

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****WP No. 1131 of 2006****Reserved on : 20/05/2020****Delivered on: 31/07/2020**

M/s. Punjstar Insulation Fibre Company, (A Unit of NGP Industries Ltd.)  
6 & 7 Heavy Industrial Area, Bhilai, District Durg (C.G.) Through Vice  
President

**---- Petitioner****Versus**

State Of Chhattisgarh, Through Office of Chief Electrical Inspector,  
Superintendent Engineer (Electrical Safety), 36/437, First Floor, Byron  
Bazar, Raipur, P.O. & District Raipur (C.G.)

**---- Respondent**

For Petitioner	:	Mr. Uttam Pandey, Advocate.
For State	:	Mr. Jitendra Pali, Dy. A.G.

**Hon'ble Shri Justice P. Sam Koshy****C.A.V. Order**

- The present writ petition has been filed seeking for quashment of Annexure P-1 dated 27.04.2005 passed by the Superintendent Engineer (E & S) Cum Chief Electrical Inspector, Government of Chhattisgarh, Raipur. Vide the said order the respondent has issued a notice of recovery of electricity charges for the period between August, 1997 to March 2003 for an amount of Rs. 1,47,236 as electricity charges and an amount of Rs. 1,93,164 towards totaling Rs. 3,46,400. The said amount was ordered to be deposited by the 30.04.2005. Though the Impugned order (Annexure P-1) was passed on 27.04.2005, the present writ petition was filed only on 20.02.2006. That along with the writ petition interim relief was also sought but no interim relief as such

was granted to the petitioners and is has been informed that the petitioners in due course of time has also deposited the entire amount demanded. According to the petitioner the said amount was deposited under protest and same shall be subject to the outcome of the present writ petition.

2. That the petitioner establishment is an industry manufacturing Thermal Insulation and Coating Compound. According to the petitioner because of the difficulties that petitioner faced in the operation of the industry on account of irregular supply of electricity to the plant the petitioners had installed a 380 KVA DG Set. While installation of the said DG Set the petitioner had sought approval of the same from the respondent which was duly granted by the respondent vide Annexure (P-4) dated 14.08.1997. Thereafter, the petitioner moved an application on 22.08.1997 claiming for exemption from the electricity duty on the generation of the electricity from the above said DG Set. The petitioner since was repeatedly approaching the respondent for grant of electricity duty exemption but the respondent has not considered his request and have now vide the impugned order raised an exorbitant amount towards electricity duty in spite of the fact that petitioner under the norms, guidelines of the rules in this regard was entitled for the same which has been challenged by the petitioner in this writ petition.
3. According to the counsel for the petitioner there was no reason available with the respondent for denying the petitioner the

exemption of electricity duty. According to the petitioner once when the petitioners had moved an application for exemption specifically stating that two DG Sets in the petitioner establishment having been separately installed and both being operational the respondent could not have denied the petitioner the benefit of the exemption. According to the petitioner the reason assigned by the respondent in not granting exemption of electricity duty is also not sustainable in view of the specific details that petitioner had supplied to the respondent. According to the petitioner he fulfills all the requirements as per the notification published in this regard by the state dated 06.11.1992.

4. Opposing the petition State counsel submitted that writ petition is liable to be dismissed only on the ground that original order rejecting the claim of the petitioner so far as granting exemption from electricity duty is concerned was never challenged and which was asked as early as on 25.01.1999 which was again intimated to the petitioner on 16.08.1999. Both these orders were never challenged by the petitioner at any point of time. Therefore, writ petition deserves to be rejected on this limited ground alone. State counsel also contended that present writ petition has been filed after a gap of almost seven years from the first date when exemption of electricity duty was rejected by the respondent. According to the State counsel from the reply which has been submitted by the petitioner themselves to the department it

clearly reflects that 380 KVA DG Set was one which was replacing an already existing DG Set and since it was replacement of old DG Set the petitioner would not had been entitled for the exemption.

5. Having heard the contentions what is relevant at this juncture is to consider the notification dated 06.11.1992 which petitioners have enclosed as Annexure P-6. Clause 4 & 5 of the notification dated 06.11.1992 for ready reference is being reproduced hereinunder :-

**“4. If any generating set/power plant of more than 125 KVA capacity availing the benefit of exemption of electricity duty is replaced by a new one before the expiry of the exemption period i.e. 5 years than the replaced generating set/power plant shall continue to avail the said benefit until the completion of the exemption period of 5 years.**

**Save as provided above the exemption shall not be available to any other generating set/power plant installed in replacement of old ones.**

**5. Any person or undertaking after installation of the new generating set/power plant of more than 125 KVA capacity, shall obtain a certificate of eligibility for exemption from payment of electricity duty from the Electrical Inspector concerned and shall be regarded as eligible for exemption only on the basis of such certificate.”**

6. Now if we read the document enclosed along with the writ petition it reflects that petitioner establishment had already started its manufacturing long ago with the aid of the DG Set of 125 KV.
7. The respondent vide its order dated 25.01.1999 had intimated the petitioner that under the notification of the Government dated 06.11.1992, the petitioner is not entitled for the exemption from electricity duty and the respondent also directed the petitioner to pay the electricity duty for all the period that the petitioner had not

paid the same. This order dated 25.01.1999 has not been challenged by the petitioner at any point of time and the petitioner repeated his request with the respondent for grant of exemption from payment of electricity duty. The respondent again vide its order dated 16.08.1999 reiterated and intimated the petitioner that under the notification dated 06.11.1992 he is not entitled for exemption as claimed for. This order dated 16.08.1999 also has not been challenged by the petitioner before any Court of law.

8. That, the petitioner again approached the respondent claiming for exemption and the respondent vide its order dated 14.03.2000 again intimated the petitioner that he is not entitled for benefit of exemption from electricity duty and each time the respondent have been asking the petitioner for depositing the entire unpaid electricity duty at the earliest. This order dated 14.03.2000 again has not been challenged by the petitioner at any point of time except for the repeated approach made by the petitioner seeking exemption. Subsequently on 01.05.2001 the respondent raised a demand from the petitioner for an amount of Rs.1,41,818/- towards electricity duty unpaid since 14.08.1997 i.e. the date of starting of generation from the 380 KVA DG set.
9. Surprisingly, this demand note moved by the petitioner also has not been challenged by the petitioner before any Court of law at any point of time. The respondent similarly again initiated the demand note on 30.05.2003 asking the petitioner to immediately deposit the unpaid electricity duty with interest which again was

not honored by the petitioner. There was yet another demand note raised by the respondent on 17.09.2003 raising a claim for Rs.2,84,501/- towards electricity duty with interest from August, 1997 to May, 2003. This again was not honored by the respondent or was it challenged. There was yet again a demand note raised by the respondent on 13.11.2003 with specific intimation to the petitioner that in the event if the petitioner fails to deposit or honor the said demand raised, the respondent shall be forced to initiate recovery proceedings against the petitioner. This was followed by another demand note from the respondent on 09.09.2004 and again on 01.02.2005 and 08.02.2005 none of these demand notes has ever been challenged by the petitioner at any point of time.

10. At this juncture, if we come to the relief clause in the writ petition, it specifically reflects/reveals that the challenge, which has been made is only to the demand letter (Annexure P/1) dated 27.04.2005, whereas in the writ petition, Annexure P/2 again is a notice of demand raised from the office of the **Tehsildar** as a revenue recovery proceedings, which again has not been challenged by the petitioner in this writ petition.
11. Given the said facts, it stands undisputed from the pleadings of the writ petition itself, this Court is of the opinion that the present writ petition challenging Annexure P/1 alone dated 27.04.2005 that to by filing a writ petition after a lapse of more than 10 months from the date of impugned order P/1 was passed and

after a lapse of more than 7 years from 25.01.1999 when for the first time the respondent had rejected the claim of the petitioner. That the present writ petition was filed as late as in 2006 when the petitioner himself had enclosed these annexures dated 25.01.1999, 16.08.1999, 14.03.2000, 01.05.2001, 30.05.2003, 17.09.2003, 13.11.2003 and 09.09.2004, wherein the claim of the petitioner specifically stood rejected and they were asked to deposit the electricity duty with interest, yet the petitioner has not challenged any of these orders.

12. This Court is of the opinion that the petitioner has deliberately not challenged the same as the petitioner was aware that the petition otherwise would be hit by delay laches. Moreover, this Court is also of the firm view that unless the original order of rejection of a claim for exemption from electricity duty is challenged and got quashed, the subsequent decision of the respondent or the subsequent demand notice raised by the Department would not be sustainable without there being a challenge to the original order and the writ petition therefore on this ground alone is not sustainable and deserves to be and is accordingly ordered to be dismissed.
13. It is also relevant at this juncture to mention that in the notification dated 06.11.1992 the relevant clauses of which have been reproduced in the preceding paragraphs, clause 4 clearly mentions that the exemption shall not be available to any other generating set installed in replacement of old one. Unless the old

one was of more than 125 KVA and the old one was granted the certificate of exemption from payment of electricity duty. From the documents enclosed along with the return, a document Annexure R/2 dated 08.04.1998 a document of the petitioner himself shows that the dully installed 380 KVA new DG Set was in replacement of the old 125 KVA DG Set. The petitioner himself has mentioned that the old DG Set has been scraped w.e.f. September, 1997 due to engine problem. Even otherwise the old DG Set since it was of only 125 KVA, it was not entitled for exemption. The saving clause of Clause 4 in the notification dated 06.11.1992 specifically dis-entitles the claim of the petitioner seeking exemption from electricity duty. It is on the basis of this that the respondent had repeatedly intimated the petitioners vide a series of correspondences referred to in the preceding paragraphs, of the petitioner, not being entitled for exemption. This notification of the State Government dated 06.11.1992 also is not under challenge, this also goes against the petitioner. Thus, on this ground also the petitioner would not be entitled for relief that he has sought for and this Court therefore is inclined to dismiss the writ petition being devoid of merits.

14. The writ petition accordingly stands dismissed.

Sd/-  
(P. Sam Koshy)  
**Judge**

Ved