PETITIONER:
1. THE STATE OF MADHYA PRADESH2. THE ELECTRICAL ADVISER TO G

Vs.

RESPONDENT:
M/S. BIRLA JUTE MANUFACTURING CO. LTD.

DATE OF JUDGMENT10/05/1995

BENCH:
VENKATACHALA N. (J)
BENCH:
VENKATACHALA N. (J)
KULDIP SINGH (J)

CITATION:
1996 AIR 167 1995 SCC (4) 603
JT 1995 (4) 572 1995 SCALE (3)729

ACT:

HEADNOTE:

JUDGMENT:

WITH
WRIT PETITION NO. 2739 OF 1985
1. M/s. Birla Jute Manufacturing Co. Ltd.
2. Shri M.M. Gadodia
Versus
1. The State of Madhya Pradesh
2. The Electrical Adviser to Government of Madhya Pradesh
3. The Regional Accounts Officer, Madhya Pradesh Electricity Board

J U D G M E N T

VENKATACHALA, J.

Soecial leave sought for in S.O.F. No. 3870 of 1982 is granted.

The State of Madhya Pradesh, its Electrical Adviser and Regional Accounts Officer of the Madhya Pradesh Electricity Board, have filed the above Civil Appeal under Article 136 of the Constitution of India, impugning a Division Bench judgment and order dated May 1, 1982 of the High Court of Madhya Pradesh in Misc. writ Petition No. 320/80 wherein it has been held that the rate of duty payable on consumption of the electrical energy under the Madhya Pradesh Electricity Duty Act, 1949 - "the 1949 Act" in premises of M/s. Birla Jute Manufacturing Company Limited - "M/s. Birla Ltd." to which the Mines Act, 1952 - "the Mines Act" applied, was required to be calculated under item (2) and not item (1) of Table to section 3 of the 1949 Act.

M/s. Birla Ltd. and its Director, Shri M.M. Gadodia, have filed the above writ Petition under Article 32 of the Constitution of India, impugning the constitutionality of the Madhya Pradesh Electricity Duty (Amendment and Validation) Act, 1984 - "the Validation Act" which amended certain provisions of the 1949 Act, validating duty levied on consumption of electrical energy imposed under the 1949 Act in respect of premises to which the Mines Act apolied. Since questions arising for our consideration and decision in the Civil Appeal and the writ petition relate to sustainability of levy imposed under the 1949 Act on electrical energy consumed in a premises to which the Mines Act applied, they could be disposed of together.

Facts which are material for a proper consideration of the questions arising for our pecision in the said appeal and writ petition, could be stated thus:

M/s. Birla Ltd. has set up several industries all over the country for the manufacture and sale of consumable goods. One of such industries set up by M/s. Birla Ltd. is M/s. Satna Cement works with lime-stons mines at one place and a cement factory at another place, in the State of Madhya Pradesh. Huge lime-stone boulders extracted from the mines known as dnokas are broken into small sized lime-stones known as gittis for being used as raw-material for manufacture of cement in the cement factory by a lime-stone crusher erected in a premises located at the mines-head of lime-stone mines to which the Mines Act applies. For the electrical energy consumed by the lime-stone crusher in that premises at mines-head during the year 1979-1980, the Government of Madhya Pradesh levied duty under section 3 of the 1949 Act at a rate calculated under Item (1) of Table below that section and raised demands thereon, against M/s. Birla Ltd. Such levies and demands were refuted by M/s. Birla Ltd. by contending that it was liable for levy of duty on electrical energy consumed for preaking dhokas into gittis by the lime-stone crusher in the premises at mines-head only at a rate calculated in item (2) of Table to section 3 of the 1949 Act, notwithstanding the applicability of the Mines Act to the said premises, in that that premises had to be regarded as a factory for fixing the rate of duty payable on electrical energy consumed therein because of inclusive meaning of factory given in Explanation (c) to section 3 of the 1949 Act itself. Since the Government of Madhya Pradesh persistet in its demands made against M/s. Birla Ltd., the latter filed a writ Petition, Misc. W.P. No. 520 of 1980 in the Madhya Pradesh High Court challenging the said levies and demands. A Division Bench of the High Court taking the aid of Explanation (c) to section 3 of the 1949 Act, duashed the levies and demands challenged by M/s. Birla Ltd., by upholding the contention that its liability to pay duty was only at the rate calculated under clause (2) of Table to section 3 of the 1949 Act, by its judgment and order dated May 1, 1982 rendered in that writ petition, it is the correctness of that judgment and order which has been under challenge in the present appeal filed by the State of Madhya Pradesh, its Electrical Adviser and Regional Accounts Officer of the Madhya Pradesh Electricity Board.

While, the correctness of the said judgment and order of the High Court in the present appeal was pending consideration and decision by this Court, the State of Madhya Pradesh enacted and brought into force the aforesaid validation Act. What has been impughed in the present writ petition by M/s. Birla Ltd. is the constitutional validity of that Validation Act.

We have heard learned counsel for the contesting parties in the appeal as well as the writ petition. We have been taken through the judgment of the High Court under appeal and the relevant provisions of the 1949 Act and the Validation Act. Whether the duty leviable on consumption of electrical energy by M/s. Birla Ltd. under section 3 of the 1949 Act in their premises to which the Mines Act applies is at the rate specified in Item (1) or Item (2) of the Table given below that section being the main question which needs to be answered by us in deciding the present appeal and the writ petition, we shall proceed to find the answer therefor, at the first instance.

Since the answer to the said question has necessarily to depend on a proper construction to be placed by us on section 3 of the 1949 Act, as a whole, as to its ambit and application, it could be reproduced for the sake of easy reference and proper examination, thus:

> "3. Levy of duty on sale of consumption of electric 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 purposes of his township or colony, during the preceding month:

TABLE

	Rate of Duty
(1) Electrical energy sold or supplied for consumption in premises used -	
(a) for business trade or commercial purposes or for purposes of profe-ssional persuits other than for flour mills.	8 paise per unit of energy upto 80 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 units but not in exce-ss of 100 units of energy 12 paise per unit for each additional unit sold or supplied in a month in excess of 100 units of energy.
(b) for flour mills	2 paise per unit of energy.
(2) Electrical energy sold supplied for consumption in in premises of a fact-ory excluding energy sup-plied for consumption for domestic or non-factory purposes where the conn-ected load	2 paise per unit of energy.
(a) does not exceed 100 H.P.	1.5 paise per unit of energy.
(b) exceeds 100 H.P.	3 paise per unit of energy.
(3) Electrical energy sold or supplied for purposes of ellumination on the occa-sion of marriages or other social functions.	65 paise per unit of energy upto 50 units of energy sold or sup-plied on any one occa-sion. Rest per unit for each additional unit sold or supplied on any one

	occasion in excess of 100 units of energy.
(4) Electrical energy sold or supplied for energy consumption in :- (a) a township or colony attached to a factory, mine, or institution or (b) a premises getting supply at high voltage or extra high voltage but not covered under Items (1) and (2) in above.	
(5) Electrical energy sold or supplied for consumption in premises and for purposes not covered under (1) to (4) above.	6.5 paise per unit of energy upto 50 units of energy sold or supplied in a month. 7 paise per unit for each additional unit sold or supplied in a month in excess of 50 units but not in excess of 150 units of energy. 12 paise per unit for each additional unit sold or supplied in a month in excess of 150 units of energy.

Provided that if the electrical energy sold or supplied for consumption for any one purpose is used either wholly or partly, without the consent of the distributor of energy or producer or electricity, as the case may be, for consumption for any other purpose for which a higher rate of duty is chargeable the entire energy sold or supplied shall be charged at the highest rate applicable.

Explanation - For the purpose of this section -

(a) ‘Month means such period as may be prescribed and till such period is prescribed, the filing month :

(b) Premises used for business, trade commercial purposes or for purpose of professional persuits shall include the premises used -

(1) for the purposes of mines to which Mines Act, 1952 (No. 35 of 1952) applies :

(2) for the purposes of industries which do not require raw materials for carrying on the industries but which are carried on for rendering services such as flour mill, repains workshop and the like and are not registered as factories under the Factories Act, 1945 (No. 63 of 1948) :

(c) Factory means a factory registered under the Factories Act 1945 (No. 67 of 1946) : and includes premises used for the purposes of Industries which require raw materials for carrying on the manufacturing process and prepare finished goods for sale."

As seen from section 3 above, duty leviacle thereunder and payable to the State Government every month on electrical energy sold or supplied or consumed during the preceding month is required to be calculated at the rate per unit specified in the Table given below that section. As per the Table, duty payable for the electrical energy sold or supplied for consumption varies from item to item, depending upon the purpose for which it is consumed. when item (1) of the Table is seen, the rate of duty payable for electrical energy sold or supplied for consumption in a premises covers premises used for business, trade or commercial purposes or for purposes of professional persuits other than for flour mills. Because of the explanation (b) to the section which says that for the purpose of the section premises used for business, trade, commercial purposes or for purpose of professional persuite shall include the premises used for the purpose of mines to which the Mines Act, 1952 applies, any premises in or a mine which is used for processing the mines extracted from the mine, becomes the premises covers under Item (1) of the Table. When Item (2) of the Table is seen, the rate of duty payable for electrical energy sold or supplied for consumption in a premises covers a factory, because of explanation (c) which says that for the purpose of the section factory not only means a factory registered under the Factories Act, 1948, but also includes a premises used for the purpose of industries which require raw materials for carrying on the manufacturing process and prepare finished goods for sale. When Item (3) of the Table is seen. It refers to the rate of duty payable on electrical energy sold or supplied for purposes of illumination on the occasion of marriage or other social functions when Item (4) of the Table is seen, it refers to the rate of duty payable for electrical energy sold or supplied for consumption in a township or colony attached to a factory, mine, or institution or a premises getting supply at high voltage or extra high voltage but not covered under Items (1) and (2) of the Table. The rates fixed in respect of electrical energy sold or supplied for consumption in a premises covered by Item (4) cannot be reparded as a premises covered by Item (1) or Item (2) of the Table because of the specific exclusion of those items, as mentioned in Item (4) itself. As seen from Item (5) of the Table, the rate of duty payable for electrical energy sold or supplied for premises or purposes covered thereunder cannot apply to premises or purposes covered in Items (1) to (4) of the Table because of their specific exclusion as mentioned thereunder. When the rates of duty leviable under various items in the Table are seen, each of them applies, according to the purpose for which electrical energy is sold or consumed. Then, comes the proviso to the Table which declares that the electrical energy sold or supplied for consumption for any one purpose is used either wholly or partly, without the consent of the distributor of energy or producer of electricity, as the case may be, for consumption for any other purpose for which a higher rate of duty is chargeable, the entire energy sold or supplied shall be charged at the highest rate applicable. This, praviso, therefore, expressly states that the rates of duty leviable for electrical energy consumed by premises or purpose covered by more than one item. It is the highest rate fixed under them which is laviable where the consumer of electrical energy does not obtain the consent from the distributor of electrical energy or producer of electricity for change in such user, Hence, according to the proviso if consent is otained by the consumer of electrical energy from the distributor of energy or producer of electricity for using electrical energy in a cremises of a factory covered by Item (2) it cannot be used for premises covered under Item (1) and if such thing is done without obtaining such consent, instead of lower duty payable for a premises covered under Item (2), higher duty for a premises covered under Item (1) becomes payable. In other words, proviso to the Table requires that a consumer of electrical energy must declare before such consumption as to the purpose for which it would be consumed in the sense whether it would be consumed for the purpose covered under Item (1) or Item (2) or Item (3) or Item (4) or Item (5) of the Table. The requirement of the proviso when is understood in the context of the provisions under different items, the purpose for which electrical energy is consumed, if falls under more than one item, the rate at which duty becomes leviable would be of the item for which highest rate of duty is fixed.

It regard is had to the aforesaid analysis of section 3, its Table and explanation, as to their ampit and applicapility, can it be held that the rate of out payable for electrical energy consumed in premises covered by Item (2) of Table to section 3 of the 1947 Act is the rate provided for thereunder, even where for such premises (factory), the Mines Act is made applicable, is the question.

No doubt, as we have already pointed out a factory under clause (c) to the explanation to section 3 since includes premises used for purposes of industries which require raw materials for carrying on the manufacturing process and prepare finished goods for sale, the premises of M/s. Birla Ltd. at the mines near of their lime-stone mines of the State of Madhya Pradesh where lime-stone bouloers-dhokas extracted from the mines are broken into small pieces, i.e., gittis for being used in their cement factory or factory requiring raw-material for carrying on the manufacturing process and prepare finished goods of cement for sale, falls within the description of premises covered by Item (2) of the Table to section 3 of the 1949 Act. But the question is when such premises also falls within the description of premises covered by Item (1) because of clause (b) (1) to the Explanation whether the duty payable for electrical energy used therein could only be what is payable for premises under Item (2) of Table to section 3. Since a premises for which mines Act is made applicable becomes a premises covered by Item (1) of Table to section 3 of the 1949 Act which provides for highest rate of duty leviable for electrical energy consumed in such premises question of leviability of lower duty for such consumption merely because of that premises answering the description of premises in other Item of the Table respecting which lower duty is leviable can never arise, for as we have pointes out already, when once highest rate under an Item is leviable. lower rate leviable under other item is excluded. It is, therefore, our considerec view trem premises covered by Item (1) to the Table to which Mines Act is made applicable being the premises of M/s. Birla Ltd. at their mines-site gets covered by Item (1) of Table and hence the duty payable for consumption of electrical energy in that premises shall be at the rate payable for the premises covered under Item (1) of the Table to section 3 of the 1949 Act.

Hence, the view taken by the High Court in the judgment and order under appeal that the premises of M/s. Birla Ltd. at the mines site being a factory premises covered by Item

(2) of the Table to section 3 of the 1949 Act the payment of duty leviable in respect of electrical energy consumed in that premises is covered by Item (2) of the Table, becomes unsustainable and calls to be interfered with.

The next question which arises for our consideration is as to sustainability of the provisions in the Validation Act which validate the levy of duty imposed under Item (1) to the Table to section 3 of the 1949 Act in respect of electrical energy consumed in the premises of M/s. Birla Ltd. at their mines site to which Mines Act is applicable under the 1949 Act and in respect of similar premises of other persons or companies to which Mines Act is applicable.

Although learned counsel for the petitioners for the writ petitions sought to question the provisions of the validation Act which purport to retrospective validate levy of duty on electrical energy consumed in their premises under the 1949 Act because of the view taken of section 3 of the 1945 Act by the High Court in its judgment and order under the present appeal, the learned counsel for the State of Madhya Pradesh sought to support the sustainability of the validation Act olacing reliance on the cecision of this Court in Govt. of A.P. v. H.M.T. [1975] Suppl. S.C.R. 394, where this Court had upheld the provisions of a Validation Act by which duty made payable in respect of a building premises retrospectively. Prima facie, the cecision of this Court appears to support the stand of learned counsel for the State. But, when the judgment and order of the High Court under the present appeal, which is sought to be made ineffective by the Validation Act, is held to be unsustainable by us in the present appeal, we find it unnecessary, to examine the constitutionality of the Validation Act.

In the result, we not merely allow this civil appeal, set aside the judgment and order of the High Court in W.P. No. 520 of 1980 (reported in AIR 1982 m.p. 225) appealed against and dismiss that writ petition, but also dismiss the writ petition filed in this Court. No costs.