 21st July 1990.

2.4 In the year 1995 or thereabout, the petitioner no.1 Company also put up a composite plant making substantial investment for production of both HBI and HRC. In the year 1991-92, the petitioner No.1 Company thought of setting up another Captive Power Plant of 300 MW of capacity in Combined Cycle Mode at Hazira for meeting its requirement of more power. The Government of Gujarat and the Gujarat Electricity Board granted in-principle approval to the petitioner No.1 Company for setting up the said Captive Power Plant of 300 MW. However, due to a change in the Power Policy of Government of India, which allowed the participation of private sector in power generation during the year 1991-92, the petitioner no.1. company abandoned its plan to set up the said Captive

Power Plant of 300 MW in Combined Cycle Mode and in place and stead thereof, promoted and incorporated a separate generating company under the name and style of "Essar Power Limited" on 13th October 1991. The State Government cleared the project by accepting this position in the letter dated 5th June 1995.

2.5 The petitioner no.2 commenced generation of electricity on 8th August 1995. The petitioner no.1 Company applied for exemption from payment of electricity duty for a period of 10 years from 8th August 1995 under the Notification No.GHU/92/10/JCP/ 1188/2594/K dated 27th February 1992 issued by the Government of Gujarat. While the said application was pending the petitioner no.1 Company applied to the Commissioner of Electricity Duty, Gandhinagar, on 12th April 2001, for granting exemption for 15 years under section 3(2)(vii)(a)(i) of the Bombay Electricity Duty Act, 1958 as in force in the State of Gujarat. The Under Secretary to the State Government, Energy Petrochemicals Department, by his letter dated ELD-11-2000-1751-K dated 23rd December 2002 addressed to the Collector of Electricity Duty stated that M/s Essar Steels Limited is not eligible for Electricity Duty exemption for a period of 15 years under section 3(2)(vii)(a) of Bombay Electricity Duty Act, 1958.

2.6 The petitioners herein challenged the aforesaid decision before this Court by way of filing Special Civil Application No.2836 of 2003. This Court vide order dated 17th March 2003 directed the concerned authority to take a fresh decision on the representation of the petitioner company after giving a reasonable opportunity of hearing to the petitioner.

2.7 On 23rd January 2006 the Principal Secretary passed an order rejecting the application made by the petitioner no.1 company for grant of exemption from payment of electricity duty under the provisions of the Act. Further, vide order dated 24th September 2009, the Principal Secretary has rejected the applications dated 15th March 2000 and 12th April 2001 filed by the petitioner no.1 Company and held that the petitioner no.1 Company is liable to pay the electricity duty in accordance with the provisions of the Act. In pursuance of the said order dated 24th September 2009, the Collector of Electricity Duty, Gandhinagar, has addressed letter dated 6th October 2009 demanding payment of a sum of Rs.1038.27 crores from the petitioner no.1 company from the date of receipt thereof. Therefore the petitioner has filed the present petition.

3 Learned Advocate for the petitioners submitted that the petitioners claimed exemption under section 3(2)(vii)(a)(i) of the Bombay Electricity Duty Act, 1958 for a period of 15 years or in the alternative, remission of duty under Notification dated 27th February 1992 on the grounds that:

[a] Essar Power Limited was established as a wholly owned subsidiary by petitioner no.1 to augment its requirement of power on expansion of its manufacturing activities;

[b] The plant of Essar Power Limited is located within the existing industrial complex of petitioner no.1;

[c] Under Fuel Management Agreement signed between petitioner no.1. and petitioner no.2, entire raw material for generation of power drawn by petitioner no.1 is supplied to petitioner no.2 and Essar Power Limited only recovers conversion charges in terms of the Power Purchase Agreement and Fuel Management Agreement;

[d] The generating of Essar Power Ltd. is based on and sustained by the infrastructure facilities created/ provided by Essar Steel Limited.

[e] Essar Steel Limited provides to Essar Power Limited working capital necessary to the extent required for Essar Steel for off-take of power; and

[f] there is a common Management and Board of Directors.

3.1 He therefore submitted that in view of the above facts the petitioners are entitled an exemption as prayed for before the concerned authority.

3.2 Learned Advocate further submitted that the letter dated 10th November 1994 of GEB granting NOC under section 44 treating the plant in question of 515 MW as captive plant and the letter dated 3rd February 1995 of GEB reiterating its stand that the proposal of setting up of 515 MW power plant be treated as that of a captive power plant would go to show that GEB approved the plant under section 44 of Electricity (Supply) Act as a captive power plant of M/s Essar Gujarat, subsequently named as M/s Essar Steel Limited.

3.3 He submitted that the respondent no.1 has expressly categorized the power plant of the Company as a Generating Station and not a Generating company vide its letter dated 5.6.1995. The reference to section 15-A and section 18-A of the Act in the said letter cannot have the effect of impliedly amending the categorization of the power plant as Generating Station, specifically granted in the same letter, to that of a Generating Company. He further submitted that the respondents are precluded from raising any contention to the contrary in view of the aforesaid letters.

3.4 According to the learned Advocate for the petitioner, in view of the fact that to the extent of 42% (215 MW) of the power generated at the generating station of Essar Power Ltd. and drawn by petitioner No.1

(proportionate to 42% of its capital holding), the case of the petitioner would fall under section 3(2)(vii)(a)(i). He submitted that the petitioner no.1. is undoubtedly an industrial undertaking and it generates energy "singly or jointly" for its own use. In this connection learned Advocate for the petitioner has relied upon a decision of the Apex Court in the case of State of U.P. and others V/s. Renuagar Power Co. and others, reported in (1988) 4 SCC 59, wherein the Apex Court held that power generated by "Renuagar", which was set up as wholly owned subsidiary of "Hindalco" was power generated from "own source of generation" by Hindalco, the holding company applying the principle of lifting the corporate veil.

3.5 He has also relied upon a decision of the Apex Court in the case of A.P. Gas Power Corporation Ltd. V/s. A.P. State Regulatory Commission and Another, reported in 2004 (10) SCC page 511. In that decision the A.P. Gas Power Corporation Limited was held to be a Group captive generating venture set up by a Group of companies and the power generated was shared by the participating industries to the extent of their shareholding. It is held to be "captive consumption" by the participating industries and not "sale" by the Group Captive generating venture, I.e. A.P. Gas Power Corporation Limited to its participating units.

3.6 Learned Advocate submitted that the conclusion arrived at by the respondent authority is vitiated by a wrong finding that no permission under section 44 for setting up the generating station as captive power plant given by GEB when GEB has specifically treated this as a Captive Power Plant of M/s Essar Gujarat and granted permission under section 44 of the Act. According to him, no decision on this issue has been recorded by Central Electricity Authority and consumption of electricity by petitioner no.1, to the extent drawn from the generating station of petitioner no.2 is, therefore, exempted under section 3 and to that extent, petitioner no.1 is not 'a consumer'.

3.7 Learned Advocate for the petitioner in the alternative submitted that the petitioner no.1 is entitled to benefit of exemption under Notification 27th February 1992 for the reason that the generating plant of Essar Power Limited has to be treated as "Joint generation of power" by the petitioner. According to him, even if the power generated by petitioner no.2 and supplied to the GEB is not covered by the exemption Notification, the benefit of exemption cannot be denied to petitioner no.1.

3.8 Learned Advocate submitted that the petitioner no.1 company had, in respect of its 20 MW Plant and 11 MW, claimed benefit of exemption for 15 years under Section 3(2)(vii)(a)(i), which has been granted, as captive power plants. This has nothing to do with exemption in respect of 215

MW drawn by petitioner no.1 for its captive use from the generating plant jointly set up with Essar Power Limited.

3.9 He submitted that the "remission" available under Notification dated 30th June 1993 is available to every industrial undertaking, which has undertaken "substantial expansion". In this case Essar Steel Limited had applied for remission of duty under the said Notification in view of substantial expansion undertaken by it. This benefit is available to the power consumed by the industrial undertaking irrespective of the source which it is received. This has also nothing to do with the statutory exemption available under section 3(2)(vii)(a)(i).

3.10 Learned Advocate submitted that petitioners are similarly situated to GIPCL who was granted remission. Even GIPCL is treated as an industrial undertaking while issuing remission certificate. He submitted that the petitioners had claimed for exemption under section 3 vide its letter dated 12th April 2001 and though it was not in the prescribed format, as laid down by the Apex Court, non compliance with formal and procedural requirement would not disentitle a party to claim the benefit of exemption, if otherwise, it is entitled to. In this connection he has relied upon a decision in the case of Mangalore Chemicals and Fertilizers Limited V/s. Deputy Commissioner of Commercial Taxes and others, reported in 1992 Supp (1) SCC 21.

4 Mr. Kamal Trivedi, learned Advocate General appearing for the respondent submitted that the petitioners have not made out any case for grant of exemption and the petition deserves to be dismissed.

4.1 He submitted that the petitioners are not entitled to the exemption from payment of electricity duty as provided under section 3(2)(vii)(a) of the Duty Act, since it has failed to comply with certain conditions. According to him, Essar Steel cannot be said to be an industrial undertaking generating 215 MW of energy either singly or jointly with Essar Power for its own use or for the use of Essar Power He submitted that Essar Power is not an "industrial undertaking" as per section 2(bb) of the Duty Act, but is a "Generating Company" as defined under section 2(4A) of the Supply Act and hence section 3(2)(vii)(a) of the Duty Act which is meant for "Industrial Undertakings", cannot at all cover Essar Power within its purview.

4.2 He pointed out that proviso to clause (vii)(a) of section 3(2) of the Duty Act makes it obligatory for Essar Steel to have made an application, seeking exemption within the prescribed time, i.e. before 8.2.1996 (within 180 days from 8.8.1995 being the date of commencement of generation), in prescribed form and before the prescribed authority, i.e. respondent no.2 herein. However, Essar Steel had not done so and its

two communications dated 15th March 2000 and 12th April 2001 cannot be considered to be application in the prescribed form to the prescribed authority.

4.3 Mr. Trivedi submitted that Essar Steel has failed to obtain eligibility certificate for the exemption in prescribed form since the proviso to clause (vii)(a) of section 3(2) clearly provides that no industrial undertaking shall be entitled to exemption from payment of electricity duty, unless such an eligibility certificate is obtained in advance, as was done by Essar Steel by claiming similar exemptions on earlier occasions.

4.4 Mr. Trivedi submitted that Essar Steel is not entitled to the exemption from payment of electricity duty as per notification dated 27th February 1992 issued under section 3(3) of the Duty Act, since it has failed to comply with the conditions laid down.

4.5 According to him for being eligible to the exemption from payment of electricity duty either under section 3(2)(vii)(a) of the Duty Act or as per notification issued under section 3(3) of the Duty Act, the conditions laid down therein are compulsorily required to be complied with.

4.6 He submitted that the so-called claim of exemption belatedly made by Essar Steel vide its letter dated 12th April 2001 cannot be considered to be an application made in prescribed form and within prescribed time and to the prescribed authority, more particularly when, in past, Essar Steel had made such applications in prescribed form and within prescribed time limit and to the prescribed authority for issuance of eligibility certificate, whereupon only the benefit of exemption was available. He therefore, submitted that the benefit of proviso to Rule 11 of the aforesaid Rules as regards condonation of delay cannot be made available to Essar Steel.

4.7 Mr. Trivedi submitted that the statutory conditions are mandatory and are not empty formalities, but are the foundation for availing of the exemption benefit and hence, the said conditions have to be strictly complied with. In this connection he has relied upon the decisions in the case of Eagle Flask Industries Ltd. V/s. Commr. Of C.E. Punie, reported in (2004)7 SCC 377, and in the case of Commr. Of C.E. V/s. Hari Chand Shri Gopal, reported in 2005(188) ELT 353 (SC).

5 The claim of the petitioners is for exemption from payment of electricity duty for a period of 15 years in respect of its consumption of power 215MW sold by Essar Power starting from 8th August 1995 to 7th August 2010 under section 3(2)(vii)(a)(i) of the Duty Act, and alternatively for exemption for a period of 10 years starting from 8th August 1995 to 7th August 2005 as per notification

dated 27th February 1992 issued under section 3(3) of the Duty Act. Section 3(2)(vii)(a)(i) reads as under:

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

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[vii] for motive power and lighting in respect of premises used by an industrial undertaking for industrial purpose, until the expiry of the following period, that is to say -

[a] in the case of an industrial undertaking which generate energy either single or jointly with any other industrial undertaking for its own use or as the case may be, for the use of industrial undertakings which are jointly generating the energy, -

[i] fifteen years from the date of commencement of the Bombay Electricity Duty (Gujarat Amendment) Act, 1983 (hereinafter in this sub-section and sub-sections (2A) and (2AA) referred to as "the commencement date") or the date of starting the generation of such energy whichever is later if such generation of energy is by back-pressure turbine or if such generation of energy is obtained by co-generation."

5.1 The proviso to the said section reads as under:

"Provided that no industrial undertaking shall be entitled to exemption from payment of electricity duty under this clause, unless it has obtained a certificate regarding eligibility for such exemption in prescribed form by making an application therefore in prescribed form and within prescribed period to such officer as the State Government may, by notification in the Official Gazette, specify."

5.2 Thus, as per section 3(2)(vii)(a) of the Act, electricity duty shall not be leviable on the units of electricity consumed by an industrial undertaking, if the said industrial undertaking generates electricity singly or jointly with any other undertaking, for its own use or for the use of industrial undertakings which are jointly generating the energy for the periods specified therein, provided such an industrial undertaking makes application in the prescribed form and within the prescribed time to the prescribed authority and obtains Eligibility Certificate for which exemption in the prescribed form. As per section 3(3) of the Duty Act, the State Government may issue a notification for remitting the electricity duty in respect of specified classes of consumers, subject to the terms and conditions specified therein.

5.3 "Industrial undertaking" is defined under section 2(bb) of the Duty Act, which means an undertaking engaged predominantly in the manufacture or production of goods (other than eatable or drinks), or any job work which results in the manufacture or production of goods (other than eatables or drinks), but does not include a service undertaking. According to section 2(4A), "Generating Company" means a company registered under the Companies Act, 1956 (1 of 1956) and which has among its objects the establishment, operation and maintenance of generating stations. Therefore it appears that the petitioner company falls under the category of "Generating Company".

5.4 Proviso to clause (vii)(a) of Section 3(2) of the Duty Act makes it obligatory for a company to have made an application, seeking exemption within the prescribed time. In the present case the petitioners have commenced generation on 8th August 1995 and therefore it should have made an application within 180 days i.e. before 8th February 1996 before the respondent no.2 herein. However, the petitioners have not made any application in prescribed form before the prescribed authority i.e. respondent no.2 herein. According to the petitioners, there are two communications dated 15th March 2000 and 12th April 2001. However, both these communications are not in the prescribed format nor before the prescribed authority.

5.5 The proviso also stipulates that the industrial undertaking has to produce an eligibility certificate for the exemption. In the present case the petitioners have not produced anything on record to show that they have produced the eligibility certificate for such exemption in prescribed form before the concerned authority.

5.6 At this stage a reference may be made to the notification dated 27th February 1992 issued under section 3(3) of the Bombay Electricity Duty Act. By the said notification remission was allowed on the following conditions:

"[a] The generating set or sets shall have been purchased or installed or commissioned during the period beginning from 1st January 1991 and ending on 31st December 1992. Provided that such generating set or sets shall not have been previously used in the State.

[b] The total capacity of such joint captive power plant shall not be less than 100 megawatts.

[c][i] If a Company is established for the aforesaid purpose by the participating units of the said company, they should together make capital contribution of at least 12.5% of the project cost either as equity, subordinated loan or out right grant.

[ii] In a joint company, the participating units together should also contribute not less than 25% of the working capital on pro-rata basis.

[d] The benefit of remission of electricity duty for energy consumed by individual participating unit out of the total power generated by such joint set or sets shall be remitted to the extent of the ratio of their individual capital contribution to the total contribution of all the participating units.

The Collector of Electricity Duty shall decide the exact quantum of benefit enjoyable by each participating unit taking into consideration various technical aspects.

[c] Total amount of benefit to be so availed, by all the participating industries together, during the aforesaid period of exemption of 10 (ten) years, should not exceed the limit of 75% of the fixed investment made in such joint captive power plant.

[f] Power generation from this joint set shall not be supplied to any unit other than the participating units.

[g] The eligibility certificate for remission of electricity duty shall be obtained from the Collector of Electricity Duty, Ahmedabad within 180 days from the date of publication of this notification in the Official Gazette or the date of installation of generating set, whichever is later.

Provided that when an industrial undertaking makes an application for certificate of eligibility after the expiry of the aforesaid period of 180 days, the period lapsed between the date of application and the date of notification or the date of installation shall be reduced from the total period of 10 (ten) years,

[h] The Collector of Electricity Duty, Ahmedabad shall satisfy himself before granting eligibility certificate that the generating sets are purchased or installed or commissioned between the 1st January 1991 and 31st December 1992."

5.7 Thus, according to the condition the generating set for generating electrical output of 215 MW should have been purchased, installed or commissioned during the period beginning from 1.1.1991 to 31.12.1992 and that the said generating set should not have been previously used in the State. From the record it appears that the generating sets in question have been commissioned in the month of August 1995 and the petitioners have failed to establish that the generating sets were even purchased during the aforesaid period. Mere placement of order for purchase cannot amount to actual purchase of the generating sets.

5.8 Secondly, the petitioner has not pointed out that it has made an application within 180 days from the date of publication of the notification in question in the Official Gazette, i.e. 27th February 1992 or from the date of installation of generating sets in August 1995, whichever is later.

5.9 Thirdly there is also nothing on record to show that the petitioner has obtained requisite eligibility certificate for remission of electricity duty from the Collector of Electricity Duty.

5.10 Lastly, there should be a satisfaction reached by the Collector of Electricity Duty that the generating sets are purchased or installed or commissioned between 1st January 1991 and 31st December 1992. The petitioner has also failed to point out that there was a satisfaction reached by the Collector of Electricity Duty in this behalf.

6 Thus, for being eligible to the exemption from payment of electricity duty either under section 3(2)(vii)(a) of the Duty Act or as per the notification issued under section 3(3) of the Duty Act, the aforesaid statutory conditions are compulsorily required to be complied with. However, the petitioners have failed to point out anything from the record that they have complied with those conditions.

6.1 The petitioners have relied upon a letter dated 5th June 1995 granted by the State Government in order to support the claim of the petitioners. In fact by letter dated 5th June 1995 the State Government has granted approval to the demand of Essar Power to set up a generating station and to supply power generated by it to Essar Steel and other sister concerns, subject to the compliance of the provisions of sections 15(A) and 18(A) of the Supply Act which are applicable in case of Generating Company. Therefore it appears that the said approval clearly recognised Essar Power as a "Generating Company" and not as "Captive Power Plant" of Essar Steel or as "industrial Company, as defined under section 2(bb) of the Duty Act.

6.2 The petitioners have also relied upon No Objection Certificate granted by the GEB vide its letter dated 10th November 1994. However, it is required to be noted that CEA is the supreme authority in granting NOC.

6.3 In the instant case the CEA has never conferred upon Essar Power the status of "Captive Power Plant" of Essar Steel. On the contrary the CEA, vide its letter dated 11th January 1995 sought clarification from GEB to the effect that since Essar Power has been registered under the Companies Act with the object of generating power, it has to be treated as a Generating Company and not as a Captive Power Plant, irrespective

of the fact that power generated is for the use of Essar Group of Companies.

6.4 In fact GEB has stated that the Essar Power Limited has gone ahead in its implementation of the project without obtaining prior clearance from the CEA. The contention of the petitioners is that No Objection/ consent under section 44(2A) of the Electricity (Supply) Act, 1948 is required only for a Generating Station and would not be required to be obtained for a Generating Company setting up a power plant as expressly provided in the said Section and that the Board has granted such no objection/consent after consultation with the Central Electricity Authority. If that is so, there was no reason for the Central Electricity Authority to seek clarification from GEB to the effect that since Essar Power has been registered under the Companies Act with the object of generating power, it has to be treated as a Generating Company and not as a Captive Power Plant.

6.5 In sum and substance, in view of the statutory conditions mentioned hereinabove, for being eligible to the benefit of exemption from electricity duty, as laid down under section 3(2)(vii)(a) of the Duty Act as well as notification dated 27th February 1992 issued under section 3(3) of the Duty Act read with Rule 11 of the Bombay Electricity Duty (Gujarat) Rules, 1986, the procedure should be laid down therein should be followed. In the present case the petitioner has vide letter dated 12th April 2001 sought exemption which cannot be considered to be an application made in prescribed form and within prescribed time and to the prescribed authority, more particularly when, in past, the petitioner had made such applications in prescribed form and within prescribed time limit and to the prescribed authority for issuance of eligibility certificate, whereupon only the benefit of exemption was available to it. This view is followed in the case of Eagle Flask Industries Ltd. V/s. Commr. of C.E, Pune, reported in (2004)7 SCC 377 and in the case of Commr. of C.E. V/s. Hari Chand Shri Gopal, reported in 2005(188) ELT 353 (SC).

6.6 The petitioners have relied upon a decision in the case of Mangalore Chemicals (supra). In the case the appellant was eligible for the sales tax exemption benefit and it had made a requisite application for permission within the prescribed time, but the same had remained undisposed of by the Revenue and it was in that context that the Apex Court observed to the effect that there was no other disentitling circumstances which would justify the refusal of the permission, since the appellant did not have prior permission because it was withheld by the Revenue without any justification. Therefore the ratio laid down in the said decision is not applicable to the facts of the case.

6.7 In the case of Renu Sagar Power Co. Ltd. reported in (1988) 4 SCC 59 the Apex Court was concerned with section 3 of the U.P. Electricity (Duty) Act, 1952, which empowered the State Government to provide exemption from payment of electricity duty on the energy consumed by any other person from his own source of generation as provided under section 3(1)(c) of the said Act. In the said case the Apex Court found that a company called "Hindustan Alluminum Corporation Ltd.) (Hindalco for short) commissioned its plant in 1962 for manufacture of alluminum and thereafter in 1964, incorporated its wholly owned subsidiary called "Renu Sagar Power Co. Ltd.". This was done to set up captive power house through instrumentality of a 100 per cent subsidiary fully controlled by Hindalco in all respects to supply power to Hindalco only for avoiding takeover complications. While partly accepting the contentions of the State Government, the Apex Court held that the claim of Hindalco for the reduced rate of bill on the basis that Renu Sagar Power Plant was its own source of generation under section 3(1)(c) of the said Act, should be accepted. In the present case, the relevant provisions of law as well as factual aspects involved therein are totally different and therefore the ratio laid down in the said decision would not be applicable to the facts of the present case.

6.8 Likewise, in the case of A.P. Gas Power Corporation, the said judgement dealt with an issue of a license and not exemption and therefore no reliance can be placed upon the said decision.

7 This Court has also gone through the impugned order dated 24th September 2009 passed by Principal Secretary to Government, Energy & Petrochemicals Department, Gandhinagar. This order was passed in pursuance of the order dated 18th December 2006 in Special Civil Application No.2836 of 2003. The authority has elaborately discussed the matter and considered the relevant provisions, either existing or the previous ones. In terms of section 44 of the Act specific approval of the State Electricity Board was necessary without which a captive power plant could not be set up. There is a clear finding of the authority that there was no approval sought for or otherwise given by the State Electricity Board under section 44 of the Electricity (Supply) Act, 1948.

7.1 There is also a clear finding that in past Essar Steel Limited has applied in prescribed form and have enjoyed the benefit of exemption of electricity duty for the power purchased from Essar Power Limited on expansion of project HRC. After availing the same Essar Steel Limited has sought for a period of 15 years from 8.8.1995 as per the provisions of section 3(2)(vii)(a)(i) of the Duty Act as enforced in the State of Gujarat.

7.2 For this purpose the Essar Steel Limited has never applied. Learned Advocate for the petitioners is not in a position to controvert any of the findings of the competent authority.

7.3 The correspondence between the parties is taken into consideration by this Court. However it is to be noted that any alleged assurance by GEB contrary to Statute may not be binding to the State Government. The business of steel and power, both are different entities. The power company is generating company selling power to GEB. Therefore it is not a captive power company and therefore benefit of captive power company cannot be given to the petitioners. Further, as stated hereinabove, there was no approval by the Central Authority.

8 In view of the above discussion I am of the view that there are no merits in the present petition and the same is required to be dismissed. Accordingly the petition is dismissed. Rule is discharged with no order as to costs. Interim relief, if any, stands vacated.

