The Chief Electrical Inspector vs Ambuthirtha Power Private Ltd

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SooperKanoon Citation : sooperkanoon.com/1860464

Court : Karnataka

Decided On : Nov-29-2024

Judge : Anu Sivaraman,Umesh M Adiga

Appeal No. : WA/2999/2012

Appellant : The Chief Electrical Inspector

Respondent : Ambuthirtha Power Private Ltd

Judgement :

-1-

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF NOVEMBER, 2024 PRESENT THE HON'BLE MRS. JUSTICE ANU SIVARAMAN AND THE HON'BLE MR. JUSTICE UMESH M ADIGA WRIT APPEAL NO. 2999 OF 2012 (GM-KEB) BETWEEN:

1. THE CHIEF ELECTRICAL INSPECTOR TO THE GOVERNMENT (CEIG) GOVERNMENT OF KARNATAKA No.32/1-2, 2ND FLOOR CRESENT TOWER, CRESENT ROAD BENGALURU-560 001

2. THE PRINCIPAL SECRETARY

DEPARTMENT OF ENERGY GOVERNMENT OF KARNATAKA VIKASA SOUDHA AMBEDKAR VEEDHI BENGALURU-560 001 Digitally signed APPELLANTS by (BY SRI. RUBEN JACOB, AAG A/W. CHANNEGOWDA PREMA SRI. M.V. ANOOP KUMAR, HCGP) Location: High Court of Karnataka AND:

1. AMBUTHIRTHA POWER PRIVATE LTD.

A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE COMPANIES ACT, 1956 WITH REGISTERED OFFICE AT No.137 7TH FLOOR, HMG AMBASSADOR BUILDING RESIDENCY ROAD, BENGALURU-25 REP. BY ITS MANAGING DIRECTOR MR. SADANADA SHETTY AGED 74 YEARS -2-

2. PRAXAIR INDIA PVT. LTD.

A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE COMPANIES ACT, 1956 WITH REGISTERED OFFICE AT "PRAXAIR HOUSE", No.8 ULSOOR ROAD, BENGALURU-42 REP. BY ITS MANAGING DIRECTOR RESPONDENTS (BY SRI. K.N. PHANEENDRA, SENIOR COUNSEL FOR SMT. LATHA S SHETTY, ADVOCATE FOR R1; SRI. C. MURALIDHARA, ADVOCATE FOR R2) THIS WRIT APPEAL IS FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT, PRAYING TO (a) CALL FOR RECORDS AND

(b) ALLOW THIS WRIT APPEAL AND SET ASIDE THE ORDER

DATED 28.09.2011 PASSED IN THE WRIT PETITION No.33479/2011 AND W.P.No.34790-824/2011. THIS APPEAL, COMING ON FOR ORDERS, THIS DAY,

JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN and

HON'BLE MR. JUSTICE UMESH M ADIGA

ORAL JUDGMENT

(PER: HON'BLE MRS. JUSTICE ANU SIVARAMAN) This writ appeal is preferred by the Chief Electrical Inspector to the Government of Karnataka as well as the Government of Karnataka as represented by the Principal Secretary against the judgment of the learned Single Judge in WP No.33479/2011 and WP Nos.34790-824/2011. -3-

2. Heard Sri. Reuben Jacob, learned Additional

Advocate General along with Sri. M.V. Anoop Kumar, learned High Court Government Pleader appearing for the appellants and Sri. K.N. Phaneendra, learned Senior counsel as instructed by Smt.Latha S Shetty, learned counsel appearing for respondent No.1 and Sri. C.Muralidhara, learned counsel appearing for respondent 2.

3. It is the specific contention of the learned Senior

counsel appearing for respondent No.1 that the issue raised in this writ petition stands squarely covered by the decision of the Apex Court in M/S DAKSHIN GUJARAT VIJ COMPANY LIMITED VS M/S. GAYATRI SHAKTI PAPER AND BOARD LIMITED AND ANOTHER, ETC in Civil Appeal Nos.8527- and scope of Captive Generating Plant, Captive Generation, Captive User etc., as provided in the Electricity Act, 2003 (for short "the Act") as well as Rule 3 of the Electricity Rules, 2005 (for short "the Rules") found that a reading of Section 2(8) and Section 9(1) of the Act would make it clear that it is not necessary for the person who maintains and operates a "Captive Generating Plant" should have also constructed such -4- plant. It was found that in view of the specific language of Rule 3, even a person, who becomes a shareholder of the entity which set up the plant at a later point of time would be entitled for the benefit of exemption as a captive user. It is therefore contended by the learned Senior counsel appearing for respondent No.1 herein that the demand of tax raised for the period from December 2007 to December 2010 in the instant case would be completely without jurisdiction in view of the exemption granted as per the policy as available in Annexure-L.

4. Learned Additional Advocate General has made

available before us the Karnataka Electricity (Taxation on Consumption)(Amendment) Ordinance, 2003, the Karnataka Electricity (Taxation on Consumption) (Amendment) Act, 2004 as well as the Notification dated 24.11.2014. It is clear from the perusal of the Ordinance, the Act and the Notification at the relevant time i.e., at the time for which the demand has been raised in the instant case, the exemption for CGP was in existence and that there is no tax as provided for the Captive Consumption at the relevant time. -5-

5. In the light of the judgment of the Apex Court

which has settled the issue with regard to who would be entitled to the benefit of exemption as a captive user and in view of the fact that there was no tax contemplated for a Captive User at the relevant time, we are of the opinion that the findings of the learned Single Judge were justified and do not require any interfere in this intra-Court appeal. The writ appeal therefore fails, the same is accordingly dismissed. Sd/- (ANU SIVARAMAN) JUDGE Sd/- (UMESH M ADIGA) JUDGE RAK List No.: 1 Sl No.: 9