

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4243 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

ARROW OXYGEN (P) LTD.

Versus

EXECUTIVE ENGINEER

Appearance:

1. Special Civil Application No. 4243 of 1995
MR PV NANAVATI for Petitioner No. 1-2
MR TUSHAR MEHTA for Respondent No. 1-2
MR AD OZA for Respondent No. 1-2
Mr. KL PANDYA AGP for Respondent No. 3
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CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 30/06/2004

ORAL JUDGEMENT

1. The present petition is filed under Article 226 of the Constitution of India for giving directions to the respondent no. 3 to grant exemption to the petitioner as an industrial undertaking which is entitled to the exemption from payment of electricity duty u/s 3 (2) (b) (viii) of the Bombay Electricity Board and also for directions upon the respondents no. 1 and 2 to revise their bills as per exemption sought for under the aforesaid Section 3 (2) (b) (viii) of the Act.

2. It is contended by the learned advocate for the petitioners that the petitioner company is using the electricity energy for manufacturing oxygen gas and the same oxygen gas is filled in cylinders especially manufactured for its preservation. He has submitted that M/s. Arrow Oxygen Ltd. was incorporated in April 1993. The company has got authorised capital upto Rs.2 crores. It has got subscribed capital of Rs.31 lakhs. For the purpose of carrying on its business of manufacturing oxygen gas it started its factory in the month of June, 1994, at village Meghpur, District Jamnagar. For the purpose of manufacturing oxygen gas, the petitioner Company applied for High Tension power to the respondent no.1 - Gujarat Electricity Board. Since there was a contract demand of 200 KVA, as per the respondent Board's Rules, 160 KVA will be considered for billing demand. It is further submitted by the learned advocate for the petitioners that whether the company actually uses it or not, the company will have to pay actual consumption of electricity charges. However, the company will have to pay compulsorily billing demand charges of 160 KVA.

3. It is also contended by the learned advocate for the petitioners that revised bill for additional electricity consumption for the period from August 1994 to April, 1995 was issued by the respondent Board to the petitioners on the ground that Multiplier Factor for the meter installed for H.T.P. connection at Meghpur in August 1994 is 4 (four) and the petitioners have been issued the bill on the basis of Multiplier 2 (two) and hence the bill for the period from August, 1994 to March, 1995 for Rs.6,78,382.71 ps. is illegal, unjust and contrary to law.

4. An affidavit-in-reply has been filed by Shri Laxmichand Jerajbhai Vaishnani, Deputy Engineer of the respondent Board. It is contended by the learned advocate for the respondent Board that for the enforcement of the contract between the petitioner and the respondent Board and looking to the nature of the prayer which is in terms of money suit is not tenable at

law and the petitioner ought to have filed a civil suit for enforcement of contractual rights. So far as multiplier factor is concerned, it is submitted by the learned advocate for the respondent that the petitioner was having Multiplier-4 (four) but by mistake on the part of the officers of the respondent Board, Multiplier-2 has been applied. Therefore, the respondent Board has rightly issued additional bill to the petitioner for the period from August 1994 to March 1995 .

5. It is stated in the affidavit-in-reply at para 8.4 that in fact and in reality, since the CT ratio installed at the consumer's premises was of 10/5 amp., multiplier of '2' was to be applied along with another multiplier of '2' that of the meter. Thus, total multiplier of '4' was to be applied instead of '2'.

6. Learned A.G.P. submitted that exemption sought for in the electricity has already been granted and therefore the petitioner has not agitated that point at the time of arguments.

7. Looking to the aforesaid averments made in the affidavit-in-rely, it is implicitly clear that there was mistake on the part of the respondent authority in issuing the bill for electricity consumption by applying multiplier factor '2' instead of multiplier factor '4' and therefore correct additional bill has been issued by the respondent Board which is at Annexure-C to the memo of the petition.

8. Learned advocate for the petitioner has not pressed law point for getting exemption under Section-3 (2) (b) of the Bombay Electricity Act, 1958. Therefore, the only point left out is regarding applicability of multiplier factor '2' whether multiplier factor '4' can be applied.

9. I have carefully gone through the material on record and also considered the submissions made by the learned advocate for the parties.

10. As per the averments made in paragraphs no. 8.3, and 8.4 of the affidavit-in-reply filed on behalf of the respondent Board, there was mistake on the part of the respondent authority in applying multiplier factor '2' instead of multiplier factor '4' and therefore additional bill issued by the respondent Board for the period from August 1994 to March 1995 is legal, valid and proper. Therefore, the petition fails and accordingly the same is dismissed. Rule is discharged, with no order as to

costs.

(D.N. Patel, J.)

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