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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE VINAY SARAF**

ON THE 9th OF MAY, 2024

WRIT PETITION No. 25952 of 2023

BETWEEN:-

**MADHYA PRADESH PASCHIM KSHETRA VIDHYUT
VITRAN COMPANY LIMITED A COMPANY
INCORPORATED UNDER COMPANIES ACT 1956
THROUGH ITS OFFICER IN CHARGE OF THE CASE
SUPERINTENDENT ENGINEER(O AND M) MPPKVVC
LTD HAVING IT REGISTERED UNDER CORPORATE
OFFICE AT GPH COMPOUND, POLO GROUND, INDORE
(MADHYA PRADESH)**

.....PETITIONER

(BY SHRI PRAKASH UPADHYAY - ADVOCATE)

AND

- 1. M/S R D WEAVING MILLS LLP A PARTNERSHIP
FIRM THROUGH ITS PARTNER MOHD IQBAL
KHAN S/O NOT KNONW AGED ABOUT NOT
KNONW R/O PODDAR COMPOUND NEW TIT
ROAD GURUDWARA, BURHANPUR, DISTRICT
BURHANPUR (MADHYA PRADESH)**
- 2. ELECTRICITY CONSUMER GRIEVANCE
REDRESSAL FORUM INDORE AND UJJAIN
DIVISION, POLO GROUND, INDORE (MADHYA
PRADESH)**

.....RESPONDENTS

***(SHRI DHEERAJ SINGH PANWAR - ADVOCATE WITH MS. TANVI KHARE -
ADVOCATE)***

.....
*This petition coming on for admission this day, the court passed the
following:*

ORDER

Madhya Pradesh Pachim Kshetra Vidyut Vitran Company Limited
(hereinafter referred to as "MPPKVVC Ltd.") licensee company has preferred

the present petition assailing the order dated 22.9.2022 passed by the Electricity Consumer Grievance Redressal Forum, Indore/respondent No.2 (hereinafter referred to as "the Forum"), which is statutory forum established under Section 42 (5) of the Electricity Act, 2003 for redressal of consumer grievances in WO 520422, whereby the forum has allowed the complaint submitted by M/s. R.D. Waving Mills LLP/respondent No.1, a registered limited liability partnership firm (in short "LLP") and ordered to extend the benefit of rebate to respondent No.1 according to the Retail Supply Tariff Order FY 2017-18.

2. The facts of the case are not in dispute and the relevant undisputed facts in short suffice for redressal of the present petition, are as under:

(i) The unit established by the LLP/respondent No.1 falls under the category of Green Field Project.

(ii) The respondent No.1 made a request to MPPKVVC Ltd. for supply of High Tension connection with contract demand of 500KVA at 33 KV supply and an agreement was executed between the petitioner and respondent No.1 on 25.01.2016.

(iii) Executive Engineer (O&M) MPPKVVC Ltd. Burhanpur issued a letter on 4.8.2016 to Electrical Engineer Power Energy for the purpose of joint survey and test charge of 33KV line installed for the purpose of electricity supply to the premises of the respondent No.1 and on 27.8.2016 issued a letter to respondent No.1/LLP for carrying out the deficiencies pointed out by the surveyor.

(iv) On 29.8.2016, respondent No.1/LLP completed the work and electricity line was verified, handed over, connected and charged by supplying the electricity.

(v) Rebate was allowed to the respondent No.1 as regulated by yearly tariff order issued by Madhya Pradesh Electricity Regulatory Commission, Bhopal (hereinafter referred to as 'MPERC Bhopal') for the FY 2016-17.

(vi) MPERC issued Retail Supply Tariff Order for FY 2017-18, whereby according to the Special Terms and Conditions (e) of Tariff Schedule HV-3, a rebate was announced for new HT consumer connection for which agreement for availing supply from licensee were finalized during FY 2016-17 and FY 2017-18, provided the connections are served to Green Field project.

(vii) Respondent No.1 applied for extending the benefit of tariff order FY 2017-18 by allowing rebate of Rs.1/unit or 20%, which ever would be less from the applicable energy charges.

(viii) The request of respondent No.1 company was turned down by Additional S.E. (HT Billing Cell) MPPKVVCL Indore, by order dated 13.10.2017 on the ground that agreement was executed on 25.01.2016 and therefore, as per clause (e) of Tariff Schedule HV-3 of Retail Supply Tariff Order FY 2017-18, respondent No.1 is not eligible for the rebate.

(ix) Respondent No.1 preferred the complaint before Electricity Consumer Grievance Redressal Forum Indore and Ujjain Division, Indore for extending the benefit of rebate, which was allowed by order dated 22.9.2022, which is under challenge in the present petition.

3. It is apt to reproduce the relevant clause of the Retail Supply Tariff Order FY 2017-18:-

(e) Rebate for new HT connections: A rebate of Rs 1/Unit or 20% whichever would be less is applicable in energy charges for new connection for the consumption recorded. The rebate shall be allowed for a period of five years from the date of connection for such new projects for which agreements for availing supply from licensee are finalized during FY 2016-17 and FY 2017-18. Provided these connections are served to green field projects only and no

rebate is applicable for new connections obtain by virtue of change in ownership in existing connection. Note: the green field project shall be those projects where the consumer invests in the construction of new industry/plant from the ground up and there was no prior construction/structure on that particular land."

4. The respondent No.1 claimed the benefit of rebate as announced in the clause (e) by claiming that the agreement was executed on 25.1.2016 but the Electricity Line was completed, verified and connected on 29.8.2016 when the supply was also started by charging the line. As per respondent No.1, the date of execution of agreement cannot be treated as the finalization of agreement and the date of connection of the line for the purpose of supply of electricity should be treated as date of finalizing of agreement and the same was done on 29.8.2016, within the FY 2016-17, therefore, respondent No.1 is entitled for the rebate, whereas MPPKVVC Ltd. rejected the claim of rebate on the ground that agreement was executed on 25.1.2016 and the date of execution of agreement will be the date of finalizing the agreement, and the date of finalizing the agreement was FY 2015-16, Therefore, respondent No.1 was not entitled for the rebate.

5. The core question involved in the present matter is that, whether the date of execution of agreement may be treated as date of finalization of agreement, or the date of commencement of agreement or the date of connection of line for the purpose of receiving energy or the date of commencement of supply of energy may be treated as date of finalization of agreement.

6. Learned counsel for the petitioner submits that date of execution of agreement is the date when the agreement was finalized between the parties and therefore, the same should be treated as date of finalization of agreement also. For bolster his interpretation, he relied on the definition of agreement provided

in Chapter-II clause 2.1 (b) of the M.P. Electricity Supply Code, 2013 (hereinafter referred to as 'Code, 2013), which reads as under:-

"2.1(b): 'Agreement' with its grammatical variations and cognate expressions means an agreement entered between the licensee and the consumer under this Code."

7. He further relied clause 2(a) of the agreement dated 25.01.2015, which provides that, "*commencement of this agreement shall dealt either from the actual date or which the consumer has begun to take electric energy under this agreement or the day immediately following the expiry of prescribed notice period of intimation of 30 days as per Electricity Supply Code, 2013 as in force.*" He further relied on clause No.5 of the agreement. He further submits that the date of commencement of agreement cannot be treated as date of finalization of the agreement and when the agreement was signed by the parties, the agreement came into force and therefore, the said date will be treated as date of finalization of agreement.

8. He further submits that in the matte of **State of Maharashtra vs. Shri Vile Parle Kalvani Mandal and others, (2022) 2 SCC 725**, the Apex Court has held that, taxing or fiscal statute should be construed strictly and it is not opened to the Court to ignore the provisions of the taxing statute and if the eligibility criteria laid down in exemption notification, it required to be construed strictly and once it is found that applicant satisfied the same, only thereafter the exemption notification may be applied. He relied on the following paras of the judgment:-

"11. 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 analyzed first.

12. In Dilip Kumar [Commr. of Customs v. Dilip Kumar & Co., (2018) 9 SCC 1] , 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. 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 paras 53 to 55 in Dilip Kumar [Commr. of Customs v. Dilip Kumar & Co., (2018) 9 SCC 1]]. 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 necessary implication, or on a construction different from the words used by reference to the object and purpose of granting exemption [see Hansraj Gordhandas v. CCE [Hansraj Gordhandas v. CCE, AIR 1970 SC 755]].

13. Further it is 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 CCE v. Parle Exports (P) Ltd. [CCE v. Parle Exports (P) Ltd., (1989) 1 SCC 345 : 1989 SCC (Tax) 84] and Union of India v. Wood Papers Ltd. [Union of India v. Wood Papers Ltd., (1990) 4 SCC 256 : 1990 SCC (Tax) 422]] 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 SCC paras 64 to 65 in Dilip Kumar [Commr. of Customs v. Dilip Kumar & Co., (2018) 9 SCC 1]]

9. He further relied on the judgment of Apex Court delivered in the matter of **Krishi Upaj Mandi Samiti, New Mandi Yard, Alwar vs. Commissioner of Central Excise and Service Tax, Alwar, (2022) 5 SCC 62** , which provides that, the onus lies on the assessee to show that he comes within the purview of the exemption notification. Learned counsel for the petitioner further submits that the forum has committed error in extending the benefit of rebate to respondent No.1, who is not eligible for the rebate as the agreement was finalized on 25.1.2016. He prays for setting aside the order passed by the forum.

10. *Per contra*, learned counsel for respondent No.1 supported the order passed by the forum on the ground that execution of agreement itself is not sufficient for the purpose of supply of energy and after execution of agreement,

till commencement of agreement, several acts are required to be done. During this period the electricity lines are required to be erected, verified by the surveyor appointed by the Electricity Company and thereafter to be handed over to the company for the purpose of charging the same and for supply of electricity and therefore, the date of finalizing the agreement cannot be treated as date of execution of agreement. He prays for dismissal of the petition.

11. Heard learned counsel for the parties with the consent for the purpose of final disposal of the present petition.

12. Considered the arguments advanced by them, perused the documents available on record.

13. It is not in dispute that on 25.01.2016, the agreement was executed for the purpose of supply of energy to the premises of the respondent No.1. It is also not in dispute that after the execution of agreement the electricity lines were erected. Some deficiencies were found in the electric lines by the surveyor in its report and the same was intimated to the respondent No.1 by petitioner company on 27.8.2016 and after rectification of the defect pointed out by the petitioner company, the line was handed over on 29.8.2016, and on the same day these lines were charged and supply was started.

14. The definition of agreement relied by the learned counsel for the petitioner provided under the Code, 2013 is material as in the definition of agreement, it is specifically mentioned that agreement means an agreement entered between the licensee and the consumer under this Code meaning thereby the document will be treated as agreement for the purpose of Code, 2013, whenever the customer, who execute the document in favour of DISCOM will, attained the status of consumer. For the purpose of understanding the meaning of consumer, the definition provided in Clause 2.1 (n) in Chapter-II of Code, 2013 is material,

which reads as under:-

"2.1 (n):-'Consumer' means any person who is supplied with electricity by the licensee and includes any person whose premises are for the time being connected for the purpose of receiving electricity from the licensee, persons who have applied for an electricity connection, persons whose supply is not yet connected even after due notice to avail connection or whose electricity supply has been disconnected. A consumer is- (i)'Low Tension Consumer (LT Consumer)' if he obtains supply from the licensee at low voltage. (ii) 'High Tension Consumer (HT Consumer)' if he obtains supply from the licensee at High Voltage. (iii) 'Extra High Tension Consumer (EHT Consumer)' if he obtains supply from the licensee at Extra High Voltage."

15. Similarly, definition of consumer is provided in Section 2(15) of the Electricity Act, 2003, which reads as under:-

"2(15):- "consumer" means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be."

16. As per the definition provided in Code, 2013 and the Electricity Act, 2003, any person who falls under the definition of consumer, it is essential that the electricity is being supplied to him by the licensee and includes any person whose premises is connected for the purpose of receiving electricity with the works of a licensee or any notice is issued to him for completing the work, for the purpose of receiving the energy or whose electricity supply has been disconnected. Meaning thereby, mere entering into an agreement with the Electricity Supply Company, the person will not fall under the definition of consumer and whenever the person will fall under the definition of consumer as per the definition given in the Code, 2013, the agreement will be treated as agreement for the purpose of Code, 2013. It means that, until and unless, customer falls under the definition of consumer, if any agreement is executed at any pre stage, the same shall not be treated as an agreement for the purpose of

Code, 2013, therefore, the words finalization of agreement is purposely used in the tariff. It cannot be accepted that the date of execution of agreement will be the date of finalization of agreement otherwise there was no need to use the word finalization of agreement and the words may be used as execution of agreement. The execution of agreement is not the date of commencement of agreement and the date of supply of energy is the date of commencement of the agreement. Meaning thereby, mere execution of agreement is not sufficient for the purpose of commencement of agreement. Similarly, it is also not correct to say that the date of finalizing the agreement is the date when the electricity supply was started because as per the definition of consumer, if the electricity lines is complete and connected for the purpose of receiving the energy in the premises of the customer, the customer will fall under the definition of consumer and the agreement will be treated as an agreement under the provisions of Code, 2013. Therefore, the initiation of supply of energy is not *sine qua non* for the purpose of treating as consumer. The similar view was taken by the Apex Court in the matter of **Uttar Pradesh Power Corporation Limited and others vs. Anis Ahmad, (2013) 8 SCC 491**, which reads as under:-

"36. Therefore, we hold that the complaints filed by the respondents were not maintainable before the Consumer Forum.

Maintainability of a complaint before the Consumer Forum against final order of assessment made under Section 126 of the Electricity Act, 2003 or action taken under Sections 135 to 140 of the Electricity Act, 2003.

37. Section 2(15) of the Electricity Act, 2003 defines "consumer" in the following manner: "2. (15) 'consumer' means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be;"

38. From a bare reading of section aforesaid we find that the "consumer" as

defined under Section 2(15) includes any person who is supplied with electricity for his own use by a licensee and also includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, irrespective of the fact whether such person is supplied with electricity for his own use or not. Per contra, under Section 2(1)(d) of the Consumer Protection Act, 1986 those who are supplied with electricity for commercial purpose and those who do not avail services for consideration, irrespective of electricity connection in their premises do not come within the meaning of "consumer."

17. The definition of consumer was also interpreted in **Sesa Sterlite Limited vs. Orissa Electricity Regulatory Commission and others, (2014) 8 SCC 444**, wherein the Apex Court held that, if a person is receiving or purchasing the electricity from the company, he qualifies to be a consumer under Section 2(15) of the Electricity Act, 2003. This proposition is reiterated by the Apex Court in the matter of **Karnataka Power Transmission Corporation Limited vs. JSW Energy Limited, (2023) 5 SCC 541**, wherein it is held that there is no form for the concluded contract in the act and no penalty can be imposed for not entering into power purchased agreement, which shows that PPA is not an essential requirement under the Act and the word finalized in the context of power purchase agreement cannot be played down in the context of the previous correspondence at any rate. If a agreement is concluded contract or not it will depend upon the facts and circumstances as well as intention of the parties and after completing the work the agreement will be treated as concluded contract.

18. The definition of work has been provided in Electricity Act, 2003 in Section 2(77), which provides that the work will be completed when the electricity lines are erected for the purpose of receiving electricity.

19. In view of the above discussion, the following result appears:-

(a) For the purpose of entering into a contract to supply the electricity, the electricity company and consumer may execute an agreement but the same

cannot be treated as an agreement under the Code, 2013, unless and until, the customer falls under the definition of consumer.

(b) If after the execution of agreement, erection of line and other works required to be carried out, the agreement cannot be treated as concluded contract and the date of commencement of contract will be different.

(c) Whenever the electricity lines are conveyed, verified and handed over to the Electricity Company for the purpose of charging the same by electric supply, the premises will be treated as connected with the lines and owner of the premises will be treated as consumer. Therefore, the date on which the lines were handed over for the purpose of charging the electricity shall be treated as the date for finalizing the agreement, which is 29.8.2016 in the case in hand.

20. In view of above conspectus, the Forum has not committed any error in holding that the M/s. R.D. Waving Mills LLP/respondent No.1 is entitled for the rebate as declared in Retail Supply Tariff Order FY 2017-18 for the New High Tension Projects falls under the definition of Green Field Project and consequently, the petition fails and is hereby **dismissed**. The view taken by the Forum is upheld. No order as to costs.

(VINAY SARAF)
JUDGE