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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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CWP-4763-2007 (O&M)

Reserved on : 18.07.2024

Date of Decision : 30.07.2024

UNION OF INDIA

.... PETITIONER

V/S

PUNJAB STATE ELECTRICITY BOARD AND ORS.

.... RESPONDENTS

CORAM : HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present :- Mr.Tajeshwar Singh Sullar, Central Govt. Counsel
for the petitioner.

Mr. P.S.Thiara, Advocate
for respondent No.1.

Mr. Bhuvnesh Satija, DAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking direction to respondents to refund a sum of Rs.4,57,342/- along with interest which respondent No.1 has collected from petitioner and deposited with respondent No.3.
2. The brief facts of the case are that Military Engineering Service (MES) looks after supply of electricity within cantonment. The electricity is purchased from respondent



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No.1-Punjab State Electricity Board (for short 'PSEB'). The

Board during 2000-07 charged a sum of

Rs.4,57,342/- as octroi duty on the electricity consumed by petitioner.

As per petitioner, in terms of Article 287 of the Constitution of India, no

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tax can be levied on consumption of electricity by Government of India or sale of electricity to be consumed by Government of India. The petitioner has made various representations to respondent to the effect that in view of Article 287 of the Constitution of India, octroi cannot be charged on sale of electricity which has been consumed by Government of India.

3. Counsel for the petitioner submits that in view of Article 287 of the Constitution of India, the respondent could not charge octroi from petitioner. The respondent during the period in question supplied electricity to other Central Government Organizations like Diesel Locomotive Works, Patiala but octroi was not charged, however,

petitioner who is part of Ministry of defence was subjected to octroi duty.

The respondent has wrongly and in violation of Article 287 of the

Constitution of India collected octroi from petitioner. In support of his

contentions, he relied upon the judgment of Supreme Court in *The*

Cantonment Board, Dehu Road and another vs. Mahindra Owen Ltd.

and another, 1986 AIR (SC) 1114, New Delhi Municipal Committee vs.

State of Punjab, 1997(2) RCR (Civil) 199, Union of India vs. Purna

Municipal Council and others, 1992(1) SCC 100, Union of India vs.



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Ranchi Municipal Corpn. Ranchi & Ors., 1996(7) SCC 542 and State of Punjab and others vs. Union of India and others, 1990 (79) STC 437.

4. Mr. P.S.Thiara, counsel for respondent No.1 submits that they have collected octroi from petitioner, however, further deposited with municipal committee. The refund, if any, can be granted by municipal committee.

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Mr. Bhuvnesh Satija, DAG, Punjab submits that PSEB brought electricity within municipal limits and paid octroi. It was PSEB which had collected and deposited octroi. The PSEB as per its contract collected octroi from few Government departments though did not from other departments. The State does not dispute the fact that as per Article 287 of the Constitution of India, octroi was not payable on sale of electricity to Government of India, however, State is not responsible for payment of octroi to PSEB. It was a contract between two departments and the petitioner should approach Civil Court for its claim.

5. I have heard the arguments of counsel for the parties and perused the record with their able assistance.

6. Concededly, the petitioner is an integral part of Government of India. The petitioner purchased electricity from PSEB-respondent No.1 which was utilised in the cantonment area. The respondent No.1 along with charges of electricity collected octroi and deposited with local body. The amount collected by respondent No.1 is with the local body.

The respondent has abolished octroi and it is no more payable after 2007.



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7. Article 287 of the Constitution of India specifically provides that save as otherwise provided by Parliament by law, no law of a State shall impose or authorize the imposition of tax on the consumption or sale of electricity which is consumed by Government of India, or sold to the Government of India for consumption by that Government. Article 287 of the Constitution of India, for ready reference is reproduced as

below :

“287. Exemption from taxes on electricity Save

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in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorise the imposition of, a tax on the consumption or sale of electricity (whether produced by a Government or other persons) which is.-

(a) consumed by the Government of India, or sold to the Government of India for consumption by that Government; or

(b) consumed in the construction, maintenance or operation of any railway by the Government of India or a railway company operating that railway, or sold to that Government or any such railway company for consumption in the construction, maintenance or operation of any railway, and any such law imposing, or authorising the imposition of, a tax on the sale of electricity shall secure that the price of electricity sold to the Government of India for consumption by that Government, or to any such railway company as aforesaid for consumption in the construction, maintenance or operation of any railway, shall be less by the amount of the tax than the price charged to other consumers of a substantial quantity of electricity.”



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From the reading of aforesaid Article, it is quite evident that electricity consumed by Government of India cannot be subjected to tax by State Government. The respondent has levied octroi in terms of Section 61 of the Punjab Municipal Act, 1911. The respondent No.1 PSEB collected octroi from petitioner and deposited with local body. The respondent in view of Article 287 of the Constitution of India was prohibited from charging any tax on sale to petitioner, electricity for its

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consumption. The petitioner is part of Government of India and it has purchased electricity for its consumption. In view of aforesaid Article, the respondent could not charge octroi on sale of electricity still respondent has recovered octroi from petitioner. The respondent has conceded that octroi was not charged with respect to sale of electricity to other Government departments. The respondents are shifting responsibility from one shoulder to another. The respondent No.1 i.e. PSEB is also State Government Undertaking. Despite knowing the fact that sale of electricity to Government of India cannot be subjected to tax, the respondent No.1 collected octroi and deposited with local body. The act of respondent was in violation of Article 287 of Constitution of India.

8. The respondent is further trying to delay the matter on the ground that there was contract between petitioner and respondent No.1, thus, petitioner should approach Civil Court. It is a case of collection of tax contrary to mandate of Article 287 of the Constitution of India. No disputed



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questions of fact are involved and matter is pending before this Court since 2007, thus, there is no reason to relegate the petitioner to Civil Court.

9. In the wake of above discussion and findings, this Court finds that the present petition deserves to be allowed and accordingly allowed. The respondent No.3 is hereby directed to refund a sum of Rs.4,57,342/- to petitioner within 08 weeks from today.

(SANJEEV PRAKASH SHARMA)
JUDGE

(JAGMOHAN BANSAL)
JUDGE

30.07.2024

Anju

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No