

(2012) 03 AHC CK 0213**Allahabad High Court****Case No:** Civil Miscellaneous Writ Petition No. 15209 of 2012

M/s. Trikoot Iron and Steels
Castings Ltd.

APPELLANT**Vs**

State of U.P. and Others

RESPONDENT**Date of Decision:** March 28, 2012**Acts Referred:**

- Electricity Act, 2003 - Section 126, 127, 127(1), 135, 135(1A)

Citation: (2012) 5 ADJ 51 : (2012) 4 AWC 4187**Hon'ble Judges:** Sudhir Agarwal, J**Bench:** Single Bench**Advocate:** B.C. Rai, for the Appellant; Shashi Nandan, Pankaj Kumar Shukla and C.S.C., for the Respondent**Judgement**

Hon"ble Sudhir Agarwal, J.

Heard Sri B.C. Rai, learned counsel for the petitioner, Sri Shashi Nandan, learned Senior Advocate assisted by Sri Pankaj Kumar Shukla, learned counsel for respondent Nos. 2, 3 and 6 and learned Standing Counsel for respondent Nos. 1 and 5. Sri Shashi Nandan, learned Senior Advocate appearing for respondents-Corporation stated at the outset that since a pure question of law regarding maintainability of appeal against an assessment made on allegation of theft of electricity has been raised, he does not propose to file any counter-affidavit and writ petition may be heard and decided at this stage after considering oral submissions.

2. With the consent of learned counsels of the parties this writ petition is being heard and decided finally at this stage under the Rules of this Court.
3. The impugned order dated 14.3.2012 has been passed by Appellate Authority consisting of Commissioner, Saharanpur Division, Saharanpur and Superintending Engineer, Paschimanchal Vidyut Vitran Nigam Limited, Meerut rejecting petitioner's

Appeal No. 13 of 2010-11 on the ground that assessment in question having been made u/s 135 of Electricity Act, 2003 (hereinafter referred to as the "Act, 2003") no appeal u/s 127 is maintainable.

4. It is contended by petitioner counsel for the petitioner that there is no provision of assessment u/s 135 and the assessment is permissible in the Act, 2003 u/s 126 only against which appeal lie u/s 127. He submitted that procedure for assessment in respect to electricity theft has been provided under Paras 8.1 to 8.3 of U.P. Electricity Supply Code, 2005 (hereinafter referred to as the "Code, 2005") and in other matters it is provided in Para 6.8 but in both the matters appeal lie u/s 127 of Act, 2003 since the procedure of assessment is referable to Section 126 and not to Section 135. He placed reliance on Apex Court's decision in Chairman, West Bengal State Electricity Board and others v. Syed Mukbul Hossain and others, 2009(2) SCC 727 (paras 4 and 6) as well as this Court's decision in Ashok Kumar and others v. State of U.P. and others, 2008(6) ADJ 660 (DB) (para 58); M/s Paliwal Alloys (Pvt.) Ltd. v. U.P. Power Corporation Ltd. and others, 2009(7) ADJ 456 (DB) (para 28); M/s Mohit Paper Mills Ltd. and another v. PVVNL and others, 2011(9) ADJ 239 (paras 78, 79 and 80); and, Civil Misc. Writ Petition No. 4222 of 2009, Paschimanchal Vidyut Vitran Nigam Ltd. and others v. The Appellate Authority/Addl. Commissioner and another, decided on 26.3.2010.

5. The Apex Court in Chairman, West Bengal State Electricity Board (supra) has observed that in the matter of theft of electrical energy the assessment is referable to Section 126 and appeal is to be filed u/s 127. In Ashok Kumar (supra) this Court has held that assessment on account of theft, which is to some extent is covered by Section 135, is made u/s 126 and appeal, therefore, would lie u/s 127.

6. In M/s Paliwal Alloys (Pvt.) Ltd. (supra) this Court in para 28 has observed as under:

28. In aforesaid view of the matter, we are of the considered opinion that assessment u/s 126 is also to be made in theft cases and a person has right of appeal. In the present case it is on the record that assessment was made by the Executive Engineer on the basis of checking dated 14th June, 2006 and assessment bill was given on 13th July, 2006 (Annexure-1 to the writ petition). The assessment made by Executive Engineer was u/s 126 and the petitioner has right of appeal, which appeal has already been filed and is pending.

7. In Paschimanchal Vidyut Vitran Nigam Ltd. (supra) this Court said:

The scheme of the 2003 Act does not exclude the assessment u/s 126 in theft cases. Same is further fortified by Section 135(1A) third proviso, which provides that the licensee or supplier, as the case may be, on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of the Act, shall without prejudice to the obligation to lodge the complaint as referred to in the second proviso to this clause, restore the supply. Thus assessment of electricity

charges due to theft of electricity is contemplated u/s 135 itself, which further provides that after deposit of the assessed amount electricity is required to be restored. In case in theft no assessment is to be made u/s 126. Section 135(1A) third proviso would not have been as contained in the Act. The scheme of the 2003 Act thus clearly delineates the object that Legislature contemplated assessment u/s 126 with regard to all categories of unauthorised use of electricity including theft of electricity. The appeal provided for u/s 127 (1) is against the final order made u/s 126. No parameters have been provided for, as per which appeal in question is to be decided, in such a situation authority of Appellate forum is co-extensive to the authority of assessing authority and appellate authority is free to decide, as to whether assessment has been correctly made or not and is also free to decide, on the material available on record, as to whether it is case of use of unauthorized use of electricity and same covers the field of theft of electricity also. For the purpose of assessment u/s 126, the power being co-extensive, the appellate authority is empowered under the scheme of things to decide the question, as to whether assessment can be made on the basis of theft of energy in the facts of the case, for which different parameter has been provided for under paragraph 8.1 of the U.P. Electricity Supply Code, 2005 or for unauthorized use of electricity as envisaged under paragraph 6.8 of the U.P. Electricity Supply Code, 2005. The inevitable conclusion that appellate authority is competent to go into the question of theft also for judging the validity of assessment made u/s 126.

8. In view of above authorities it is evident that whenever an assessment on allegation of electricity theft is made it is referable to Section 126. Though under Code, 2005 the procedure prescribed in Paras 8.1 to 8.3 may apply in the matter of theft but that would not exclude appeal u/s 127 and the Appellate Authority has misdirected itself in rejecting appeal by stating that assessment is u/s 135 and, therefore, appeal does not lie. In the result, the writ petition is partly allowed. The impugned appellate order dated 14.3.2012 is hereby set aside. The matter is remanded to Appellate Authority with a direction to decide appeal of the petitioner on merits within a period of one month from the date of production of a certified copy of this order by reasoned and speaking order after giving opportunity to all concerned parties. No costs.