

(2009) 11 MAD CK 0161

Madras High Court

Case No: W.A. No. 1611 of 1997, 1380 to 1385 of 2000 and W.P. No's. 2416 to 2423 of 2001 and 17489 of 1995 and W.P.M.P. No. 27672 of 1995

Dalmia Cement (Bharat) Ltd.

APPELLANT

Vs

The Accounts Officer, Revenue,
The Superintending Engineer,
The Chairman, Tamil Nadu
Electricity Board and The State of
Tamil Nadu

RESPONDENT

Date of Decision: Nov. 10, 2009

Acts Referred:

- Constitution of India, 1950 - Article 14
- Tamil Nadu Electricity (Taxation on Consumption) Act, 1962 - Section 10, 11, 12, 13, 13(1)
- Tamil Nadu Electricity (Taxation on Consumption) Rules, 1964 - Rule 14

Hon'ble Judges: T.S. Sivagnanam, J; F.M. Ibrahim Kalifulla, J

Bench: Division Bench

Advocate: R. Krishnarnurthy for R. Parthiban, for the Appellant; P. Srinivas, for R1 to R3 and G. Desinghu, Spl. G.P. for R4, for the Respondent

Final Decision: Dismissed

Judgement

T.S. Sivagmanam, J.

Since the issue involved in all these Writ Appeals and Writ Petitions raises a common question, they are taken up for disposal together.

2. The facts leading to the filing of the Writ Appeals and Writ Petitions before this Court are stated as hereunder:

(a) The Appellant is manufacturer of Portland Cement in their works situated at Dalmiapuram. The Appellant is a consumer of electrical energy, which is supplied by Tamil Nadu Electricity Board. According to the Appellant, due to acute power

shortage, they were forced to go for captive power generating sets in order to maintain levels of production and to avoid shut down the Appellant has installed 2 Nos. of 5000 KV and 2 Nos. of 2500 KVA Generating sets and those generating sets are running on Furnace Oil.

(b) It is stated that under the provisions of Tamil Nadu Electricity (Taxation on Consumption) Act 1962, a tax is imposed on the consumption of energy and Section 3 of the Act is the charging section. Section 3A was inserted by Tamil Nadu Act 32 of 1991, by which the additional tax on consumption was fixed at 5% of the price. The proviso to Sub-section 1 would exclude the power captively generated by an industrial unit from the levy of additional tax; Section 5 of the Act provides for payment of Electricity Tax; Sub-section (2) of Section 5 of the Act provides for payment of tax on energy generated by industry; Section 12 provides for exemption from tax; Section 13 empowers the Government to notify exemption and reduction and Section 15 deals with Rule making power.

(c) It is further submitted that the Government of Tamil Nadu has been periodically notifying the exemption from payment of Electricity Tax and by G.O.Ms. No 878 dated 29.6.1974, issued in exercise of the powers conferred u/s 13(1) of the Act read with Rule 14 of the of the Tamil Nadu Electricity (Taxation on Consumption) Rules 1964 (hereinafter referred as "the Rules"), the Government reduced the rate of tax to 5.5.% for Cement manufacturers like the Appellant.

(e) By G.O.Ms. No. 333 dated 1 3.1997, the Government granted exemption from payment of Consumption Tax for self generated electrical energy using diesel oil. By G.O.Ms. No. 1484 DATED 25.7.1984, exemption was also extended to self generating Units using Low Sulphur Heavy Stock (LSHS). That the exemption was granted to encourage industries to set up their generating plants so that the burden on the Electricity Board was less. By G.O.Ms. No. 850 dated 20.5.1988, exemption was given for electricity captively declared by Paper Industry, irrespective of the fact they use by G.O.Ms. No. 851, similar exemption was also granted for Textile Industry and by G.O.Ms. No. 852, similar exemption was granted to Chemical Industry. The period of five years stipulated in the said Government Orders were extended subsequently.

(f) It is submitted that the Appellait and similarly placed Cement Industries submitted a memorandum to the Government on 14.3.1994. The Petitioner on 12.1.1995, submitted a representation to the Chief Electrical Inspector stating that they were using Captive Generators during the power cut and furnished details. At that juncture, the Government by order dated 8.2.1995, rejected the request made by the Appellant. On 8.3.1995, the Appellant submitted a further representation to the Government followed by another representation to the Chief Electrical Inspector on 5.4.1995. Subsequent representations were also rejected by the Government by a Government Letter dated 9.5.1997 by stating that the Government have examined the appeal carefully and have decided that exemption sought for by Cement Industry cannot be granted.

(g) Therefore, the Appellant had filed the following Writ Petitions seeking for the relief as set out hereunder:

(i) W.P. No. 2416 of 2001, to quash the order rejecting the exemption and to direct the Respondents to grant exemption from tax on consumption of self-generated power using furnace oil on par with diesel oil and LSHS;

(ii) W.P. No. 2417 of 2001 to quash the letter dated 12.10.1995 and to direct the Respondents to apply the reduced rate of 5.5% under G.O.Ms. No. 878 dated 29.6.1974;

(iii) W.P. No. 2418 of 2001 for issue of a writ of mandamus to direct the Respondent to determine the tax after providing for/deducting the electricity consumed/lost in the distribution of power;

(iv) W.P. No. 2419 of 2001 for issue of a writ of mandamus to direct the Respondent to exempt cement industry in the same manner as Paper, Textile, Chemical and Sugar;

(v) W.P. No. 2420 of 2001 for issue of a writ of mandamus directing the Respondent to refund excess amount received by them for the period between July 1995 and October 1995 & November 1995 and December 1995;

(vi) W.P. No. 2421 of 2001 for issue of a writ of certiorari to quash the bill dated 29.7.1998 demanding electricity tax of Rs. 3,61,738/-, during the power cut which was contrary to G.O.Ms. No. 456 dated 7.3.1973;

(vii) W.P. No. 2422 of 2001 for issue of a writ of certiorari to quash the demand vide bill dated 30.3.2000 for Rs. 40,86,926/- being the difference between 5.5% already collected and 10.25% to be collected as per the order of the High Court dated 12.12.1997;

(viii) W.P. No. 2423 of 2001 for issue of a writ of mandamus directing the Respondent to refund the amount received in excess of whatever is legally due and paid under protest pursuant to an interim order dated 12.12.1997 in W.A. No. 1611 of 1997.

(ix) W.P. No. 12028 of 1995 challenging the demand dated 27.7.1995 which was for a period from October 1992 to February 1995. [The said Petition came to be dismissed by an order dated 11.11.1997, as against which the Appellant has filed W.A. No. 1611 of 1997];

(x) W.P. No. 10485 of 1995 to forbear the authorities from raising demand. [This Writ Petition came to be dismissed on 23.1.1998 on the ground that the earlier Writ Petition No. 12028 of 1995 was dismissed by an order dated 11.11.1997. As against the said order, the Appellant has filed W.A. No. 1380 of 1998];

(xi) W.P. No. 10486 of 1995 to quash the order dated 8.2.1995, rejecting the prayer for exemption from tax to Cement Industry. [This Writ Petition was also dismissed following the order in W.P. No. 12028 of 1995 and W.A. No. 1381 of 1998 has been filed against the said order];

(xii) W.P. Nos. 10487, 10488, 10489 and 10490 of 1995 have been filed challenging the Bills and seeking for refund. [These Writ Petitions were also dismissed following the earlier order and as against which the Appellant has filed WA. Nos. 1382, 1383, 1384 and 1385 of 1998];

(xiii) W.P. No. 17489 of 1995 to quash the Bill dated 29.11.1995. This Court while admitting the Writ Petition by an order dated 20.12.1995, granted stay on condition that the condition to pay tax at the rate of 5.5% only and the said Writ Petition is also tagged along with the batch of cases.

Therefore, it is seen that the Appellant has filed the all the above matters as against the refusal to grant exemption from the Electricity Tax in respect of the power captively generated by them by using furnace oil.

h) Mr. R.Krishnamurthy, learned Senior counsel for the Appellant would contend that the Appellant is generating the electricity using furnace oil and it is a high tension Industry and a power intensive Industry and it should be treated on par with other Industries namely Sugar Industry, Textile Industry and Paper Manufacturing Units. The learned Senior counsel would submit that under the various Government Orders, the other Industries have been totally exempted from the tax irrespective of the fuel used for captively generating power and there is no reasonable basis for adopting a different yardstick to Industries who are using furnace oil for the purpose of generating power. The learned Senior counsel would submit that the impugned order rejecting the request to grant exemption is a non-speaking order, devoid of any reasons and therefore, it has to be termed as arbitrary and violative of Article 14 of the Constitution of India. It is further submitted that refusing to grant exemption to Cement Industry is per se discriminatory and hence violative of Article 14 of the Constitution of India. Earlier the orders of exemption were also granted to Cement Industries when they, utilised diesel or LSHS but exemption was refused when the Industry utilised the furnace oil and such rejection of exemption is arbitrary and discriminatory. The learned Senior counsel would submit that the price of furnace oil is more than that of LSHS and the Indian Oil Corporation by their communication dated 8.3.1995 had stated that the availability of LSHS has come down by 50% and the same has resulted in inadequacy in supply to the existing customers as well and advised the Appellant to continue to use furnace oil. Therefore, the learned Senior counsel would submit that they have been compelled to use the furnace oil on account of the non-availability of LSHS and hence the Government is not justified in denying exemption.

i) The learned Senior counsel relied on Section 2(1) which defines the "consumer" to mean with its grammatical variations and cognate expressions includes any person who consumes energy whether generated by himself or supplied to him. In terms of explanation I to Section 2(1), where a licensee consumes energy, whether generated by himself or supplied to him, such licensee shall be deemed to be a consumer only in respect of the energy so consumed.

j) it is further submitted that sections 3 defines "energy intensive industries" and the said definition is an inclusive definition and the industries mentioned in Clause (i) and (v) are only illustrative and not exhaustive. It is submitted that in terms of Section 3(l)(b)(iii), tax on consumption of energy in respect of High Tension Supply for cement industry had been fixed at 15% of the price of energy consumed. The learned Senior counsel would further submit that the Government ought to have invoked the powers under Sections 12 and 13 of the Act and granted exemption to the Appellant and ought not to have denied the benefit merely because the Appellant had used the furnace oil for the purpose of generating power.

k) It is further submitted that the object of granting exemption itself is only to relieve the Board from the burden and to encourage Industries to captively generate power. Mere use of furnace oil as the raw material for the purpose of generating power cannot form the basis for rejecting the request for exemption. Further, it is contended that no reasons are stated in the impugned order and even in the counter affidavit filed in the Writ Petitions, there is no reason mentioned as to why the Appellant has been denied exemption when they used furnace oil for the purpose of generating electricity. On all these grounds, the learned Senior counsel would submit that the order of rejecting the request for exemption is illegal and consequently, the demand raised are also illegal and the order of the learned Judge dismissing the Writ Petitions is therefore not tenable.

1) The learned Senior counsel placed reliance on the decision of the Hon"ble Supreme Court in [Punjab Dairy Development Board and Another, etc. Vs. Cepham Milk Specialities Ltd. and Others, etc.](#), for the proposition that there cannot be any discrimination in the matter of exemption and the decision of the Hon"ble Supreme Court in [Aashirwad Films Vs. Union of India \(UOI\) and Others](#), , stating that even taxation statute are not immune from challenge based on Article 14 of the Constitution of India.

3. Per contra, Mr. P.Srinivas, learned Standing Counsel appearing for the Electricity Board would first contend that Section 3 of the Act makes a clear distinction among Industries and in terms of Section 3(1)(b)(iii), Cement Industry has been treated as a separate category even under the charging provision. Therefore, the Learned Counsel would submit that the question of discrimination does not arise and the claim made by the Appellant is baseless.

3.1 The Learned Counsel would further submit that in terms of Section 3(1)(b)(iii), Cement Industries were required to pay 15% of the price of the energy consumed. But, subsequently, the Government by G.O.Ms. No. 878 dated 29.6.1974 had reduced it to 5.5% and therefore, the Appellant is bound to pay the same.

3.2 The Learned Counsel would further submit that the Cement Industry is not energy intensive industry in terms of Section 2(3) of the Act and the type of industry which are covered under the said provision have been enumerated and it cannot be said to be an inclusive definition, but it is an exhaustive definition applicable only to such of those industries mentioned therein. The Learned Counsel would further submit that the power u/s 13 of the Act for grant of exemption or rejection in respect of Electricity Tax payable could be exercised having regard to all or any of the circumstances set out in Section 13(1)(a) to (c) of the Act. The Learned Counsel by relying upon Rule 14 of the Rules would submit that the Appellant's case would not fall under any of those categories and there cannot be any claim for exemption.

3.3 The Learned Counsel during the course of argument attempted to explain as to what could be the reasonable basis for rejecting the request for grant of exemption when Industries use furnace oil as the fuel for generating industry. However, we cannot take into consideration the said submissions since not only the impugned order is devoid of reasons, but also the counter affidavit has not explained the basis for rejection of the request for exemption. Therefore, in our view at this stage of the matter, the Respondents cannot be permitted to improve upon their case based on oral submissions.

4. We have carefully considered the respective submissions made by the Learned Counsel appearing on either side and perused the materials available on record.

5. The Tamil Nadu Electricity (Taxation on Consumption) Act came to be enacted for levy of tax on consumption of electrical energy in the State of Tamil Nadu. The Act defines u/s 2(3) "Energy Intensive Industries". Section 3 is the charging section which requires that tax on consumption of energy has to be remitted on the rates mentioned u/s 3(1)(b). Sub Clause (iii) of Section 3(1)(b) deals with High Tension supply for Cement Industry and the prescribed rate of tax is 15% of the price of energy cement. Section 5 of the Act provides for payment of electricity tax; Section 6 regarding obligation of the licensee to keep books of accounts and submit returns; Section 7 deals with Inspecting Officers; Section 8 deals with recovery; Section 9 deals with decision of certain disputes; Section 10 with penalties; Section 11 deals with offences by companies; Section 12 of the Act deals with exemption from tax and Section 13 deals with power of Government to notify exemptions and reductions. As these two provisions are relevant for the purpose of the present case, they are extracted hereunder:

12. Exemption from tax -(1) Where energy under High Tension Supply is consumed in the process of manufacturing or producing the principal product in any industrial

undertaking licensed under the Industries (Development and Regulation) Act, 1951 (Central Act LXV of 1951), no electricity tax shall be payable on the energy so consumed for a period of three years from the date of the commencement of the manufacture or production of the principal product in such undertaking.

13. Power of the Government to notify exemptions and reductions: (1) The Government may, by notification, make an exemption or reduction in rate, in respect of the electricity tax payable under this Act by any specified class of persons, having regard to all or any of the following matters, namely:

- (a) the nature of the business or industry carried on by such class of persons;
- (b) the price of energy consumed in relation to the total cost of the manufacture or production of the principal product in any industrial undertaking owned or controlled by such class of persons;
- (c) such other matters as may be prescribed.

6. In terms of the powers conferred u/s 15 of the Act, the Tamil Nadu Electricity (Taxation on Consumption) Rule 1964 (herein after referred to as "the Rules") have been framed. Rule 14 of the said Rules would also be relevant, which reads as follows:

14. Exemption or reduction in rate u/s 13 - An exemption from or reduction in rate in respect of the electricity tax payable under the Act by any specified class of persons may be made by the Government having regard to the following matters, namely:

- (1) the price of energy paid by a consumer to a licensee from time to time for the energy supplied to him;
- (2) the area of supply; and
- (3) the nature of supply availed of, namely, High Tension Supply or Low Tension Supply.

7. On a reading of Sections 12, 13, along with Rule 14 of the Rules, it is clear that the Government has power to issue notifications for making exemption or reducing the rate of electricity tax payable under the Act, by any specific class of persons, having regard to the nature of the business or industry carried on by such class of persons, the price of energy consumed in relation to the total cost of the manufacture or production of the principal product in any industrial undertaking owned or controlled by such class of persons and such other matters as may be prescribed. Further, in terms of Section 13(2), any exemption under Sub-section 1 may be subject to such restrictions and conditions as may be specified in the notification and in terms of Rule 14 such exemption or reduction in rate u/s 13 may be made by the Government having regard to the three circumstances contemplated under Rule 14, which have been extracted above. Thus, for a person to be eligible to seek for

exemption, it is necessary to comply with the requirements u/s 13 read with Rule 14 of the Rules.

8. (i) The Government by G.O.Ms. No. 33 dated 7.1.1972 granted exemption and reduction in respect of Electricity Tax in area of operation of Tamilnadu Electricity Board. Under the said G.O., there was full exemption in respect of low tension supply and in respect of high tension supply, a reduction was given for certain category of consumers and under proviso (b) it is stated that the exemption shall not apply to persons (other than licencees) who consume energy generated by themselves and under provision (c) it is again stated that the exemption shall not apply to licensees, other than the TNEB, who consume energy whether generated by themselves or supplied to them.

(ii) Under G.O.Ms. No. 456 dated 17.3.1973, the exemption from tax was granted during the period of power cut and it was limited to the quantum of energy generated to make good the shortfall in the supply by the Tamil Nadu Electricity Board.

(iii) G.O.Ms. No. 878 dated 29.6.1974 would be relevant for the purpose of the present case. Under the said G.O., the Government granted reduction of tax to the Cement Industries who were High Tension Consumers in the areas served by the Tamil Nadu Electricity Board either directly or through licensees and the tax was fixed at 5.5% as against 15% fixed u/s 3(1)(b)(iii). The said G.O.Ms. No. 878 was given effect to from 1.7.1974.

9. It is to be noted that upto this stage of the matter, it appears there was no grievance expressed by the Appellant. The problem arose after the Government issued G.O.Ms. No. 333 dated 1.3.1977. While passing the said Government Order, the Government took note of the representation by certain Industries and the Planters Association of Tamil Nadu requesting for exemption from Electricity Tax in view of the high cost of diesel. Therefore, the Government accepted the request and decided that the tax on self generated consumption of electricity using diesel oil be exempted from levy of tax and accordingly, a Notification to the said effect was issued on 1.3.1977.

10. Based on the said G.O.Ms. No. 333, Government issued G.O.Ms. No. 1484 dated 25.7.1984, granting exemption from Electricity Tax on self generation of electricity using LSHS. In the said G.O., the Government stated that LSHS is a petroleum derivative like diesel and it is a recent introduction because of increased indigenous production of crude and the exemption has been given in G.O.Ms. No. 333 to the energy generated through self generating units using diesel oil as fuel and generators based on LSHS were not in vogue then. The idea behind the grant of exemption is to encourage industries to set up their own generation so that the burden on Electricity Board is brought down. That seems to be the object for issuing such an exemption. Subsequently, by three different orders in G.O.Ms. Nos. 850, 851

and 852, all dated 20.5.1998, the Paper Industry, Textile Industry and Chemical Industry respectively were exempted from Electricity Tax irrespective of the fuel they use for a period of five years from 1.4.1988. It is stated that the said period was subsequent extended.

11. In G.O.Ms. No. 852, the reason assigned is that the Chemical Industries have stated that they are generating power for their captive consumption using various items like or-thoxylene and that these sophisticated heat recovery and power generation system were installed at considerable cost. This was the basis for their request for exemption and the Government acceded to the said request. Similar Notification was also issued in G.O.Ms. No. 1246 dated 1.8.1988 exempting Sugar Industries irrespective of the fuel they used for generating electricity.

12. It is at this point, the Petitioner was aggrieved and all the Cement Manufacturing Units submitted a Joint Memorandum to the Government on 14.3.1994 stating that Cement Industry is the core sector and any shortage of cement will affect the infrastructural facilities and they may also be granted the benefit of exemption irrespective of the fuel used by it.

13. This request dated 14.3.1994 by the Appellant and other Cement Industries came to be rejected by the following order dated 8.2.1995:

I am directed to invite attention to the reference cited and to state that the Government after careful examination considered that there is no justification to exempt the consumption of electrical energy generated by captive generator by the Cement Industries from the Electricity Tax. Accordingly, your request is rejected.

The individual request made by the Appellant was also rejected by an order dated 9.5.1997, which reads as follows:

I am directed to invite attention to the letter cited and to state that the Government have examined your request carefully and have decided that the exemption sought for by the Cement Industry cannot be granted.

These two orders were impugned in the Writ Petitions and they have given rise to the present litigation.

14. It is true that the legislatures enjoys a greater freedom in choosing on which of those persons, any levy of tax can be exempted. However, it is a trite law that these Tax Laws are not immune from challenge on the ground that they are violative of Article 14 of the Constitution of India.

15. Mr. R.Krishnamoorthy, learned Senior Counsel primarily based his submissions on the question of discrimination.

16. It is true that the Cement Industry had been treated as a separate category by itself under the charging section namely Section 3(1)(b)(iii). However, power to grant exemption has been vested with the Government in terms of Section 13 read with

Rule 14 of the Rules. A perusal of the Government Orders granting exemption to various categories of Industries reveal that the Government has examined each case on its own merits and has also assigned certain reasons for justifying its decision to grant exemption.

17. For example, in G.O.Ms. No. 333 dated 1.3.1977, the Government has taken into consideration the representation of the Industries and the Planters Association who have been using diesel oil for the purpose of generating powers. In G.O.Ms. No. 1484, a representation has been made by the Chemical and Plastics India Limited, about their proposal to instal captive combined cycles Power Plant based on LSHS fired gas turbine with a capacity of 4800 KV was taken note of. While considering the said request, the Government observed that the LSHS is a petroleum derivative and on account of recent increase in the indigenous production of crude, such Industry has to be encouraged and these type of case were not in vogue earlier. Therefore, the Government held that the idea behind the Government Order No. 333 is to encourage the Industries to set up the own generation so that the burden of electricity is less. It is relevant to note that G.O.Ms. No. 333 dealt with exemption for Units using diesel oil.

18. Similarly in G.O.Ms. No. 852 dated 20.5.1988, the request for Chemical Industries were examined and taking note of the fact that they are using various items like or-thoxylene and that sophisticated heat recovery and power generation system were installed at considerable cost, exemption was granted.

19. G.O.Ms. Nos. 850, 851 and 852 came to be issued exempting the Paper Industries, Textile Industries and Chemical Industries irrespective of the fuel they use for generating power. Thus, it is to be noted that while examining each ones request for exemption, relevant facts have been taken into consideration by the Government. However, in the instant case, a perusal of the impugned orders, which have been extracted above, reveals that no reasons have been assigned for rejecting the request for grant of exemption. In simple terms, the Government has stated that there is no justification to exempt the consumption of electrical energy generated by captive generators by the Cement Industries from the Electricity Tax.

20. One other relevant factor which has to be considered is that the same Cement Industries" have been granted exemption when they have utilised diesel or LSHS for the purpose of generating energy for the captive consumption. In such circumstances, the question that loom large is as to why the Government has denied exemption for the very same Industry namely the Cement Industry when they have used furnace oil as their raw material for generating electricity.

21. The Hon"ble Supreme Court in the decision in [S.N. Mukherjee Vs. Union of India](#), held that "even administrative order which has civil consequences must give reasons". In paragraph 35 of the aforesaid decision, the Supremment Court observed that "recording of reasons by an administrative authority serves a salutary purpose,

namely, it excludes chances of arbitrariness and ensures a degree of fairness in the process of decision making. It is not necessary that the reasons should be as elaborate as in the decision of a court of law. The extent and nature of the reasons would depend on particular facts and circumstances. However, what is necessary is that the reason should be clear and explicit so as to indicate that the authority has given due consideration to the points in controversy."

22. Further, the Hon"ble Supreme Court in [Union of India \(UOI\) and Others Vs. Jai Prakash Singh and Another](#), has held as follows:

Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at. Reasons substitute subjectively by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance.

23. Therefore, the authority while considering the request was bound to assign reasons for rejecting the request. Moreso, when the Appellant had been granted the benefit when they had utilised diesel or LSHS. The reason assigned by the Appellant for using Furnace Oil is that, there was shortage in supply of LSHS, the Indian Oil Corporation themselves had advised them to continue to utilise the furnace oil. It is further submitted that the cost of furnace oil is higher than that of LSHS and by considering all these circumstances, the Appellant would contend that there appears to be no reasonable basis on which their request could be rejected.

24. In any event, we are not inclined to go into the controversy as to whether the Appellant Industry is entitled for exemption while using furnace oil for generating electricity for captive consumption or not. It is essentially a question of fact to be decided by the competent authority by taking into consideration the relevant factors and materials. We are satisfied that the impugned orders have been passed in a mechanical manner without assigning any reason whatsoever. On this ground alone, we propose to interfere with the orders impugned in the Writ Petition and accordingly set aside the same.

25. However, the matter is remanded for fresh consideration to the Respondents to decide as regards the Appellant's eligibility for the purpose of generating power using furnace oil for their captive consumption. It is brought to the notice of this Court by the learned Senior counsel for the Appellant that the issue relating to

exemption is only for a specified period and the present position is different. Further, pursuant to the interim orders granted, the Appellant has effected the deposit of 50% of the amount, and the same shall remain in deposit during the period when the matter is taken up for re-consideration as directed above. While deciding the Appellant's request for exemption, the Respondents shall consider:

- (i) as to whether the Appellant would fall within the scope of "energy intensive industry" as defined u/s 2(3) of the Act;
- (ii) whether the Appellant industry would satisfy the requirements u/s 13(1)(a) to (c) of the Act read with Rule 14 of the Rules for grant of exemption;
- (iii) whether the Appellant can be denied the benefit of exemption solely based upon the material which they have used for the purpose of generating power for captive consumption; and
- (iv) or any other grounds under the Law.

It is needless to state that the Respondents while re-considering the matter shall afford an opportunity to the Appellant to place all materials in support of their claim. It is thereafter, the Respondents shall take into consideration all the materials placed and also the various Government Orders issued from time to time and then pass an order assigning reasons in support of their conclusion. The entire exercise shall be completed within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.