

(1985) 10 MP CK 0001
Madhya Pradesh High Court
Case No: M.P. No. 2545 of 1985

Birla Jute and Industries Ltd. and
another

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision: Oct. 9, 1985

Acts Referred:

- Constitution of India, 1950 - Article 226, 32
- Factories Act, 1948 - Section 2(m), 4
- Madhya Pradesh Electricity Duty Act, 1949 - Section 3, 3A, 4, 6

Citation: (1986) ILR (MP) 447 : (1986) JLJ 259 : (1986) MPLJ 42

Hon'ble Judges: K.K. Adhikari, J; J.S. Verma, J

Bench: Division Bench

Advocate: Prakash Narain with A.K. Jain, Deepak Verma, for the Appellant; M.V. Tamaskar, Addl. A.G. with Rajendra Tiwari, Government Advocate for Respondents 1 and 2 and M.L. Jaiswal for Respondents 3 and 4, for the Respondent

Final Decision: Dismissed

Judgement

J.S. Verma, J.

In this petition filed under Article 226 of the Constitution, several reliefs had been claimed but at the hearing of the petition, learned counsel, for the petitioners confined the petitioner's case to only one point, stating expressly that the remaining points raised in the petition and the reliefs flowing from them are not pressed since the same have also been raised by the petitioners in an earlier petition filed under Article 32 of the Constitution in the Supreme Court of India. The only point canvassed on behalf of the petitioners for decision in this petition is the rate at which electricity duty is payable by the petitioner-company under the M.P. Electricity Duty Act, 1949, as amended by the M.P. Electricity Duty (Amendment) Act, 1978 (M.P. Act No. 21 of 1978) and the M.P. Electricity Duty (Amendment and

Validation) Act, 1984 (M.P. Act No. 46 of 1984), on the quantity of electricity supplied by the M.P. Electricity Board to the petitioner company's premises, known as "BirlaVikas Cement" at Satna in Madhya Pradesh, on the basis stated hereafter.

The contention of learned counsel for the petitioners is that the electricity duty payable by the petitioner company on the supply of electricity fo "Birla Vikas Cement" is at the concessional rate prescribed for a "factory" in accordance with item (2)(b) of the table prescribing the rates of duty in section 3 of the Act and not at the ordinary or higher rate prescribed in item (1) and (a) of the table, as claimed by the M.P. Electricity Board. It is the refusal of the M.P. Electricity Board as also the Electical Advisor to the State Government (respondent No.2) to accept this contention, which has led to this petition challenging the demand of the difference in duty between the two rates. Annexure-K, dated 30.1.85, is the supplementary bill demanding this difference of Rs. 52,50,936.47 for the period from December 1981 to August 1984, together with the covering letter saying that the demand is pursuant to Electrical Advisor's direction in letter (Annexure-I) dated 28.12.1984. Thereafter, Annexure N, dated 6.4.1985, contains the demand of Rs. 57,75,140.54 upto January 1985, while the earlier demand was for the period from December 1981 to August 1984. Annexure P, dated 27-7-1985 is a repetition of the demand threatening discontinuance of supply of electricity if the dues were not paid. Challenge in this petition has been confined at the hearing to only these documents on the basis stated.

Before quoting the relevant statutory provisions, facts material for deciding the only point urged before us, may be stated. The petitioner No. 1, referred as the "petitioner-company", owns cement industry known as "Satna Cement Works" situated at Satna in Madhya Pradesh. The said Satna Cement Works has been registered as a factory under the Factories Act for a long time and the licenece has been renewed from time to time. The petitioner-company has set up another cement plant nearby which is called "Birla Vikas Cement". An application for registering Birla Vikas Cement as a factory under the Factories Act was made on 31-1-1983 and a licence under the Factories Act for the same was issued on 10-8-83. The dispute relates to the rate at which electricity duty is required to be paid on the supply of electricity by the M.P.E.B. to the premises, known as "Birla Vikas Cement" from December 1981.

The petitioner's case is that on grant of licence dated 10-8-1983 for Birla Vikas Cement under the Factories Act, the licence dated back to 31-1-1983, when the application for licence was made; the petitioner-company is liable for payment of duty only at the concessional rate prescribed for a "factory" for supply of electricity to Birla Vikas Cement, from this date, treating it as a separate factory; and prior to that date, Birla Vikas Cement was merely a part of Satna Cement works, which was already registered as a factory and, therefore, liable to pay duty only at the concessional rate prescribed for a "factory". It is on this basis that the learned

counsel for the petitioner contends that the petitioner-company is not liable to pay electricity duty on supply of electricity to Birla Vikas Cement at the higher or ordinary rate for any period. In short, the reply of the respondents is that Birla Vikas Cement does not fulfil the definition of "factory" given in the M.P. Electricity Duty Act, as amended by M.P. Act No. 46 of 1984, which alone is relevant for the purpose of electricity duty for any period and, therefore, the petitioner-company is liable to pay duty at the ordinary or higher rate. It was also urged that filing of this petition is abuse of the process of Court in as much as the same reliefs substantially have been sought by the petitioners in an earlier writ petition filed in the Supreme Court.

At this stage, a brief reference may also be made to the petitioners' pending writ petition in the Supreme Court and the earlier dispute giving rise to the same. A similar dispute arose between the petitioner-company and the respondents regarding the rate at which electricity duty was payable on supply of electricity to a crusher installed in the petitioner company's mines. The petitioner-company contended that the crusher unit in the mines was deemed to be a "factory" according to the definition of "factory" given in the M.P. Electricity duty Act and, therefore, concessional or lower rate of duty for a "factory" was alone recoverable from the petitioner-company even for the crushing unit in the mines. This dispute led to a writ petition in this Court, which was Misc. Petition No. 520 of 1980, decided on 1-5-1982, reported in 1982 M.P.L.J. 443. In that decision, it was held that according to the definition of "factory" given in Explanation (c) below the table in section 3 of the Act, even a crushing unit in the mines was deemed to be a "factory" and, therefore, the concessional rate of duty was applicable. After this decision, the State Legislature enacted the M.P. Electricity Duty (Amendment and Validation) Act, 1984, (M.P. Act No. 46 of 1984), which inter-alia, amended the definition of "factory" in Explanation (c) and made the amendment retrospective with effect from 1-10-1978. The result of this Amendment and Validation Act of 1984 is also to overcome the effect of the aforesaid earlier decision of this Court.

The petitioners have filed writ petition No. 2729 of 1985 in the Supreme Court under Article 32 of the Constitution, prior to filing of this petition, in which constitutional validity of M.P. Act No. 46 of 1984 has also been challenged, in addition to claiming several other reliefs, relating to the rate at which electricity duty is to be paid by the petitioner-company on the quantity of electricity supplied by the M.P.E.B. to its several units. A copy of that petition has been produced before us as a result of our direction. Learned counsel for the petitioners, however, stated categorically, at the hearing that the only point urged for decision in this petition relating to the rate at which electricity duty is payable on the supply of electricity to the unit, known as "Birla Vikas Cement" is not raised for decision before the Supreme Court; and that the question of constitutional validity of M.P. Act No. 46 of 1984, having been raised in the Supreme Court, the same, together with the remaining ancillary reliefs mentioned in this petition are not pressed before us. It is, therefore, on this basis, assuming that the M.P. Electricity Duty Act, as amended by M.P. Act No. 46 of 1984,

is valid, that the question of rate of duty to be paid on supply of electricity to Birla Vikas Cement is being decided by us.

The relevant statutory provisions may now be quoted from the M.P. Electricity Duty Act, 1949, as amended by M.P. Act No. 21 of 1978 and M.P. Act No. 46 of 1984 and the M.P. Electricity Duty Rules, 1949.

S. 3 Levy of duty on sale or consumption of electrical energy. Subject to the exceptions specified in section 3-A every distributor of electrical energy and every producer shall pay every month to the State Government at the prescribed time and in the prescribed manner a duty calculated at the rates specified in the Table below on the units of electrical energy sold or supplied to a consumer or consumed by himself for his own purposes or for the purposes of his township or colony, during the preceding month:

TABLE

Rates of Duty

(1) Electrical energy sold or supplied for consumption in premises used,-

(a) for business, trade or for purposes of professional pursuits other than for flour mills.

8. Paise per unit of energy up to 50 units of energy sold or supplied in a month

10. paise per unit for each additional unit sold or supplied in a month in excess of 50 units but not in excess of 100 units of energy.

12. paise per unit for each additional unit sold or supplied in a month in excess of 10 units of energy. 2 Paise per unit of energy.

(b) for flour mills.

(2) Electrical energy sold or supplied for consumption in premises of a factory, excluding energy supplied for consumption for domestic or non-factory purposes where the connected load -

(a) does not exceed 100 HP.

1.5. paise per unit of energy.

(b) exceeds 100 HP

3 paise per unit of energy.

Explanation - For the purpose of this section,-

(c) "Factory" means a factory registered under the Factories Act, 1948 (No. 62 of 1948).

Note:-For the purpose of this section the date of issue of the Factory Licence or the date of the commencement of production as certified by the Director of Industries or his authorised representative, whichever is later, shall be deemed to be the date from which Factory is registered.

Rule 4. Recovery of Duty from consumer by distributor of electric energy.- A distributor may recover from those consumers whose consumption is dutiable, as a surcharge the whole or part of the duty payable by them under Sec. 3 of the Act. The distributor shall show separately the amount of surcharge levied by him in the bills that are sent by him to the consumers. (In case of dispute regarding amount of surcharge to be levied the matter shall be referred to the Electrical Inspector for decision).

The argument of learned counsel for the petitioner is based mainly on certain provisions of the Factories Act, 1948, and the M.P. Factories Rules, 1962 framed thereunder. These may, therefore, be referred before considering the petitioners' contention. Section 2(m) of the Factories Act defines "factory" and this definition is not the same as definition of "factory" for the purpose of electricity duty under the M.P. Electricity Duty Act, 1949. Section 6 of the Act enables the State Government to make rules relating to approval, licensing and registration of factories. The M.P. Factories Rules, 1962, framed under the Act are applicable to this State. The material provisions of the Act and the Rules are as under:-

Section 4 of the Act.

Power to declare different departments to be separate factories or two or more factories to be a single factory. The State Government may, on an application, made in this behalf by an occupier, direct, by an order in writing, that for all or any of the purposes of this Act, different departments or branches of a factory of the occupier specified in the application shall be treated as separate factories or that two or more factories of the occupier specified in the application shall be treated as a single factory.

Rules

Approval of Plants:- No manufacturing process shall be carried on in any building constructed or extended or taken into use as a factory or a part of a factory after the date of the commencement of these rules, unless previous permission in writing is obtained from the Chief Inspector.

Obligation to have a licence:- No manufacturing process shall be carried on in any factory unless such factory is or is deemed to be duly licensed in accordance with the rules.

Authority to grant licence and its tenure:- The authority to grant, renew, amend or transfer a licence and to issue a duplicate copy thereof shall be the Chief Inspector. Every licence shall be granted or renewed in Form No. 3 appended to these rules and shall remain in force up to 31st December of the year for which the licence is so granted or renewed.

Registration and grant of licence:- Not less than 15 days before the occupier begins to use any premises as a factory he shall make to the Chief Inspector an application for registration and grant of licence along with notice of occupation in Form No.4, in duplicate. The application shall be accompanied by a Treasury challan as proof of the payment of the amount of fee as specified in the Schedule below:-

Provided that the State Government may by general or special order, exempt any class or description of factory from the operation of this rule.

Renewal of licence:- (a) an application for the renewal of a licence shall be made to the Chief Inspector in Form No. 4 in duplicate, not less than 30 days before the date on which the licence expires. The application shall be accompanied by the treasury challan as the proof of the payment of the amount of fees as specified in the Schedule given under rule 6:

Provided that the State Government may by general or special order, extend the period for application for renewal of a licence.

(b) No application for the renewal of licence made after the expiry of the period specified in sub-rule (a) or if the period is extended, after the expiry of such extended period be entertained and the licence renewed unless it is accompanied by a treasury challan as the proof of payment of the amount of fees specified in the Schedule referred to in sub-rule (a) and an additional fee equal to 25 per cent fees payable for the licence which is to be renewed.

Upon submission of an application in accordance with rules 6, 7, 9 and 10, the premises in respect of which such application is made shall be deemed to be duly licensed until the Chief Inspector has passed an order either granting or refusing to grant or renewal or amendment or transfer of the licence.

The argument of learned counsel for the petitioners is that "Birla Vikas Cement" from its inception was a part of the "factory" known as "Satna Cement Works" till a separate factory licence was granted to Birla Vikas Cement on 10-8-83, dating back to the date of application made for grant of that licence. It is urged that from the date of grant of separate factory licence, it is deemed to be a separate "factory" by virtue of the separate licence and prior to that date it was a part of the factory known as "Satna Cement Works" so that for the entire period during which electricity was supplied to it by the MPEB, its consumption was as a "factory" for the purpose of payment of electricity duty under the M.P. Electricity Duty Act, 1949, as amended by M.P. Act No. 21 of 1978 and M.P. Act No. 46 of 1984. The real question,

therefore, is whether "Birla Vikas Cement" can be treated to be a "factory" for the purpose of the M.P. Electricity Duty Act, as amended for any such period.

In our opinion, shorn of verbiage, the real question for decision is whether "Birla Vikas Cement" fulfils the definition of a "factory" contained in the above quoted Explanation (c) below the table of rates of duty in section 3 of the M.P. Electricity Duty Act, 1949, as it stood amended retrospectively with effect from 1-10-1978 by M.P. Act No. 46 of 1984. Unless this definition of "factory" is satisfied, there is no foundation for the petitioners' cases.

The definition of "factory" given in explanation (c) of the Act requires a factory to be registered under the Factories Act. 1948, and further lays down that for the purpose of section 3, the date of issue of the factory licence or the date of commencement of production as certified by the Director of Industries or his authorised representative, whichever is later, shall be deemed to be the date from which the factory is registered. It means that for the purpose of section 3 of the Act, a factory registered under the Factories Act shall be deemed to be a "factory" only from the date of issue of the factory licence or the date of commencement of production as certified by the Director of industries or his authorised representative whichever is later. Unless this definition of "factory" given in Explanation (c) is satisfied, the benefit of concessional rate of duty available to a "factory" under Item (2) of the table of rates of duty given in section 3 of the Act, cannot be claimed by the consumer merely because the factory is registered under the Factories Act. The burden is, therefore, on the petitioners to show that Birla Vikas Cement satisfies the requirements of the definition of "factory" given in Explanation (c). Unless this is proved, benefit of the concessional rate claimed by the petitioner-company on the ground that it is a "factory" for the purpose of payment of electricity duty cannot be given to it and the rate of duty applicable is that prescribed in Item (1)(a) for consumption in premises used for business, trade or commercial purpose, etc.

The petitioner-company has not even asserted that the date of commencement of production in Birla Vikas Cement, which has been granted a separate factory licence, has yet been certified by the Director of Industries or his authorised representative. In the proceedings of 15.4.1985, before the Electrical Advisory, the representative of the petitioner-company clearly admitted that till then not even an application was made to the Director of Industries for grant of the certificate required to satisfy the definition of a "factory" in Explanation (c). (Annex-R) to the Return of respondents Nos. 1 and 2. In fact, this is one of the factors taken into account by the Electrical Advisor while negating the petitioner-company's claim to pay electricity duty only at the concessional rate as a "factory" for consumption of electricity in Birla Vikas Cement. In view of this undisputed fact, the requirements of the definition of "factory" given in Explanation (c) have not been satisfied by the petitioner-company and, therefore, for this reason alone, the claim of benefit of payment of duty at the concessional rate under item (2) cannot be accepted for consumption of electricity in

Birla Vikas Cement for any part of the relevant period, in spite of grant of a separate factory licence to it on 10-8-1983.

For the period prior to grant of a separate factory licence to Birla Vikas Cement on 10.8.1983, the petitioners' claim is based only on the assumption that Birla Vikas Cement was earlier a part of Satna Cement Works, which was already granted a factory licence under the Factories Act. In our opinion, this argument is not only without any foundation but is also negated by the undisputed facts and certain admissions made by the petitioner-company in its correspondence with the M.P.E.B. for supply of electricity to the new plant known as "Birla Vikas Cement".

It is significant that supply of electrical energy to Birla Vikas Cement was under an agreement dated 27-3-1979 (Annex. R-3, to the return of respondents nos. 3 and 4), whereas supply of electrical energy to what is known as "Satna Cement Works" was by a separate earlier agreement. It is also clear that the premises known as "Birla Vikas Cement" was not included in the premises known as "Satna Cement Works" and described in the licence of Satna Cement Works, with reference to particulars of the premises of the factory. It has not been shown with reference to any document, including the earlier factory licence granted to Satna Cement Works and its renewal made from time to time, that the premises shown as factory therein, known as "Satna Cement Works" had, at any time, also included "Birla Vikas Cement", so as to provide foundation for the petitioner's argument. The premises licensed as a factory has to be described with reference to its particulars in the application for grant/renewal of licence as well as in the licence granted/renewed on that basis. Any amendment in the licence is required to be made in accordance with rule 9 of the M.P. Factories Rules, 1962, providing for amendment of the licence. No such amendment is also shown to have been made in the factory licence granted earlier to the Satna Cement Works in order to include the premises known as "Birla Vikas Cement" within the licensed factory known as "Satna Cement Works".

Reference may also be made to some correspondence exchanged between the petitioner-company and the M.P.E.B. relating to supply of electrical energy to the new plant known later as "Birla Vikas Cement". On May 5, 1977, a letter (Annex. R-5 to the return of respondents Nos. 3 and 4) was written on behalf of the petitioner-company to the MPEB, saying that a new cement plant, close to the existing factory, "Satna Cement Works", Was to be instated and it was expected to be commissioned by the first quarter of 1980; and that the petitioner-company wanted to enter into an agreement for supply of electrical energy to the new plant. On February 9, 1978, another letter (Annex.R-6) by the petitioner-company to the MPEB, was written in the same connection. On March 10, 1978, while acknowledging a letter of MPEB in connection with the requirement of power for the new cement plant, a letter (Annex. R-7) was sent on behalf of the petitioner-company saying that the particulars of the proposed location of the new plant would soon be sent. A separate agreement dated 27-3-1979 (Annex. R-3) was then made for supply of

electricity to the new plant known later as "Birla Vikas Cement". On September 13, 1979, another letter (Annex. R-8) was sent on behalf of the petitioner-company to the M PEB regarding concessional tariff for the new cement plant for which the agreement dated 27-3-1979 had been entered into and in this letter, it was clearly stated that "our new cement plant is not the branch factory or a sister concern for the manufacture of the same or allied products". Then by letter dated January 4, 1980 (Annex. R-9), the same position was reiterated by the petitioner-company while writing to the MPEB for concessional tariff for the new cement plant. The significant portions of this letter, containing admissions of the petitioner-company are as under:- "The above letter was replied vide our letter No.E/II/ Proj./1 dated 28th Nov. 79 but it appears that you still need some clarifications. Therefore, we are mentioning below our reply on the various points.

(a) New Cement plant being set up by Birla Jute Mfg. Co. Ltd. is not an extension to the existing Unit (i.e. Satna Cement Works).

(b) The new plant is also not a branch unit of the existing unit (i.e. Satna Cement Works) and it is situated in premises/plan different from the existing unit of Satna Cement Works.

(c) Since the legal entity i.e. Company is Birla Jute Mfg. Co. Ltd. and it has under it not only several Cement Units, but also Jute, Carpet, Calcium Carbide, Staple Fibre etc., it can add one more cement unit and the legal entity being the same company, such unit would also belong to Birla Jute Mfg. Co. Ltd. It is to be clarified that such Unit cannot, in any case, belong to Satna Cement Works, the existing Unit.

We hope the above matter is absolutely clear.

We, therefore, await communication regarding applicability of concessional tariff for our new Cement Plant.

By letter dated February 16, 1981 (Annex. R-10), the MPEB intimated grant of concessional tariff to the new Cement plant, which was latter known as "Birla Vikas Cement". This concessional tariff was made applicable from the date of the agreement dated 27-3-1979. This is how the petitioner-company availed the benefit of the concessional rate of electricity duty as a "factory" from the date of the agreement dated 27-3-1979 for its unit known as "Birla Vikas Cement".

From the clear admissions made on behalf of the petitioner-company in its correspondence with the MPEB while claiming concessional tariff resulting in grant of the same to it in the aforesaid manner, it cannot be doubted that there is no foundation for the argument now advanced by learned counsel for the petitioners that prior to grant of a separate factory licence to Birla Vikas Cement, it was a part of Satna Cement Works, which was registered as a factory and, therefore, it was entitled to the same benefit as a part of the Satna Cement Works, It is obvious that without at least explaining these admissions, which expressly negative this part of

the petitioners" case, the argument must fail on the short ground that it has no foundation. Learned counsel for the petitioners, Shri Prakash Narain, did not even attempt to explain these admissions made on behalf of the petitioner-company, which alone are sufficient to negative this part of his argument. For these reasons, it, is sufficient to say that there is no foundation for such an argument and the clear admissions of the petitioner-company on this point actually disprove the facts on which the argument is based.

We may also refer to section 4 of the Factories Act, on which reliance was placed by learned counsel for the petitioners. Section 4 enables the State Government to make an order in writing on an application made in this behalf directing that different departments or branches of a factory specified in the application shall be treated as separate factories or that two or more factories specified in the application shall be treated as a single factory. In other words, this provision enables the State Government, on an application made in this behalf by an occupier, to bifurcate the existing factory or to amalgamate two or more separate factories of the same occupier. In our opinion, there is no material to attract section 4. The separate factory licence granted to Birla Vikas Cement was not the result of bifurcation u/s 4, which presupposes that the separated part was earlier a part of the licensed factory and shown as such in the relevant documents. No application of the petitioner-company or licence of Satna Cement Works has been produced to show that Birla Vikas Cement was earlier a part of the Satna Cement Works as a registered factory and that thereafter an application was made for its bifurcation u/s 4 of the Factories Act or that the separate factory licence granted to Birla Vikas Cement on 10-8-1983 is the result of an order of the State Government u/s 4 of the Factories Act. The real facts have already been shown with reference to the petitioner's admissions that Birla Vikas Cement was never treated as a part of Satna Cement Works.

A brief reference to the rules framed under the Factories Act may also be made in this connection. Rule 3 provides for approval of plant and it says that no manufacturing process shall be carried on in any building constructed or extended or taken into use as a factory or a part of the factory unless previous permission in writing is obtained from the Chief Inspector. Rule 4 lays down the obligation to have a factory licence and it says that no manufacturing shall be carried on in any factory unless such factory is or is deemed to be duly licenced in accordance with the rules. Rule 6 requires the occupier to apply for grant of a factory licence before he begins to use any premises as a factory. Rule 8 says that on making such an application, the factory shall be deemed to be duly licensed until the granting or refusing to grant or renewal, etc. of the licence. It is, therefore, clear that even for using the premises called "Birla Vikas Cement" as a part of the factory known as "Satna Cement Works" till a separate licence was obtained on 10.8.1983, the prescribed previous permission in writing for extension of Satna Cement Works, in order to include Birla Vikas Cement, had to be obtained to satisfy this statutory requirement and to claim

the benefit available to a "factory", to Birla Vikas Cement, prior to grant of a separate licence for it. In the proceedings dated 30.4.1985 (Annexure R-II to the return of respondents Nos. 1 and 2) it has been recorded that the petitioner-company failed to produce any material in spite of opportunity being given for this purpose to show that the factory licence granted to Satna Cement Works, included therein the premises known as "Birla Vikas Cement". Section 4 of the Factories Act and the rules framed under that Act also do not advance the petitioners' case any further. Moreover, the additional requirement in the definition of "factory" under the amended M.P. Electricity Duty Act, 1949, has to be fulfilled in any case.

From the above discussion, it follows that on the only point urged on behalf of the petitioners, this petition has no merit. It has not been shown that Birla Vikas Cement can be treated as a "factory" according to the definition of factory given in Explanation (c) under the table of rates of duty in section 3 of the MP. Electricity Duty Act, 1949, as amended by M.P. Act No. 46 of 1984 for any part of the period relevant in this petition. This being so, the claim of the petitioner-company to the benefit of the concessional rate applicable to a "factory" under item(2) of the table of rates of duty in section 3 of this Act is not available to the petitioners for any part of the relevant period. It has also not been shown that period to grant of a separate factory licence on 10-8-1983, the Birla Vikas Cement was a part of Satna Cement Works and in this manner it satisfied the definition of "factory" in Explanation (c). The burden is obviously on the petitioner-company to prove facts on which the concessional rate of electricity duty is available and this burden not having been discharged by the petitioner-company, it must fail and it is liable to pay electricity duty on the consumption of electricity in Birla Vikas Cement for the entire relevant period according to the ordinary rate for consumption in premises used for business, trade or commerce, etc. under item (1)(a) of the table of rates of duty in section 3. The dispute for decision in this petition is confined only to the difference in duty between these two rates, which is claimed by the MPEB from the petitioner company, since the petitioner company had paid the electricity duty for consumption of electricity in Birla Vikas Cement at the concessional rate under item (2)(b), when in fact, it is liable to pay at the ordinary rate under item (1)(a) of the table. This being the only question for decision in the petition, the rest of the reliefs claimed in the petition not having been pressed at the hearing, as already stated, this petition must fail. We may, however, add that if there be any obvious clerical or arithmetical mistake, pointed out by the petitioner-company in calculating the amount demanded as the difference in duty from the petitioner company on this basis, the dismissal of this petition shall not debar its correction either by the MPEB itself or the Electrical Advisor (respondent No. 2) on a dispute to that extent alone being raised. We may also add that no such mistake has been shown to us and this observation is made only as a matter of abundant caution at the instance of the petitioners' counsel.

Before parting with the case, we must observe that the petitioners' conduct in including points and reliefs covered by the earlier writ petition pending in the Supreme Court, in this petition, and not pressing the same at the hearing only when such an objection was specifically raised by the respondents, has justifiably attracted the criticism of abuse of the process of Court by them.

Consequently, the petition fails and is dismissed with costs. The interim stay stands vacated. Counsels fee Rs. 2,000/- if certified to each of the two sets of respondents.