

Rajasthan Electricity (Duty) Act, 1962

12 of 1962

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Rajasthan Electricity (Duty) Act, 1962

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An Act to levy a duty on the consumption of electrical energy in Rajasthan. Whereas it is expedient to levy a duty on the consumption of electrical energy in Rajasthan. Be it enacted by the Rajasthan State Legislature In the Thirteenth Year of the Republic of India, as follows:

1. Short title and extent :-

(1) This Act may be called the Rajasthan Electricity (Duty) Act, 1962. (2) It extends to the whole of Rajasthan.

2. Definition :-

In this Act, unless there is anything repugnant in the subject or context,-- (a) "Board" means the Rajasthan State Electricity Board constituted under Chapter III of the Electricity(Supply) Act, 1948 (Central Act 54 of 1948): 1 "Commissioner" means the Commissioner, Commercial Taxes, Rajasthan and includes the Additional Commis-. sioner, Commercial Taxes, Rajasthan.] (c) "consumer" means a person who is supplied with energy by a supplier 2 by any other person who generates energy] and includes a supplier in respect of the energy consumed by him in or upon premises used by him for his commercial or residential purposes:

(d) "energy" means electrical energy: (e) "net rate charged" means the rate charged less any rebate or other deduction that may be allowed by the supplier: (f) "prescribed" means prescribed by rules made under this Act: (g) "rate charged" means the rate per unit, charged for energy by the supplier from the consumer, and does not include hire for meter or service: Provided that where a minimum charge or a fixed charge is payable by a consumer instead of a rate per unit, the rate charged shall be deemed to be the same as for other consumers of the same category; (h) "supplier" means the Board or a licensee licensed under Chapter 11 of the Indian Electricity Act, 1910 (Central Act 9 of 1910), to supply energy and includes any person who has obtained the sanction in that behalf of the State Government under section 28 of the said Act: (i) words and expressions not defined in this Act but defined in the Indian Electricity Act, 1910 (Central Act 9 of 1910) have the meaning assigned to them in that Act. 1. Clause (c)- Consumer- Meaning of.- The definition of consumer, as given in this clause clearly includes a supplier in respect of the energy consumed by it. The only restriction is that such energy must be consumed Subs. by Raj. Act 30 of 1964. 2 Ins.hyRaj.Act5of 1979.:1 in or upon premises used by it for his commercial or residential purpose. Amalgamated Elect. Co.Ltd. v. State of Rajasthan, 1983 RLW 115 2. Commercial purpose. - The word commercial according to the Oxford Dictionary means viewed as a matter of profit and loss. The word purpose means object which is in view or for which it is made. The word commercial purpose, therefore, means an undertaking the object of which is to make a profit out of such undertaking. Random House Dictionary of the English Language, also states as one of the meaning of the term commerce as business. Amalgamated Elect. Co.Ltd. v. State of Rajasthan, 1983 RLW 115

3. Electricity duty on energy consumed :-

There shall be levied for and paid to the State Government on the energy consumed by a consumer or by a person other than a supplier generating energy for his own use or consumption, a duty (hereinafter referred to as the electricity duty) computed at such rate as may be fixed by the State Government from time to time by notification in the Official Gazette: Provided that-- (1) In respect of consumption of energy under a temporary connection obtained by a consumer from the supplier for a period not exceeding such number of days, for such purpose and exceeding such units as may be fixed by the State Government from time to time by a

notification in the Official Gazette; (1-A) The total of the duty so levied and the net rate charged per unit shall not exceed the rate as may be notified by the State Government from time to time by a notification in the Official Gazette; and (1-B) Where energy is consumed by a cultivator in agricultural operations under a non-metered supply, the electricity duty shall be levied and charged at a rate as may be notified by the State Government, from time to time.] (2) the electricity duty shall not be levied on the energy consumed-- (a) by the Government of India: (b) in the construction, maintenance or operation of any Railway by the Government of India: 2 where the energy is generated at a voltage not exceeding 100 volts:] [[x x] (d) by the following classes of institutions, namely:-- 1 S.3 lexcept its provisos (2) & (3)] Subs. by Raj. 15 of 1995. 2 Ins, by Raj. Act 5 of 1979. 3 Omitted l)y Raj. Act 8 of 1982. (1) hospitals or dispensaries which are not maintained for private gain, (ii) recognised educational Institutions, (iii) places of public worship, subject to the condition that the exemption under this sub-clause shall not be applicable to energy consumed in buildings or part of buildings used for commercial or residential purposes. 1 [Where the State Government is of opinion that it is necessary or expedient in the public interest to do so, it may by a notification in the Official Gazette 2 [on such terms, conditions and restrictions as may be laid down in the e notification] reduce or remit,-- e (a) the electricity duty on the energy consumed-- (i) by a consumer in any industry in the manufacture, production processing or repair of goods: 3 [by a person generating energy for his own use or a consumption]; (ii) by or in respect of any mine as defined in the Mines Act, 1952 (Central Act 35 of 1952): (b) Whether prospectively or retrospectively the electricity duty on the energy consumed by or in respect of any municipal board or council or Panchayat or Panchayat Samiti or other local authority for the purpose of or in respect of public street lighting; subject however, in the case of clause (a), to the condition that any reduction or remission so made shall not be applicable to energy consumed in respect of any premises used [commercial or residential purposes].

SYNOPSIS 1. Previous provision 2. Consumption of electricity in the manufacture- Scope of. 3. No penalty to be charged. 4. Liability to pay duty- Electricity consumed iii cold storage. 5. Principle of promissory estoppel -Applicability. 6. Right of exemption. 1. Previous provision.- The portion of section 3 repealed and substituted by Raj. 15 of 1995 was as under:-- 1 Subs. by Raj. Act 9 of 1965. 2 Ins, by Raj. Act 5 of 1979. : Ins, by Raj. Act 5 of 1979.

"3. Electricity duty on energy consumed.- There shall be levied for, and paid to, the State Government on the energy consumed by a consumer, or by a person other than a supplier generating energy for his own use or consumption a duty (hereinafter referred to as the "electricity duty") computed at such rate, not exceeding ten paise per unit as may be fixed by the State Government from time to time by notification in the Official Gazette: Provided that:-- (1) in respect of consumption of energy under a temporary connection obtained by a consumer from the supplier for a period not exceeding such number of days, for such purpose and exceeding such units as may be prescribed, the duty may be computed at a rate not exceeding fifteen paise per unit as may be fixed by the State Government from time to time by a notification in the Official Gazette. (1-A) The total of the duty so levied and the net rate charged per unit shall not exceed one rupee and sixty paise per unit; (1-b) Where energy is consumed by a cultivator in agricultural operations under a non-metered supply, the electricity duty shall be levied and charged at the rate of 5 % of the flat rate tariff as may be notified by the Rajasthan State Electricity Board, from time to time under the Electricity (Supply) Act, 1948."

2. Consumption of electricity in the manufacture- Scope of. - The energy consumed for lighting the stores, canteen, yard etc. can be said to be consumed in connection with or in relation to the manufacture of textile but it cannot be said to be used in manufacturing the cloth within the meaning of proviso (3)(a)(i) of the section. However, the electricity consumed for lighting that building of the mills where the machineries are installed and where the process of turning raw cotton into the finished cloth takes place shall stand on a different footing and according the test laid down by the Supreme Court that energy shall be taken to be consumed "in the manufacture" of cloth because without such light the ultimate production of the finished goods of the mills would not only be commercially inexpedient, but would be impossible. The process of lighting that part of the mills where the cotton is cleaned, ginned, spun into yarn, the cloth is woven, put on rolls, dyed, calendered, and pressed is so integrally connected with the ultimate production of finished goods of the mills that without that consumption of energy into lighting the manufacture of cloth would be commercially inexpedient and, therefore, such consumption of energy in lighting can safely be taken to have fallen within the expression "in the manufacture" as used in proviso (3)(a)(i) of section 3. AIR 1965 SC 1310 Ref. to. Shri Sadul Textiles Ltd. v. State of Rajasthan, ILR

(1970) RAJ 673= AIR 1971 RAJ 158. 3. No penalty to be charged.- Where interpretation of the provision of the Act and the notification was not simple, it will be unjust to subject the petitioner to the payment of penalty by way of surcharge. *Shri Sadul Textiles Ltd. v. State of Rajasthan*, ILR (1970) RAJ 673= AIR 1971 RAJ 158.

4. Liability to pay duty :-

Electricity consumed in cold storage If any article undergoes a particular process, though no change occurs in it, still it cannot be denied that the article has not been processed. Not only in the scientific sense it may be true that when any foodstuff is preserved in cold storage, it is processed under the refrigeration system and even according to dictionary meaning the same result will follow, that is when any article is given the treatment of cooling process or submitted to the cooling process in cold storage, it can be said that the article has been processed. Therefore, when goods are preserved in the cold storages, it can be said that the energy is consumed in cold storage industry in processing of the goods. *Mewad Sheet Grah v. State of Rajasthan*, 1980 RLW 461. See also *MI's Rajasthan Ice and Cold Storage, Jodhpur v. State of Rajasthan*, 1981 WLN 346.

5. Principle of promissory estoppel :-

Applicability. - Where the State Government notified certain exemption and on establishment of a factory issued another notification cancelling the remission granted by previous notification. The question arose whether the State Government was bound by the principle of promissory estoppel and could not cancel the remission already assured. In *Union of India v. J.K. Industries* [(2) RLW 386 (DB)], it was held that the Government while discharging its legislative function is bound by the promissory estoppel. Only in very exceptional cases the Government can wriggle out. What is material is that the party must have acted upon the assurance so as to alter its position. Therefore the Government cannot unilaterally revoke the benefits which have been granted by it. In *Motilal Padampat Sugar Mills Co. Ltd. v. The State of Uttar Pradesh* [1979 SC 622], Their Lordships of Supreme Court while clarifying the meaning of promissory estoppel held that "the true principle of promissory estoppel seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or effect a legal relationship to arise in the future, knowing or intending that it would be acted upon the promise would be binding

on the party making it, and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealing which have taken place between the parties, and this would be so irrespective of whether there is any pre-existing relationship between the parties or not. The doctrine of promissory estoppel need not be inhibited by the same limitation as estoppel in the strict sense of the term. It is an equitable principle evolved by the courts for doing justice and there is no reason why it should be given only a limited application as a way of defence. There is no reason in logic or principle why promissory estoppel should also not be available as a cause of action, if necessary to satisfy the equity. It is not necessary, in order to attract the applicability of the doctrine, of promissory estoppel, that the promisee, acting in reliance on the promise should suffer any detriment. What is necessary is only that the promisee should have altered his position in reliance on the promise. The Apex Court has not made any distinction between the exercise of executive power or delegated legislative power by the Government. It has only explained the meaning of promissory estoppel. It was contended that the Government has withdrawn the exemption because of acute financial decision and severe draught conditions in the State of Rajasthan. In *Vasantkumar Radhakishan Vora v. The Board of Trustees of the Port of Bombay* [1991 SC 141, it was held by the Apex Court that the doctrine of promissory estoppel being an equitable doctrine, it must yield place to the equity, if large public interest so requires, and if it can be shown by the Government or public Authority for having regard to the facts as they have transpired that it would be inequitable to hold the Government or public authority to the promise or representation made by it. The Court on satisfaction would not in these circumstances raise the equity in favour of the persons to whom a promise or representation is made and enforce the promise or representation against Government or the public authority. It is well settled legal proposition that the private interest would always yield place to the public. If the Government contended that the cancellation was made keeping in view acute financial position and severe draught condition in the State of Rajasthan, it was only necessary that this contention should have been supported with documentary evidence to substantiate the same. A bald assertion in this respect without any factual foundation is not enough. *Modi Alkalies & Chemicals Ltd. v. State of Rajasthan*, 1991 (1) WLC 452=1991 (2) RLW 343=1991 (1) RLR 258=1991 (2) WLN 219.

6. Right of exemption :-

Irrespective of rep of goods, if any in (IUStry is consuming the energy in the manufacture or production of any goods then it is certainly entitled to the benefit of the notifications issued from time to time by the State Government in pursuance of sub-clause (3) of section 3 of the Act. Amalgamated Elect. Co.Ltd. v.State of Rajasthan, 1983 RLW 115 (3-A. Levy of electricity duty during certain period.-(1) Notwithstanding anything contained in this Act but subject to the statutory exemptions granted under sub-section (2) of Section 3, there shall be levied and paid to the State Government from 3-3-1982 the electricity duty at the rate shown against each category of consumption as given below, and such rate shall be deemed modified by the notifications issued from time to time after 3-3-1982 under section 3:-- Ins, by Raj. Act 12 of 1992 128-4-921. to I. Industrial including mining.- 6 paise per unit. 2. Agriculture: (I) in the case of metered supply- 1 paise per unit. (ii) in the case of non-metered supply-5% of the flat rate. 3. Commercial, domestic and others- 6 paise per unit. 4. Consumption under temporary connection- 15 paise per unit 5. Consumption of self generated energy for any purpose- 6 paise per unit. Note.- The following validation provision is made vide section 3 of Raj. Act 12 of 1992:-- "3. Validation of electricity duty during certain period.-- (1) Notwithstanding anything contained in any judgment, decree or order of any court or authority, any levy and payment of electricity duty in accordance with the notification No. F. 4 (19) FD/Gr. IV/82-1 dated 3-3-82 issued under section 3 shall be deemed to be and ever to have been valid and effective as if such levy and payment had been made under sub-section (1) of section 3-A of the principal Act, and according- (a) all acts or things done or proceedings taken by any officer of the State Government or by any other authority or agency in connection with such levy and payment, shall, for all purposes, be deemed to be and to have been done or taken in accordance with law; (b) no suit or other proceeding shall be maintained or continued in any court or before any authority questioning such levy and payment or claiming refund thereof; and (c) no court or authority shall enforce any decree or order directing the refund of such levy and payment. (2) For the removal of doubts, it is hereby declared that nothing in this section shall be construed as preventing any person- (a) from questioning in accordance with the provisions of the principal Act, as amended by this Act, any levy and payment of electricity duty; or (b) from claiming refund of any amount paid by him in excess of

the amount due from him by way of such levy under the principal Act, as amended by this Act.

4. Consumers to pay electricity duty. - The amount of electricity duty levied under section 3 on the energy consumed by a consumer shall be payable by, and be collected and recovered from the consumer in the manner hereinafter provided.

5. Collection of electricity duty.-(1) The electricity duty shall be collected from the consumer and paid to the State Government by the supplier: Provided that where the amount of electricity duty collected by the supplier from the consumer is not paid to the State Government within the prescribed period, the supplier shall be liable to pay interest at the rate of 12 1/2% per annum on the amount of electricity duty remaining so unpaid until the payment thereof is made. (2) The duty and the interest, if any, so payable shall be a first charge on the amount recoverable by the supplier for the energy supplied by him and shall be a debt due by him to the State Government. (3) Where any consumer fails or neglects to pay, within the prescribed time and in the prescribed manner, the amount of electricity duty due from him the supplier may, without prejudice to the right of the State Government to recover the amount under section 8 and after giving not less than seven days clear notice in writing to such consumer, cut off the supply of energy to such consumer. (4) The supplier the person supplying energy free of charge may for the purpose of sub-section (2), exercise the powers conferred on a licensee under sub-section (1) of section 24 of the Indian Electricity Act, 1910 (Central Act 9 of 1910), as if the duty was a charge or sum due in respect of energy supplied to such consumer.

2 Every person other than a supplier who generates energy for his own use or consumption shall pay to the State Government at the time and in the manner prescribed, the electricity duty payable under this Act on the units of energy used or consumed by him: Provided that if the amount of electricity duty is not paid within the prescribed period, interest at 12 1/2% per annum on the amount of duty remaining so unpaid shall be chargeable from the person liable to pay electricity duty from the date of expiry of the said period until the payment thereof is made.

(6) Every person, not being a supplier, who generates energy and supplies the same to any other person free of charge, shall collect and pay to the State Government, at the time and in the manner prescribed, the electricity duty payable under this Act on the units of energy consumed by that other person: Provided that where the amount of electricity duty collected by such person is not paid to the State Government within the prescribed period, he shall be

liable to pay interest at the rate of 12 1/2% per annum on the amount of electricity duty remaining so unpaid until the 1 Ins, by Raj. Act 5 of 1979. 2 Ins, by Raj. Act 5 of 1979. payment thereof is made.] 6. Records and returns.-(1) If the State Government so directs by a general or special order, a supplier 1 a person liable to pay electricity duty under sub-section (5) of section 5 and a person not being a supplier who supplies energy free of charge as mentioned in sub-section (6) of section 5] shall maintain such record in such manner or form as may be prescribed showing:-- (i) the units of energy generated or received by 2 for supply to the consumers: (ii) the units of energy supplied to consumers or consumed by him: (iii) the amount of the duty payable thereon and the duty recovered or paid by him under section 5; (iv) the amount of interest, if any, paid 3 x x under section 5: and (v) such other particulars as may be prescribed. (2) Every supplier 4 a person liable to pay duty under sub section (5) of section 5 and a person not being a supplier who supplies energy free of charge as mentioned in sub-section (6) of section 5] who has been directed under sub-section (1) to maintain a record shall submit returns in such form or manner as may be prescribed. (3) The amount of energy shall, for purposes of clauses (i) and (ii) of sub-section (1), be ascertained in such manner as may be prescribed.

7. Duties and powers :-

The Commissioner and such officer as may be appointed to assist him shall perform such duties and exercise such powers as may be prescribed. 6 [Subject to the provisions of any rules made by the State Government in this behalf, the officers appointed to assist the Commissioner if so specially empowered in this behalf by him, and any other officer specially empowered by the State Government in this behalf, may-- (a) require production for inspection of such books and records as may be necessary for ascertaining or verifying the amount of electricity duty leviable under the Act; (h) enter and search any premises where energy is or is believed to be supplied for the purpose of-- I Ins, by Raj. Act 5 of 1979. 2 [Subs, by Raj. Act 5 of 1979. Omitted by Raj. Act 5 of 1979. 4 Ins, by Raj. Act 5 of 1979. 5 Renumbered by Raj. Act 5 of 1979. (i Added by Raj. Act 5 of 1979. (1) verifying the statements made in the books of account kept and returns submitted under section 6; (ii) testing the reading of meters; (iii) verifying the particulars required in connection with the levy of electricity duty: and (c) exercise such other powers and perform such other duties

as may be necessary for carrying out the purposes of this Act or the rules made thereunder. (3) All searches made under sub-section (2) shall be made in accordance with the provisions of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).¹

8. Electricity duty recoverable as arrears of land revenue :-

Any sum due on account of electricity duty and interest, if any, if not paid within prescribed time and in the prescribed manner shall be recoverable by the State Government as an arrear of land revenue, the case of a person liable to pay duty under sub-section (5) of Section 5, from such person, and in other cases) at the discretion of the State Government either from the consumer or from the supplier * as the case may be, from the person supplying energy free of charge as mentioned in sub-section (6) of Section 61: 2 that the Commissioner may, in pursuance of any recommendation of the State Government, defer the recovery of electricity duty in respect of an industrial unit declared as sick by the Board of Industrial and Financial Reconstruction constituted under the Sick Industrial Companies (Special Provisions) Act, 1985 (Central Act No. 1 of 1986) for such period not exceeding five years and on such conditions with regard to the payment or rate of interest as may be specified in such recommendation.)

9. Penalties :-

If any person-- (a) required by section 6 to keep record or to submit returns fails to keep or submit the same in the prescribed manner or form: or (b) intentionally obstructs the Commissioner or any other officer appointed under section 7[in the exercise of his powers and duties under this Act and the rules: (c) contravenes any rule: he shall be liable on conviction before a Magistrate, to a fine not exceeding two hundred rupees: Provided that the prescribed authority may compound such a case on payment of a sum not exceeding two hundred rupees. 1 Ins, by Raj. Act 5 of 1979. 2 Proviso added by Raj. Act 12 of 1992 128-4-921. 3 Numbered by Raj. Act 5 of 1979. [If any person keeps any record or submits any return specified in section 6, which he knows or has reasonable cause to believe, to be false, or not true in any material particulars, he shall be liable, on conviction before a Magistrate, to a fine not exceeding P 1,000/-: Provided that the prescribed authority may compound such a case on payment of a sum not exceeding Rs. 1,000/- 2 [Offences by companies.-(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of

and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation-For the purpose of this section,-- (a) "company" means a body corporate and included a firm or other association of individuals, and (b) "director" in relation to a firm means a partner in the firm. 9-B. Protection of action taken in good faith, -No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.]

10. Power to make rules :-

(1) The State Government may make rules for the purpose of carrying into effect the provisions of this Act. (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for-- (a) the manner of calculating the electricity duty: (b) the manner of collection and payment to the State Government of the electricity duty by the supplier: (c) the time and manner of payment of the electricity duty by consumers: 1 Added by Raj. Act 5 of 1979. 2 Secs 9-A and 9-B Ins. I)y Raj. Act 5 of 1979. the time and manner of payment of electricity duty by a person liable to pay duty under sub-section (5) of Section 5. (ccc) provide for installation and the reading of meters and sub- meters and for getting them tested by an Electrical Inspector or by any other prescribed officer or authority: (cccc) the officer or authority which shall decide the disputes if any, arising under the Act or the rules framed thereunder and prescribe the authority to which an appeal shall lie against the order passed on such dispute and the procedure for referring dispute to the officer or authority and for filing appeal.] (d) any other matter for which provision is, in the

opinion of the State Government. necessary for giving effect to the provisions of this Act. (3) All rules made under this Act shall be laid, as soon as may be after they are so made, before the House of the State Legislature, while it is in session, for a period of not less than fourteen days which may be comprised in one session or in two successive sessions and, if, before the expiry of the session in which they are so laid or of the session immediately following, the House of the State Legislature makes any modification in any of such rules or resolves that any such rule should not be made, such rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder.

11. Repeal :-

The Bombay Finance Act, 1932 in so far as it applies to the area is hereby repealed.