IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MUNIB AKHTAR
MR. JUSTICE SYED HASAN AZHAR RIZVI
MR. JUSTICE SHAHID WAHEED

Civil Appeals No.256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471 and 472 of 2011

(On appeal against judgment dated 13.01.2011 passed by the Lahore High Court, Lahore in ICAs No.299, 301, 304, 306, 291, 316, 350 of 2005, 96, 97, 98, 191 of 2006, 303, 305, 309, 311, 322, 341, 289, 290, 293, 300, 302, 343, 344, 345, 292, 298, 449, 310, 315, 320, 342 of 2005, W.Ps. No.7940 of 2007, 15425, 17491, 17492, 17493, 18777, 18778, 19300, 19301, 19548, 19549, 19640, 20677 and 21378 of 2010.)

Govt. of Punjab through Secretary Irrigation and Power & another ... **Appellants** (in all cases)

vs

M/s. Kunjah Textile Mills Ltd. & others	:	C.A.256/2011
M/s. Ghazi Power Ltd. & others	:	C.A.257/2011
M/s. Haseeb Waqas Sugar Mills Ltd.	:	C.A.258/2011
M/s. Crescent Textile Mills	:	C.A.259/2011
M/s. Gulshan Spinning Mills & others	:	C.A.260/2011
M/s. National Sugar Industries Ltd.	:	C.A.261/2011
M/s. Ejaz Spinning Mills & others	:	C.A.262/2011
M/s. Mian Textile Mills	:	C.A.263/2011
M/s. Idrees Textile Mills Ltd.	:	C.A.264/2011
M/s. Tata Textile Mills	:	C.A.265/2011
M/s. Shahpur Textile Mills & others	:	C.A.266/2011
M/s Master Textile Mills Ltd. & others	:	C.A.438/2011
M/s Brothers Sugar Mills Ltd.	:	C.A.439/2011
M/s Hira Textile Mills Ltd. & others	:	C.A.440/2011
M/s Umar Spinning Mills Ltd. & others	:	C.A.441/2011
Kohinoor Weaving Mills Ltd. & others	:	C.A.442/2011
M/s Yousaf Sugar Mills Ltd.	:	C.A.443/2011
M/s Gulshan Weaving Mills Ltd. & others	:	C.A.444/2011 & C.A.445/2011
M/s Asian Food Industries Ltd. & others	:	C.A.446/2011
M/s Dawood Hercules Chemicals Ltd.	:	C.A.447/2011
M/s Ibrahim Energy Ltd. & others	:	C.A.448/2011
M/s. JDW Sugar Ltd.	:	C.A.449/2011
M/s Chishtia Sugar Mills Ltd.	:	C.A.450/2011
M/s. Abdullah Sugar Mills Ltd.	:	C.A.451/2011
M/s Mayfair Spinning Mills Ltd. & others	:	C.A.452/2011
M/s Nishat Chunian & others	:	C.A.453/2011

M/s Ejaz Dyeing & Finishing Mills (Pvt.) Ltd. & another	:	C.A.454/2011
M/s Pahrianwali Sugar Mills Ltd. & another	:	C.A.455/2011
M/s Pattoki Sugar Mills Ltd.	:	C.A.456/2011
M/s Kohinoor Sugar Mills Ltd. & another	:	C.A.457/2011
M/s Tandlianwala Sugar Mills Ltd.	:	C.A.458/2011
M/s Sitara Energy Ltd. & others	:	C.A.459/2011
Shaukat Khanum Memorial Cancer Hospital	:	C.A.460/2011
Superior Textitle Mills Ltd. & another	:	C.A.461/2011
J. K. Fiber Mills Ltd. & another	:	C.A.462/2011
Sitara Chemical Industries	:	C.A.463/2011
Chiniot Textitle Mills Ltd. & others	:	C.A.464/2011
Shahzad Textitle Mills Ltd. & others	:	C.A.465/2011
Kohinoor Mills Ltd. & another	:	C.A.466/2011
Nishat (Chunian) Ltd. & another	:	C.A.467/2011
Crescent Fiber Ltd. & others	:	C.A.468/2011
Bilal Textiles (Pvt.) Ltd. & others	:	C.A.469/2011
Tanveer Spinning & Weaving Mills (Pvt.) Ltd.	:	C.A.470/2011
Sargodha Spinning Mills Ltd. & others	:	C.A.471/2011
Chenab Ltd.	:	C.A.472/2011
	...	**Respondents**

For the Appellants (Govt. of the Punjab) (in all cases)	:	Barrister M. Mumtaz Ali, Addl. Advocate General, Punjab Mr. Muhammad Iqbal Tahir, Energy Inspector, Energy Department Mr. Zafar Abbas, Energy Inspector, Energy Department
For Respondents (in CA 261/2011)	:	Mr. Haq Nawaz Chattha, ASC
For Respondents (in CA 453/2011)	:	Mr. Ahmed Pervaiz, ASC
For Respondent (FESCO) (in CAs 455 and 458/2011)	:	Mir Afzal Malik, ASC
For Respondents (in CAs.438, 440, 441, 445, 446, 448, 452, 453 and 467/2011)	:	Mr. Muhammad Ramzan Ch., ASC
For Respondents (in CA.460/2011)	:	Mr. Imtiaz Rashid Siddiqui, ASC *(via Video-Link, Lahore)*
For Respondents (in CAs. 259, 260, 263, 264, 265, 444, 445, 447, 452, 459 and 461 to 469/2011)	:	Mian Abdul Rashid, ASC *(via Video-Link, Lahore)*
For NEPRA	:	Mr. Irfan ul Haq, ASC
Other Respondents	:	Ex-parte

Date of Hearing : 29.02.2024

JUDGMENT

Munib Akhtar, J.: These appeals are directed against a judgment of the High Court dated 13.01.2011 by a learned Division Bench. That judgment was in intra-court appeals filed against the judgment of a learned single Judge, which is reported as *JDW Sugar Mills Ltd v Province of Punjab and another* PLD 2005 Lahore 596. (The judgment impugned before this Court appears not to have been reported.) Some of these appeals were filed as of right while in others leave petitions were presented, in which leave to appeal was granted in the following terms:

> "The learned High Court while deciding the Intra Court Appeals has declared that the levy of tax is within the powers of the Government but despite this finding the decision was given in favour of the writ petitioners/appellants, mainly on the ground of public policy. Apart from this the judgments of the High Court i.e. of the single Bench in the writ petitions and by the Division Bench in the Intra Court Appeals are at variance and even according to the learned counsel for the petitioners, though cogent findings were given by the Hon'ble Single Judge while hearing the writ petitions but no specific reasons have been given by the learned Division Bench for not agreeing with the grounds given in the judgments of the single Bench. *Moreover, the judgment in Intra Court Appeals have been challenged by the petitioners through direct appeals (C.As No.256 to 266 of 2011), the competency of which will be seen after service of notice upon the respondents*. Therefore, we deem it appropriate to grant leave in these petitions. To be heard along with the above said appeals. Meanwhile, status quo shall be maintained subject to notice." (emphasis supplied)

In the event, since all these matters have been heard together, the point of the competency of the direct appeals (which was also raised therein by the Court in its order dated 06.05.2011) is no longer in issue.

2. The subject matter of these appeals is the applicability or otherwise of section 13 ("s. 13") of the Punjab (previously West Pakistan) Finance Act, 1964 ("1964 Act") to the respondents. As will be seen shortly, this section (which over the course of the decades has undergone many changes) imposes a levy known as the electricity duty. It is therefore a fiscal provision and is to be

interpreted and applied as such. The facts and circumstances of the case relate to s. 13 as it stood up to 2001 when, on 25.08.2001, in exercise of certain powers with reference to s. 4 of the Punjab Finance Ordinance, 2001 ("2001 Ordinance") and shortly to be described, the Governor of the Punjab issued a notification that resulted in the application of the levy on the respondents ("2001 notification"). This levy was challenged in the High Court by writ petitions on various grounds. The constitutionality of s. 13 was also brought into play. The Provincial Government took its stand on constitutionality in terms of Article 157(2)(b) of the Constitution. In the event the writ petitions were dismissed by the learned Single Judge. The consequent intra Court appeals were allowed by means of the impugned judgment, which reversed the judgment appealed against in the manner as set out therein. Being aggrieved by this decision, the Provincial Government has presented the instant appeals before this Court.

3. Before us, the issue of constitutionality in terms of Article 157 was not pursued by either side and therefore these appeals fall to be decided solely on the ground whether, in the facts and circumstances of the case, s. 13 was applicable in terms as sought to be imposed on the respondents in terms of the 2001 notification.

4. Section 13, as it stood in 2001 after an amendment made therein by the 2001 Ordinance was as follows (emphasis supplied):

> "**13. Electricity Duty.–** (1) From the first day of July, 1964, there shall be levied and paid to Government, on the units of energy consumed for the purposes specified in the first column of the Fifth Schedule, excluding losses of energy in transmission and transformation, a duty (hereinafter referred to as 'Electricity Duty') at the rates specified in the second column of that Schedule:
>
> Provided that Electricity Duty shall not be leviable on the energy consumed by, or in respect of the consumers enumerated in the Sixth Schedule, except to the extent specified therein:
>
> Provided further that for reasons to be recorded, Government may, by notification in the official Gazette,

exempt any other consumer or class of consumers from the operation of this section.

Explanation– In this section, unless there is anything repugnant in the subject or context–

(*a*) "consumer" means any person other than a distributing licensee, who is supplied with energy by a licensee;

(*b*) "energy" means electrical energy when generated, transmitted, supplied or used for any purpose except the transmission of a message;

(*c*) "licensee" means a person licensed under section 15 or 20 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (XL of 1997) to engage in the generation and sale of energy to a consumer *and includes any person generating the electric power from a generator having the capacity of more than five hundred kilowatt for self use*.

(2) Every licensee shall collect and pay to the Government, the Electricity Duty payable under this section in such manner as may be prescribed. The duty so payable shall be a first charge on amount recoverable by the licensee for the energy supplied by him and shall be a debt due by him to the Government:

Provided that–

(*i*) the licensee shall not be liable to pay the duty in respect of any energy supplied by him for which he has been unable to recover his dues;

(*ii*) the licensee shall be entitled, for his cost of collection of the duty, to a rebate of such percentage, as may be determined by the Government, on the amount of the duty collected and paid by him under this sub-section.

(3) Where any person fails or neglects to pay the amount of Electricity Duty due from him, the licensee may, without prejudice to the right of Government to recover the amount under section 3 of the Punjab Government Dues Recovery Ordinance, 1962 (West Pakistan Ordinance XXII of 1962), discontinue to supply energy to him and for this purpose, exercise the power conferred on a licensee by sub-section (1) of section 24 of the Electricity Act, 1910 for recovery of any charge or sum due in respect of energy supplied by the licensee.

(4) In the case of energy other than that supplied by a licensee, the person generating the energy shall pay to the Government the Electricity Duty payable under this section in respect of the energy consumed, in such manner as may be prescribed."

It is to be noted that s. 4 of the 2001 Ordinance substituted the definition of "licensee" in clause (3) of the Explanation to subsection (1) such that it became as reproduced above. That is all that s. 4 did. For present purposes, it is necessary only to set out the Fifth Schedule, referred to in subsection (1). This stood as follows in 2001:

"1.	In case of energy supplied by a licensee to consumers of categories specified as	Electricity duty on the amount of the energy charges worked out according to the electricity tariff.
	(a) domestic	7 percent
	(b) office or commercial	3 percent
	(c) industrial undertakings	3 percent
	(d) tubewells and irrigation and agricultural machinery	4 percent
	(e) premises where the supply of energy by a licensee is unmetered	4 percent
2.	In case of energy not supplied by a licensee to consumers of categories specified as	Electricity duty per unit
	(i) domestic	2.50 paisa
	(ii) industrial	1.50 paisa

EXPLANATION

I. "electricity tariff" means Schedules of Tariffs made under provisions of sections 12, 13 and 25 of the West Pakistan Act XXXIV of 1958.

II. Premises which are used wholly or principally for manufacturing processes within the meaning of section 2 of the Factories Act, 1934 shall be deemed to be used for an industrial undertaking."

The 2001 notification was in the following terms:

"In exercise of the powers conferred upon him by Section 4 of the Punjab Finance Ordinance, 2001 (VI of 2001) and in supersession of all previous notifications, the Governor of the Punjab is pleased to direct that any person generating the Electric Power from a Generator having the capacity of more than 500 KW shall pay the Electricity Duty w.e.f. 01-07-2001."

The previous notification superseded, as relevant for present purposes, was one issued on 30.12.1985, which was in the following terms ("1985 notification"):

> "In exercise of the power conferred on him under Section 13 of the Punjab Finance Act, 1964 (Act No. XXXIV of 1964) the Government of the Punjab is pleased to exempt the consumers using private generators from the payment of electricity duty with immediate effect."

5. It is not in dispute that the respondents all used private generators of more than 500 KW capacity to generate electricity for self use. The case of the appellant Provincial Government, in a nutshell, is that up to 2001 the respondents may have been entitled to the benefit of the 1985 notification but thereafter the position changed fundamentally on account of the new definition of "licensee" substituted by the 2001 Ordinance. In terms of the last portion thereof ("any person generating the electric power from a generator having the capacity of more than five hundred kilowatt for self use") they statutorily became licensees. Any protection that they may have had in terms of the 1985 notification stood withdrawn by the 2001 notification and thus they were liable to pay the electricity duty imposed by s. 13. The respondents on the other hand claim that when s. 13 is read as a whole (including, in particular, the Fifth Schedule), and the well settled principles of interpreting fiscal statutes applied to it, the respondents were not liable to the payment of the duty notwithstanding the change in the definition of "licensee".

6. The learned AAG (who is to be commended on the able and skilful manner in which he presented the Government's case) referred to the well established principles relating to the interpretation of fiscal statutes. Reliance was placed on various decisions including, in particular, *H.M. Extraction Ghee & Oil Industries (Pvt) Ltd. v Commissioner of Inland Revenue* 2019 SCMR 1081 and on para 8 thereof where the well known three stages relating to taxation (leviability, assessment and recovery) are set out. It was submitted that the taxable event in s. 13 was encapsulated in the following words in subsection (1): "on the units of energy consumed". The electricity duty was a general levy that was imposed on every person who did not come within the scope of any its exclusions or exemptions, as contained in the provisos to subsections (1) or (2), or the Sixth Schedule. The latter schedule admittedly did not apply to the respondents and the benefit of any exemption in terms of the 1985 notification stood withdrawn

because of the 2001 notification. The definition of “licensee” had been altered in such manner that it specifically brought the respondents within its scope. Therefore, they were liable to pay the duty. The learned AAG submitted that subsection (3) of s. 13 related only to the third stage of taxation, i.e., recovery. The first two stages (i.e., leviability and assessment) stood determined in the case of the respondents in terms of subsection (1) (first stage) and the Fifth Schedule (second stage). Reference was also made to the Punjab Electricity Duty Rules, 2012 framed under s. 17 of the 1964 Act in which the matter of recovery from licensees such as the respondents was dealt with. The said rules repealed and replaced earlier rules framed in 1964 in which it was candidly, and in our view quite properly, accepted that there was no provision for “licensees” such as the present respondents. But that, learned AAG explained, was only because earlier the definition had been in different form. That was no longer the case after the 2001 substitution, whereby the respondents were precisely and specifically included. Reference was also made to certain Indian case law in relation to the constitutionality of s. 13. However, since that point is no longer in issue the same need not be considered. The learned AAG submitted that the learned Division Bench had erred materially. The appeals ought to be allowed and the decision of the learned single Judge restored. Learned counsel for the respondents on the other hand submitted that on any view of the matter the respondents were not liable to the duty imposed by s. 13. They did not come within the scope of the charge in terms of subsection (1) and thus the appeals ought to be dismissed.

7. We have heard learned counsel, examined the record and considered the statutory provisions and case law. As noted above, the learned AAG has contended that the crucial words, encapsulating the taxing event (i.e., leviability or the first stage) in subsection (1), are as follows: “on the units of energy consumed”. With respect, we are unable to agree. These words, on their own, are scarcely comprehensible and certainly not as a taxing event of a fiscal levy. They must be given proper context and that can only be done by reading the whole of subsection (1). Shorn of its inessential features the subsection can for present purposes be stated as follows: “... there shall be levied and paid to Government, on the

units of energy consumed for the purposes specified in the first column of the Fifth Schedule ... a duty ... at the rates specified in the second column of that Schedule." Having carefully considered the subsection, in our view the taxing event (i.e., leviability or the first stage) comprises the following words: "there shall be levied and paid to Government, on the units of energy consumed for the purposes specified in the first column of the Fifth Schedule". In other words, the taxing event comprises of two elements: (i) the consumption of energy units, (ii) for the purposes specified in the first column of the Fifth Schedule. It is only when these words are taken together that the taxing event can be sensibly gathered from subsection (1). Reading either portion separately and (as the learned AAG would have it with regard to the first words) on a standalone basis returns an incomplete and, with respect, incoherent result. Contrary to what the learned AAG submitted, s. 13 is not a general levy on electricity consumption. Rather it is on such consumption for a specific (i.e., limited) purpose or class, as contained in the second element. It is this composite that is the taxing event. The second column of the Fifth Schedule, where the rates are specified and which is the referent of the last portion of subsection (1), is relatable to the second stage of the levy, i.e., assessment.

8. What does the first column of the Fifth Schedule indicate? It is a table that comprises of two entries. Both relate to the supply of energy to consumers, the first by a licensee and the second by a person who is not a licensee. Now, this has two aspects. Firstly, it is in the nature of a "supply" that, unless something else is shown in the relevant statutory provisions, it ordinarily relates to two distinct and separate persons, one being the supplier and the other to whom the supply is made. The second aspect is that it is the second person who must be the consumer of the energy. Thus, the taxing event in terms of s. 13(1) is on energy consumed, such consumption resulting from a supply of energy by either a licensee or someone who is not a licensee to a person who is the consumer of the energy, said consumers falling in the various categories or classes set out in the first column of the Fifth Schedule. This is the first stage, or the leviability of the duty.

9. This brings us to the next question: do the respondents fall within the taxing event? In our view, the answer must be in the

negative. They certainly produce energy by means of their generators of more than 500 KW capacity. But this energy is for self use, i.e., consumed by the respondents themselves. Thus, there is no “supply” of the energy in terms as just explained. The second element of the taxing event did not apply to them and hence they are not within the levy.

10. But what of the definition of “licensee” which specifically refers to any person (such as the respondents) who generates electric power by means of a generator of more than 500 KW capacity? There can be no doubt that the respondents are within the definition of “licensee” in terms of the substitution made by the 2001 Ordinance (and are herein after referred to also as the “statutory licensee(s)”). However, that still does not bring them within the scope of the levy. It is a cardinal principle of taxing statutes that if more than one reasonable interpretation is possible of the charging, or taxing, provision, then the one more favorable to the putative taxpayer is to be adopted, i.e., the one that either takes him out of the charge altogether or (if such be the case) results in a reduced or lessened burden. We assume for the moment that on the change in the definition of “licensee” one possible, and reasonable, interpretation of s. 13 and one which brings the respondents within the taxing event, is as put forward by the learned AAG. Even if such be the case (and, with respect, we have serious doubts on this score as already set out above) in our view there is another, also reasonable, interpretation possible which does not. The second interpretation is that if the respondents are statutory licensees, all that means is that if any of them were to supply the energy produced by its generator of more than 500 KW capacity to another person, then in respect of that supply the levy would be attracted in terms of the first entry of the Fifth Schedule. It would not however mean that the self use of the energy in and of itself would come within the levy. Put differently, the words “self use” in the substituted definition would be only descriptive of who the statutory licensee is (i.e., one whose supply of energy to another person would complete the taxing event in terms of the first column of the Fifth Schedule), and not amount to a levy of the duty on such self consumption. The levy would still require the statutory licensee to supply the energy to

some other person, i.e., the consumer in terms of the Fifth Schedule. As is clear, this second interpretation is more favorable to the putative taxpayer (i.e., the respondents) and would therefore, on an application of well settled law, apply to the charge contained in subsection (1). The respondents would not, accordingly, be within the levy.

11. In view of the foregoing analysis the only conclusion possible is that the respondents are not liable to pay the electricity duty on their own self use of the power/energy generated by their generators of more than 500 KW capacity. Accordingly, these appeals fail and are hereby dismissed.

12. Before parting with the appeals one final comment may be made. The reasoning that has led us to the conclusion just reached is different from the one which found favor with the learned Division Bench in the High Court. The dismissal of the appeals should not be regarded in any manner as an endorsement or affirmation of the reasoning set out in the impugned judgment.

Judge

Judge

Judge

Announced in Court on 8/10/2024 at Islamabad.

Judge

Approved For Reporting