



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.9726 of 2013

Decided on: 9th July, 2024

M/s A.B. Tools Pvt. Ltd. and another **.....Petitioners**

Versus

Himachal Pradesh State Electricity
Board Limited and others **.....Respondents**

Coram

Ms. Justice Jyotsna Rewal Dua

Whether approved for reporting?

For the Petitioners: Mr. Anand Sharma, Senior Advocate
with Mr. Karan Sharma, Advocate.

For the Respondents: Ms. Sunita Sharma, Senior Advocate
with Mr. Dhananjay Sharma,
Advocate.

Jyotsna Rewal Dua, Judge

The petitioners, in essence, have laid challenge to Annexure P-10, dated 19.08.2013, whereunder the respondent-H.P. State Electricity Board Limited directed petitioner No.1 to pay Low Voltage Supply Surcharge (LVSS) w.e.f. 01.05.2009, calculated at Rs.23,22,781/-.

2. During hearing of the case, learned Senior Counsel for the respondents submitted that the petitioners have an alternative and efficacious remedy available to

¹Whether reporters of print and electronic media may be allowed to see the order? Yes

them against the impugned order in terms of Section 42(5) of the Electricity Act, 2003. The said provision reads as under:-

“42(5) Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.”

Learned Senior Counsel for the petitioners does not dispute the availability of alternate remedy to the petitioners. He, however, submits that in the given facts and circumstances of the case, the petitioners were within their rights to invoke extraordinary remedy under Article 226 of the Constitution of India, since according to him, facts were not in dispute. Learned Senior Counsel further submits that the petitioners would not object in case they are relegated to avail the alternate remedy in terms of the Statute, however, the period, during which this writ petition has remained pending before this Court, be condoned, so that the petitioners are in a position to effectively avail the alternative remedy. In support of this prayer, learned Senior Counsel for the petitioners has also referred to the decision rendered by the Hon'ble Supreme Court in **State of**

Maharashtra and others Versus Greatship (India)

Limited¹, in particular to the following paragraph:-

“10. Under the circumstances, the impugned judgment and order passed by the High Court is hereby quashed and set aside. The writ petition filed before the High Court challenging the assessment order and consequential notice of demand of tax is hereby dismissed. The respondent-assessee is relegated to avail the statutory remedy of appeal and other remedies available under the MVAT Act and CST Act. It is directed that if such a remedy is availed within a period of four weeks from today, the appellate authority shall decide and dispose of the same on its own merits in accordance with law without raising any question of limitation, however, subject to fulfilling the other conditions, if any, under the statute. It is made clear that we have not expressed any opinion on the merits of the case in favour of either of the parties and it is for the appellate authority and/or appropriate authority to consider the appeal/proceedings on its/their own merits and without being influenced in any way by any of the observations made by the High Court which otherwise have been set aside by the present order. The present appeal is allowed in the aforesaid terms. However, in the facts and circumstances of the case, there shall be no order as to costs.”

3. Learned Senior Counsel for the respondents fairly submitted that the respondents would have no objection in case the period spent in pursuing the instant writ petition is ordered to be condoned to enable the petitioners to avail the alternate remedy under Section 42(5) of the Electricity Act, 2003.

4. In view of the aforesaid submissions, this writ petition is disposed of with liberty to the petitioners to avail

¹ AIR 2022 SC 4408

the alternate remedy in terms of Section 42 of the Electricity Act, 2003. In case such a remedy is availed by the petitioners within a period of four weeks from today, the competent authority/forum shall decide and dispose of the same on its own merits in accordance with law without raising any question of limitation, however, subject to fulfillment of other conditions, if any.

The writ petition stands disposed of in the above terms, so also the pending miscellaneous application(s), if any.

July 09, 2024
Mukesh

Jyotsna Rewal Dua
Judge

High Court