* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 07.03.2019
Pronounced on: 01.05.2019

\+ **ST.APPL. 1/2017, C.M. Appl. No. 3884-3885/2017**
COMMISSIONER OF TRADE & TAXES, DELHI..... Petitioner
versus
SCHNEIDER ELECTRIC INDIA PVT. LTD. ..... Respondent

\+ **ST.APPL. 5/2017, C.M. Appl. No. 36948/2017, 36950/2017**
COMMISSIONER OF TRADE & TAXES, DELHI ..... Petitioner
versus
SUPER AGENCIES ..... Respondent

\+ **ST.APPL. 6/2017**
COMMISSIONER OF TRADE & TAXES DELHI..... Petitioner
versus
M/S INGRAM MICRO INDIA LTD ..... Respondent

\+ **VAT APPEAL 16/2016, C.M. Appl. No. 29580/2016**
M/S HANS RAJ OM PAKASH ..... Appellant
versus
COMMISISONER TRADE & TAXES & ANR. ..... Respondent

\+ **VAT APPEAL 17/2016**
LARSEN & TOUBRO LTD. ..... Appellant
versus
COMMISSIONER OF TRADE & TAXES ..... Respondent

\+ **VAT APPEAL 18/2016**
LARSEN & TOUBRO LTD. ..... Appellant
versus
COMMISSIONER OF TRADE & TAXES ..... Respondent

\+ **VAT APPEAL 19/2016, C.M. Appl. No. 31746/2016**
GE INDIA INDUSTRIAL PVT LTD ..... Appellant
versus
COMMISSIONER OF TRADE AND TAXES DELHI..... Respondent

\+ **VAT APPEAL 20/2016, C.M. Appl. No. 31751/2016**
SCHNEIDER ELECTRIC INDIA PVT LTD ..... Appellant
versus
COMMISSIONER OF TRADE AND TAXES DELHI..... Respondent

+ **VAT APPEAL 21/2016, C.M. Appl. No. 32217/2016**

VIKAS TRADING CO. ..... Appellant

versus

THE COMMISSIONER, VALUE ADDED TAX & ANR.

..... Respondents

+ **VAT APPEAL 28/2016, C.M. Appl. No. 36478/2016**

SUPER AGENCIES ..... Appellant

versus

COMMISSIONER OF TRADE & TAXES ..... Respondent

+ **VAT APPEAL 15/2017**

COMMISSIONER OF TRADE & TAXES, DELHI..... Appellant

versus

M/S LARSEN AND TOUBRO LTD. ..... Respondent

Counsel for the petitioner:

Mr. V. Lakshmi Kumaran, Mr. Yogendra Aldak, Mr. Karan Sachdev, Advocates in VAT. APPEAL 19/2016 & 20/2016

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Mr. Sumit K. Batra, Mr. Nikhil Gupta, Advocate for appellant in VAT. APPEAL 21/2016.

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Mr. Virag Tiwari, Advocate for appellant – Larsen & Toubro Ltd., in Item VAT. APPEAL 17/2016, 18/2016 & 15/2017.

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CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PRATEEK JALAN

MR. JUSTICE S. RAVINDRA BHAT

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1. The facts and the question of law are common in these appeals, the leading case is that of M/s Schneider India Electric Pvt. Ltd. (hereafter referred as the "assessee" or "Schneider"). The following question of law was framed for these appeals:

> *"Did the VAT Tribunal fall into error in upholding the refusal of the Revenue's claim for exemption under Rule 11 for sales made to distribution companies (DISCOMS) for the period prior to 2003-04 (prior to 11.03.2004), in the circumstances of the case?"*

2. The assessee is engaged in the business of selling various electrical equipments used in the generation and distribution of electricity. It is a registered dealer in the National Capital Territory of Delhi (NCT) with a registration TIN No. 07920179319. For 2003-04 and 2004-05 (hereinafter referred to as "the relevant period"), Schneider sold electrical equipments to various undertakings such as M/s North Delhi Power Ltd. (NDPL), M/s BSES Yamuna Power Ltd. (BSESY), M/s BSES Rajdhani Power Ltd. ("BSESR"), M/s Delhi Transco Ltd.etc. ("Transco"- all collectively referred as "DlSCOMs") which are engaged in the generation/ distribution of electricity in Delhi.

3. During the relevant period the Delhi Sales Tax Act, 1975 ("the DST Act") provided for the levy of tax on sale and purchase of goods in Delhi.

Section 4(1) of the Act provides the rate at which sales tax was levied on the *"taxable turnover"* of different types of goods. Section 4(2) of the Act defines the term *"taxable turnover"* of a dealer as the portion of the total turnover which remains after deducting, *inter-alia*, such sales as are exempt from payment of tax under Section 66 or as may be prescribed. Rule 11 of the Delhi Sales Tax Rules, 1975 ("the DST Rules") prescribes the list of such other sales which may be deducted from the turnover by a dealer to arrive at taxable turnover.

4. The DlSCOMs provided certificates to the assessees, stating that supplies made by Schneider to DlSCOMs need not be included in the taxable turnover being valid deduction allowed under the Act read with Rule 11 of the DST Rules. Schneider (as well as other assessees in appeal, in this batch) claimed the exemption under the said Rule 11 (XII) for the relevant period for such sales made to DlSCOMs. The assessees complied with the provisions of Rule 11 (XII) and submitted the certificates issued by the said companies. Rule 11 of the DST Rules prescribed the list of such sales which may be deducted from the turnover by a dealer. Rule 11 (XII) provided that a dealer was entitled to deduct the turnover of sales made by him to any undertaking supplying electrical energy to the public in Delhi under a license or sanction granted or deemed license under the Indian Electricity Act, 1910 (hereafter "the 1910 Act").

5. For 2003-2004, the assessing authority, without furnishing any reasons, denied the exemption in the assessment order- in respect of Schneider. By an order in the review application, the demand was reduced. The assessees (including Schneider) appealed to the Additional Commissioner where a direction to a pre-deposit was made; this condition

was challenged before this court in W.P.(C) 14164/2006 which was dismissed. Schneider appealed to the Supreme Court by special leave; that Court directed the Additional Commissioner to decide the matter. The assessing authority denied exemption for the period 2003-04 and raised demand of ₹ 9,16,62,309/- (including interest) by Assessment Order dated 10.09.2009, which was further reduced to ₹ 8,26,75,711/- (tax of ₹ 4,19,67,366/- and interest of ₹4,07,08,345) by Rectification Order dated 12.01.2010. As in the case of Schneider, the other assessees too were denied exemptions.

6. Against the demands, the assessees filed appeals before the Special Commissioner. Schneider was directed to make a pre-deposit of ₹ 4,00,04,000/-, against which the assessee approached VAT Tribunal, whereby the pre-deposit was reduced on further challenge before this court, the appeal was directed to be heard without any pre-deposit. For 2004-2005, the assessing authority initially denied exemption and made demands; after exhausting the appellate remedy before the Special Commissioner, it approached the VAT Tribunal, which remitted the matter for fresh consideration. The assessing officer again denied the benefit of exemption and made demands, which were reduced to ₹ 3,23,35,414/- by review order dated 31.03.2006. The Special Commissioner passed the order dated 07.02.2011 by remanding the matter back to the assessing authority. Ultimately, in remanded proceedings, the VATO on 14.03.2012 demanded tax along with interest to the tune of ₹ 8,96,95,791/- and refund of ₹ 82,18,022/- under the Central Act. This refund of ₹ 82,18,022/- was adjusted against the demand (including interest) of ₹ 4,91,95,858/- resulting into demand of ₹ 4,09,77,836/- (including interest). Schneider's appeal was

rejected by the Special Commissioner in whose opinion it did not qualify for the exemption of tax on sales made to DMRC, since the assessee itself booked the sale of ₹ 39,44,002/- made to Alstom Projects India Ltd. against ST-35 and as per exemption certificate issued by DMRC, it was shown as manufacturer and Alstom Projects India Ltd. as supplier. The Government of NCT of Delhi by its Notification No. F101(86)/2001-FIN(A/Cs)431 dated 20.05.2004 granted exemption of sales tax to all suppliers to DMRC whereas the assessee is an indirect supplier and does not qualify for the exemption.

7. The Special Commissioner held that Schneider's claim was not covered under the provisions of Rule 11(XII) of the DST Rules as these undertakings were not deemed to have been granted license under the Electricity Supply Act (hereafter "the Supply Act") and hence, disallowed exemption. The Special Commissioner dismissed the appeals by orders dated 26.08.2013 (for the period 2003- 04) and 21.12.2012 (for the period 2004-05). These orders were impugned before the VAT tribunal, under Section 76 of the Delhi Value Added Tax Act, 2004 ("DVAT" Act").

8. By the impugned orders, for assessment years 2003-2004 (upto 10.03.2004) the VAT Tribunal granted the benefit of claim under Section 4 (2) (vi) of the DST Act read with Rule 11 (XII) of the DST Rules up to the period 10.03.2004. The Tribunal partly allowed and partly dismissed the assessees' appeal. It held that they were entitled to benefit of Rule 11(XII) for the period upto 11.03.2004 upto which the DISCOMs enjoyed being licensees under Electricity Act 1910 but not thereafter when the Electricity Act, 2003 was brought into force. The tribunal further held that the assesses were not entitled to claim deduction for the periods period 11.03.2004 to 31.03.2004 and for 2004-05) from their turnover for sales made to

DISCOMS under Section 4(2)(vi) of the DST Act read with Rule 11(XII) of the DST Rules, after 11.03.2004. This resulted in liabilities of various amounts.

9. The relevant discussion in the impugned order reads as follows:

> *"100. II) view of the foregoing discussion we· are of the view that the Appellants are entitled for claiming deductions from their turnover in respect of sales made to DISCOMS namely Mis North Delhi Power Limited, BSES Rajdhani Power Limited, BSES Yamuna Power Limited under Section 4(2)(vi) of the Delhi Sales Tax ,1975 read with Rule11(xii) of the Delhi Sales Tax Rules 1975 upto 10.03.2004' and in respect of sales made to these DISCOMS on and after 11.03.2004 the day when the Electricity Act 2003 came into force. appellants are not entitled for such deduction/exemption. Accordingly the demands created upto 10.03.2004 are set aside and demands created in respect of sales made on and after 11.03.2004 are upheld and confirmed. Levy of interest being not in accordance with law is also set aside. Ordered accordingly."*

10. The details of demand confirmed by the VAT Department are varied in different appeals, given the periods involved and are not detailed as they are not relevant, since the court has to decide a pure question of law. The assessees impugn the VAT tribunal's order. The NCT of Delhi too preferred appeals to the extent relief was partly given gainst the impugned orders of the tribunal.

Assessees' challenge to the tribunal's order

11. The assessees submit that all the electricity companies to whom the goods have been sold by them fulfill all the requirements laid down in Rule 11(XII) of the DST Rules.They urge that the Indian Electricity Act, 1910 (hereafter "the 1910 Act") was the first Indian law which codified the rights

and obligations in regard to generation and distribution of electricity. These rights were found not to be adequate and the Electricity Supply Act 1948 ("the Supply Act") was enacted with the objective of creating Boards throughout India for better generation and distribution of electricity by the States. The Act prescribed that various Boards and the DVB were automatic licensees under the 1910 Act. Section 26 of the Supply Act provided that Boards shall have all the powers and obligations of a licensee under the 1910 Act and the Act deemed to be the license of the Board for purposes of 1910 Act. Thus, the Delhi Vidyut Board (DVB) is a licensee under the 1910 Act, as Section 26 of the Supply Act deems DVB to be a licensee for the purpose of the 1910 Act. Section 26 of the Supply Act is relied on to say that the Board had *"all the powers and obligation of a licensee under the Indian Electricity Act, 1910, and this Act shall be deemed to be the licence of the Board for the purposes of that Act:..."*

12. It is urged that in 1998, for further effectiveness and control of the Boards, the Electricity Regulatory Commission Act 1998 (hereinafter "the 1998 Act") was promulgated. The 1998 Act constituted a Central Electricity Regulatory Commission (CERC) and enabled State Governments to constitute State Electricity Regulatory Commissions (SERC). Such Commissions would look into the functioning of the Boards to ensure efficiency and professionalism. The Electricity Act, 2003 (hereinafter "the 2003 Act") was enacted with effect from 10th June 2003. This Act was comprehensive and it took care of all the three Acts, namely, 1910 Act, the Supply Act, 1948 and the 1998 Act. All these were repealed by virtue of the 2003 Act which consolidated the provisions. In the meantime, Delhi Electricity Reforms Act, 2000 (hereinafter referred to as "the DERC Act")

was enacted with the objective of restructuring the electricity industry (rationalization of generation, transmission, distribution and supply of electricity), improve avenues for participation of private sector in electricity industry.

13. Provisions of the DERC Act (Section 14) enabled creation of companies for generation, transmission and distribution and transfer of existing generating stations, transmission and distribution systems; Section 15 provided for transfer of assets, liabilities, etc. of DVB to the newly formed companies; the transfer of rights was framed under Delhi Electricity Reform (Transfer Scheme) Rules, 2001 (hereinafter referred to as "the 2001 Rules"). These Rules were framed in exercise of powers conferred by Section 60 read with Sections 15 & 16 of the DERC Act. As a consequence of these provisions, three entities, i.e. BSES Yamuna Power Ltd., BSES Rajdhani Power Ltd. and NDPL were created. The DVB got unbundled into six companies naming GENCO, the holding Company, Delhi Transco Ltd., BSES Yamuna Power Ltd., BSES Rajdhani Power Ltd. and NDPL, with all DVB's rights, liabilities and proceedings devolving on them. The assessees relied on the decision of the Supreme Court in *Delhi Electricity Regulatory Commission v. BSES Yamuna Power Ltd. & Others*, 2007 (3) SCC 33 to say that the unbundling process resulted in transfer of rights and liabilities of DVB to the DISCOMs and other entities. They also relied on Rules 10(1) and 10(2) of 2001 Rules stating that within sixty days of the effective date of transfer, i.e. 30.06.2002, the DISCOMs and Transco had to apply to the Commission constituted under the DERC Act for grant of licence to undertake the business of distribution and retail supply of electricity (DISCOMS) and to undertake the business of transmission and bulk supply

of electricity (Transco). This application was duly made and the licence was also granted to the DISCOMs in March, 2004 and to Delhi Transco Ltd. in May 2003.The assessee submitted that the fact of license was granted in March, 2004 is acknowledged by this Court in the case of *Suresh Jindal v. BSES Rajdhani* in LPA 256/2006. Reliance was also placed on Rules 10 (1) and 10 (2) stating that they provide that from the date of transfer and till grant of license by DERC, the DISCOMs could exercise the rights of erstwhile DVB under the Supply Act and also undertake the electricity distribution and retail supply business as the Board did prior to the effective date of transfer. They also relied on provisos to submit that the Rule 5(2) of the 2001 Rules also provides for the same effect. Rule 5(2) reads as follows:

> *"On such transfer and vesting of the undertakings in terms of sub-rule (1), the respective transferee shall be responsible for all contracts, rights, deeds, schemes, bonds, agreements and other instruments of whatever nature relating to the respective undertaking and assets and liabilities transferred to it, to which the Board was a party, subsisting or having effect on the date of the transfer, in the same manner as the Board was liable immediately before the date of the transfer, and the same shall be in force and effect against or in favour of the respective transferee had been a party thereto instead of the Board*."

14. The assessees submit that they are eligible for exemption under Rule 11(XII) of the DST Rules for the period under consideration 11.03.2004 to 31.03.2005. In this regard, they argued that with effect from 02.06.2003, the 2003 Act came into force repealing Supply Act. Relying on Section 8 of the General Clauses Act, 1897 it was argued that wherever the Supply Act appeared in DST Rules, the reference is to be to the 2003 Act. Section 8 of the General Clauses Act reads as follows:

> *"Construction of references to repealed enactments-(1) Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals or re-enacts, with or without modification, any provision of the former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted."*

15. Thus, with effect from 10th June, 2003, the condition for exclusion from turnover under Rule 11(XII) should be so read that the buyer should have a license or sanction granted or deemed to have been granted under the 2003 Act.

16. It is stated that the DISCOMs had licences under the 2003 Act as is also clear from Section 14. The fifth proviso to Section 14 of 2003 Act provides that any company or companies created in pursuance of the Acts specified in the Schedule to the 2003 Act shall be deemed to be a licensee under the 2003 Act. The said proviso reads as follows:

> *"Provided also that the Government company or the company referred to in sub-section (2) of section 131 of this Act and the company or companies created in pursuance of the Acts specified in the Schedule, shall be deemed to be a licensee under this Act."*

17. It is pointed out that DERC Act is specified in the Schedule to the 2003 Act at S.No. 7. Further, DISCOMs are companies incorporated under the provisions of the Companies Act, 1956 and satisfy Section 14 of the 2000 Act. Thus, by the fifth proviso to Section 14 read with Section 14 of the 2000 Act, DISCOMs are deemed licensees under the 2003 Act. The assessee also relied on first proviso to Section 14 of the 2003 Act stating that

anyone in the business of transmission or supply of electricity before 10.06.2003 under the provisions of the repealed laws or any Act specified in the Schedule to the 2003 Act is deemed to be a licensee under the 2003 Act for such period as may be specified in the license, clearance or approval granted under the Act specified in the Schedule. That proviso reads as follows:

> *"Provided that any person engaged in the business of transmission or supply of electricity under the provisions of the repealed laws or any Act specified in the Schedule on or before the appointed date shall be deemed to be a licensee under this Act for such period as may be stipulated in the licence, clearance or approval granted to him under the repealed laws or such Act specified in the Schedule, and the provisions of the repealed laws or such Act specified in the Schedule in respect of such licence shall apply for a period of one year from the date of commencement of this Act or such earlier period as may be specified, at the request of the licensee, by the Appropriate Commission and thereafter the provisions of this Act shall apply to such business."*

18. As the DISCOMs fall within the description of the above provisions, with effect from 10th June 2003, they are deemed licensees under the 2003 Act. Thus, having once read the 2003 Act in place of Supply Act post 10th June, 2003 in Rule 11(XII), its benefit cannot be denied. Thus, the assessees submitted that the DISCOMs to whom they supplied the goods for generation and supply of electricity are licensees under the 1910 Act or the 2003 act, therefore the Rule 11(xii) applies. As the language of that provision is clear, its benefit cannot be denied. The assessees relied on *Hemraj Goverdhan Dass v. Govt. of India*1978 (2) ELT J 350 (SC), where it was held that:

".....We are unable to accept the contention put forward on behalf of the respondents as correct. On a true construction of the language of the notifications dated July 31, 1959 and April 30, 1960 it is clear that all that is required for claiming exemption is that the cotton fabrics must be produced on power-looms owned by the co-operative society. There is no further requirement under the two notifications that the cotton fabrics must be produced by the co-operative society on the power-looms "for itself". It is well established that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words. The entire matter is governed wholly by the language of the notification. If the tax-payer is within the plain terms of the exemption it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority. If such intention can be gathered from the construction of the words of the notification or by necessary implication therefrom, the matter is different but that is not the case here. In this connection we may refer to the observations of Lord Watson in Salomon v. Salomon and Co., 1897 AC 22 at p. 38:

> *"Intention of the legislature is a common but very slippery phrase, which, popularly understood may signify anything from intention embodied in positive enactment to speculative opinion as to what the legislature probably would have meant although there has been an omission to enact it. In a Court of Law or Equity, what the Legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication."*
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> *It is an application of this principle that a statutory notification may not be extended so as to meet a casus omissus. As appears in the judgment of the Privy Council in Crawford v. Spooner, (1846) 6 Moo PC 1(9):*
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> *"..... we cannot aid the legislature's defective phrasing of the Act, we cannot add, and mend, and, by construction, make up deficiencies which are left there." Learned Counsel for the respondents is possibly right in his submission that the object*

behind the two notifications is to encourage the actual manufacturers of handloom cloth to switch over to power-looms by constituting themselves into co-operative societies. But the operation of the notification has to be judged not by the object which the rule-making authority had in mind but by the words which it has employed to effectuate the legislative intent. Applying this principle, we are of opinion that the case of the is covered by the language of the two notifications dated July 31, 1959 and April 30, 1960 and is entitled to exemption from excise duty for the cotton fabrics produced for the period between October I, 1959 to April 30, 1960 and from May I, 1960 to January 3, 1961. It follows therefore that the is entitled to the grant of a writ in the nature of certiorari to quash the order of the Assistant Collector of Central Excise of Baroda dated November 26, 1962 and the appellate order of the Collector of Central Excise dated November 12, 1963."

19. The assessees emphasized that once the prescribed certificates were issued by the buyers (electricity companies) to them certifying that the goods were purchased for use in Delhi directly in the generation/ distribution of electrical energy in Delhi under a license granted under 1910 Act, the benefit cannot be denied on the ground that the provider of the certificate is not eligible for the concession. Reliance was placed on the decisions of the Supreme Court in *Chunni Lal Parshadi Lal v. Commissioner of Sales Tax, D.P. Lucknow*, (1986) 62 STC112;*State of Madras v. Radio & Electricals Ltd*, 1966 Supp SCR 198; *ITC Ltd v. Collector Central Excise*, (2004) 7 SCC 591.

20. Further, the assessees contended that the findings of the tribunal in the impugned order, that on a comparison of the objectives of the two legislation i.e. the 1910 Act and the 2003 Act, showed that they were enacted with different objectives is fallacious. It was urged that the General Clauses Act

provides that when an Act which repeals the earlier Act is enacted with or without modification, the reference to the earlier Act will always be considered as reference to the new Act. Thus, having once read the Electricity Act in place of Supply Act after 10th June, 2003 in Rule 11(XII), its benefit cannot be denied. The assessees also rely on Section 6 of the General Clauses Act which states that a repeal would not *"affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed".* It was argued that the intention of the Section 6 of the General Clause Act is that the transactions past and closed could not be affected by the repealing Act. Reliance is also placed on Section 10 of Bengal General Clauses Act 1899, which extends to the state of Delhi (In exercise of the powers conferred by Section 2 of the Part C States (Laws) Act, 1950 vide S.R.O 862 dated 31.12.1951, which provides that where this Act, or any Bengal Act or West Bengal Act made after the commencement of this Act, repeals and re-enacts with or without modifications, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

21. The NCT's grounds of challenge are that Rule 11 (XII) is a self - contained code, therefore, each and every condition/restriction is required to be followed in true letter and spirit. In this case, the language contained in Rule as well as in the first proviso is simple and plain wherein the requirement is of a license or sanction under the 1910 Act and since the DISCOMs do not fulfill this requirement and, therefore, they were not eligible to issue certificate in terms of the said rule and simultaneously the selling dealers were not eligible to claimed deduction in this regard. The

NCT argues that the assessees' claim that the distribution companies stepped into DVB's shoes is incorrect because the exemption provided under Rule 11 is not available to the suppliers of the successor whereas it uses a technical expression licensee or deemed licensee. Therefore, even if the distribution companies were to be treated as successors unless expressly provided that they are deemed licensee the benefit of rule 11 cannot be extended to their suppliers.

22. It is urged that DISCOMs are not licensees under the 1910 Act, and they cannot be treated as deemed licensee nor is a clear-cut deeming fiction created in law extending them to be deemed licensees under the law.

23. It is submitted that the provision on the lines of the Supply Act was not enacted subsequently or for that matter any other deeming fiction thereby the distribution companies were headed out to be deemed licensee has been enacted. The exemption/deduction was available to the sellers to any undertaking supplying electrical energy under a license or sanction granted or deemed to have been granted under the 1919 Act. NCT argues that the DISCOM whom the assessees had supplied to were never granted license under the provisions of 1910 Act. It is argued that neither the DERC Act nor the Electricity Act contained a deeming fiction thereby the licenses granted under the DERC or the Electricity Act are deemed licensees under the Indian 1910 Act. The licenses to the abovesaid distribution companies were granted under the DERC Act and Electricity Act and in the absence of any deeming fiction in those Acts, the benefit of said Rule 11 (XII), was not available.

24. It was argued that in a taxing law one has to look merely at what is clearly said and that there is no room for any intent; one can only look fairly at the language is used. The said principle is well settled by various

judgements of the Supreme Court which have been extensively quoted by the tribunal in the impugned judgement. It is also well settled that equity and taxation are often strangers and when the language of the statute is plain and unambiguous then endeavour should be made to give effect to the words used in the statute.

25. The NCT complains that the tribunal failed to appreciate that there was no material even before 11.03.2004 to suggest that the abovesaid distribution companies were deemed licensees under 1910 Act.

Arguments on behalf of the assessees

26. Mr. Lakshmi Kumaran, learned counsel for Schneider, argued that Preamble to the 2003 Act showed that it is a consolidating statute and it seeks to continue the regime established under the 1910 Act. It provided for licensing of eligible undertakings and followed a similar scheme to the previous enactment. The preamble of the Electricity Act reads as follows:

> *" An Act to consolidated the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalisation of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies, constitution of Central Electricity Authority, Regulatory Commissions and establishment of Appellate tribunal and for matters connected therewith or incidental thereto."*

27. The counsel further submitted that the intention of the NCT was to extend the benefit of deduction under Rule 11(xii) to all undertakings

generating and distributing electricity and hence reference to the 1910 Act, which must to be construed to read as Electricity Act after its repeal and re-enactment. Rule 11(XII) was enacted as part of the DST Rules providing deduction to all undertakings licensed under Electricity Act, 1910 for generation and distribution of electrical energy in Delhi. Counsel contended that to understand its true nature it is necessary to understand the context and purpose of the exemption. He placed reliance on Section 8 of the General Clauses Act, 1897 and urged that references to repealed provisions must be construed to be references to the provision so re-enacted. He relied on the judgment of this court in *Commissioner of Income Tax v KRBL Ltd.* 2012 Online SCC Del 6054, where it was held that:

> *"9. There is one more way of looking at the controversy. The SIL scheme was undisputedly notified under the Foreign Trade (Development and Regulation) Act 1992. Section 28(iiia) brings the profits of sale of license granted under the Imports (Control) Order, 1995, made under the Imports and Exports (Control) Act, 1947, to charge under the head "business". The Imports and Exports Control Act, 1947 stood repealed on the enactment of Foreign Trade (Development and Regulation) Act of 1992. Under Section 8 of the General Clauses Act, 1897 where any Central Act made after the commencement of the General Clauses Act, repeals and re-enacts, with or without modification, any provision of the former enactment, then references in any enactment or in any instrument to the provisions, so repealed shall, unless a different intention appears, be construed as references to the provisions so re-enacted.*
>
> *10. The effect of this is that under Clause (iiia) of Section 28, a reference to Imports and Exports (Control) Act, 1947 should be taken to be a reference to Foreign Trade (Development and Regulation) Act and the scheme for SIL having been notified under the latter Act, which must be read into Section 28(iiia), the profits of sale of SIL would fall to be assessed under Section 28(iiia). If*

that is so, the profits of sale of SIL would be assessed as business profits; then 90% thereof would be excluded from the business profits and, thereafter, the excluded profits would be added back under the first proviso to Section 80 HHC (3) in the same proportion as the export turnover bears to the turnover of the business carried on by the assessee. This is another way to look at the controversy and resolve it."

28. Reliance was also placed on *G.P. Nayyar v. State (Delhi Admin.)*1979 2 SCC 593 where the Supreme Court held:

"that by virtue of Section 6 of the General Clauses Act, the operation of all the provisions of the Prevention & Corruption Act would continue in so far as the offences that were committed when Section 5(3) was in force. In view of Setion 6I of the Act, whether Act 16 of 1967 had been brought into force on 5th May, 1967 or not, the rule of evidence as incorporated in Section 5(3) would be available regarding offences committed prior to its repeal.

The effect of the amendment is that sub-section (3) of Section 5 as it stood before the commencement of 1964 Act shall apply and shall be deemed to have always applied in relation to trial of such offences. There can be no objection in law to the revival of the procedure which was in force at the time when the offence was committed."

29. Reliance was also placed on *State of UP v. MP Singh* 1960 (2) SCR 605, which held that:

"4. By the definition of a Commercial Establishment in s. 2 clause 3 of the Act, the clerical and other establishments of a factory to whom the provisions of the Factories Act, 1934, do not apply, are included in the connotation of that expression. It is true that the reference in the definition by which clerical and other establishments of factories are included is to the Factories Act of 1934, ***but by virtue of s. 8 of the General Clauses Act X of 1897, it must be construed as a reference to the provisions of the Factories Act LXIII of 1948 which repealed the Factories Act of 1934 and re-enacted it.*** *The contention raised by the State by special leave, that since the repeal of the Factories Act, 1934, in*

the definition of Commercial Establishment in s. 2 clause 3, are included all clerical and other establishments of a factory without any exemption has therefore no force.

5. The Factories Act, 1948 defines a worker by s. 2(1) as meaning,

"a person employed, directly or through any agency, whether for wages or not, in any manufacturing process or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process."
And a factory is defined by s. 2(m) as meaning any premises including the precincts thereof wherein a specified number of workers on any day of the preceding twelve months is employed. By the combined operation of these definitions, persons employed in any manufacturing process or in cleaning any part of the machinery or part of the premises used for the manufacturing process or any other kind of work incidental to or connected with the manufacturing process or the subject of the manufacturing process are deemed to be workers in a factory. By the use in s. 2(1) of the Factories Act of the expression, 'employed in any other kind of work incidental to or connected with the subject of manufacturing process', not only workers directly connected in the manufacturing process, but those who are connected with the subject of manufacturing process in a factory are included. It is unnecessary for the purpose of this case to decide the precise meaning of the expression 'subject of the manufacturing process' in s. 2 clause (1), because the diverse provisions of the Factories Act are intended to benefit only workers employed in a factory, i.e., in the precincts or premises of a factory. It is difficult to hold that field workers who are employed in guiding, supervising and controlling the growth and supply of sugarcane to be used in the factory are employed either in the precincts of the factory or in the premises of the factory; and if these workers are not employed in a factory, the provisions of the Factories Act, 1948 do not apply to them and they evidently fall within the definition of 'Commercial Establishment."

30. The assessees relied also on *Sales Tax Officer, Kanpur & Other v. Union of India & Others*, 1995 Supp (1) SCC 410 where the Supreme Court held that:

> *"7. The case of the Union of India represented by the railway officials is precisely based upon this sub-section. Their case is that the City Booking Agency is included within the definition 'Railway' and hence the goods being transported from Railway Station to City Booking Agency need not be accompanied by the documents/forms prescribed by the Uttar Pradesh Act. For an appreciation of this plea, we must notice the definition of 'Railway' both in the Indian Railways Act, 1890 as also in the Railways Act, 1989 which has replaced the 1890 Act. The expression 'railway' was defined by clause (4) of Section 3 of the 1890 Act in the following words:*
>
> *"(4) 'railway' means a railway, or any portion of a railway, for the public carriage of passengers, animals or goods, and includes—*
>
> *(a) all land within the fences or other boundary-marks indicating the limits of the land appurtenant to a railway;*
>
> *(b) all lines of rails, sidings or branches worked over for the purposes of, or in connection with, a railway;*
>
> *I all stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery and other works contracted for the purposes of, or in connection with, a railway; and*
>
> *(d) all ferries, ships, boats and rafts which are used on inland waters for the purposes of the traffic of a railway and belong to or are hired or worked by the authority administering the railway:"*
>
> *The 1989 Act defines the said expression in clause (31) of Section 2, which may also be set out:*
>
> *"(31) 'railway' means a railway, or any portion of a railway, for the public carriage of passengers or goods, and includes—*
>
> *(a) all lands within the fences or other boundary marks indicating the limits of the land appurtenant to a railway;*

(b) all lines of rails, sidings, or yards, or branches used for the purposes of, or in connection with, a railway;

I all electric traction equipments, power supply and distribution installations used for the purposes of, or in connection with, a railway;

(d) all rolling stock, stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery, roads and streets, running rooms, rest houses, institutes, hospitals, waterworks and water supply installations, staff dwellings and any other works constructed for the purpose of, or in connection with, railway;

I all vehicles which are used on any road for the purposes of traffic of a railway and owned, hired or worked by a railway; and

(f) all ferries, ships, boats and rafts, which are used on any canal, river, lake or other navigable inland waters for the purposes of the traffic of a railway and owned, hired or worked by a railway administration,

but does not include—

(12) *a tramway wholly within a municipal area; and*

(ii) lines of rails built in any exhibition ground, fair, park, or any other place solely for the purpose of recreation."

[By virtue of Section 8 of the General Clauses Act, 1897, we must read the reference to Indian Railways Act, 1890 in sub-section (8) of Section 28-A of the Uttar Pradesh Act as a reference to the 1989 Act, after its enactment.]"

31. Further, reliance was placed on *Aires Rodrigues v. Vishwajeet P. Rane* (2017) 11 SCC 62 and *Vinod Rao v. State of Gujarat*, 1980 SCC OnLine Guj 86. The view in *Vinod Rao (supra)* was quoted with approval in *Aires Rodrigues (supra)*, as follows:

"14. .... When we so read it, it becomes clear that the notification issued under Section 10 with reference to CrPC, 1898 should be read as having been issued with reference to CrPC, 1973. So far as the impugned notification is concerned, it also refers to CrPC, 1898. The rule of construction laid down in Section 8 of the

General Clauses Act, 1897 also requires us to construe reference to the repealed enactment made in any "instrument" as reference to the repealing enactment or the new enactment which has been brought into force. The expression "instrument" used in Section 8 of the General Clauses Act, 1897, in our opinion, necessarily includes a notification such as the impugned notification. Therefore, applying the rule of construction laid down in Section 8 of the General Clauses Act, 1897, we read both in Section 10 of the Criminal Law Amendment Act, 1932 and in the impugned notification reference to CrPC, 1898, as a reference to CrPC, 1973. Therefore, the effect of the notification issued under Section 10 in 1937 is to modify the relevant provisions in CrPC, 1973. Therefore, the notification of 1937 as well as the subsequent notification issued in 1970 are relevant to the instant case."

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12. We approve the view taken by the High Courts of Gujarat, Delhi, Allahabad and Madras in Vinod Rao [Vinod Rao v. State of Gujarat, 1980 SCC OnLine Guj 86 : (1980) 1 Guj LR 926] , Sant Ram [Sant Ram v. Delhi State, 1980 SCC OnLine Del 72 : (1980) 17 DLT 490] , Mata Sewak Upadhyay [Mata Sewak Upadhyay v. State of U.P., 1995 JIC 1168 (All)] and P. Ramakrishnan [P. Ramakrishnan v. State, 2010 SCC OnLine Mad 3215 : (2010) 1 LW (Cri) 848] and disapprove the view taken by the High Court of Allahabad in Pankaj Shukla [Pankaj Shukla v. Anirudh Singh, 2011 SCC OnLine All 2442 : (2011) 2 ADJ 472]."

32. The other decisions relied on were *State v. Ratan Lal Arora*, (2004) 4 SCC 590 and *State v. A. Parthiban*, (2006) 11 SCC 473. *Ratan Lal Arora (supra)* ruled that:

"The argument overlooks the principles underlying Section 8 of the General Clauses Act. When an Act is repealed and re-enacted, unless a different intention is expressed by the legislature, the

reference to the repealed Act would be considered as reference to the provisions so re-enacted."

33. Further, the counsel contended that the DISCOMs were licensees under the 2003 Act- in support of this, the assessees relied on Section 14 of the Electricity Act, 2003. In this regard, considering the purpose of the exemption under Rule 11(XII) read with the consolidation nature of the Electricity Act 2003, references to Indian 1910 Act as appearing in the DST Rules should be read as Electricity Act. Thus, with effect from 10th June, 2003, the condition for exemption under Rule 11 (XII) should be read/ construed that the buyer should have a license or sanction granted or deemed to have been granted under Electricity Act. Counsel further argued that the basic purpose of Rule 11 (XII) was to ensure that electricity was not double taxed. Firstly, as electricity duty at the output and sales tax on the input side. In this regard, the learned counsel placed reliance on the decision of the *Commissioner of Sales Tax v MP Electricity Boards* (1969) 1 SCC 200 which held that electricity is goods. Further, he also submitted that it is evident from the exemption provided uniformly for electrical energy in Delhi Sales Tax regimes and other State regimes. Electrical energy continued to be exempt even after the enactment of Electricity Act. Therefore, to avoid taxing of electricity at the earlier stage i.e. the input stage, exemptions in the form of deductions from taxable turnover were provided to goods supplied to DISCOMs. The exemption in the form of deduction under Rule 11(XII) for goods supplied to undertakings generating and distributing electricity is not unique to Delhi. Many States, which wanted to ensure electricity is-not double taxed, provided for similar deductions, for eg. Bengal Finance (Sales Tax) Act, 1941 (Section 5(2)(a)(iv); Punjab General Sales Tax Act, 1948

(Section 5(2)(a)(iv); and Himachal Pradesh Sales Tax Act, 1968 Section 6(3)(a)(iii). The deduction was for providing benefit to Generating and Distributing Companies.

34. With respect to the license, the counsel submitted that the licenses were merely a convenient means to identify the undertakings that generated and distributed electricity to provide benefits. They did not play any part in the sales tax regime. The exemption was with respect to the undertaking and not *qua* the license. Counsel relied on *JK Synthetics Ltd. v. CTO* [1994] 94 STC 422 (SC) and *Maruti Wire Industries (P) Ltd. v. STO* (2001) 122 STC 410 (SC) to submit that interest under Section 27 of DST Act can be levied only for failure to pay tax as shown in the returns filed by the assessee. It is admitted position that the tax due in the returns was fully paid by the Appellants. Therefore, there was no occasion to impose interest under Section 27 of the DST Act and the same is liable to be accordingly set aside.

Arguments on behalf of NCT

35. Counsel for NCT, Mr. Satyakam submitted that for the year 2003-2004, the assessees claimed to have sold electrical equipment to various undertakings such as the DISCOMs and they are companies engaged in generations/distribution of electricity in Delhi and that they filed return for the assessment year 2003 - 04 claiming deduction from his turnover sales made to above - said companies by relying upon Rule 11 (XII). He submitted that the NCT's position is that such sales were not to any undertaking which has a license or sanction granted or deemed to have been granted under the 1910 Act. The NCT submitted that the assessees' plea that DISCOMS were

successors of DVB, does not advance their case, for, the exemption provisions are to be applied in their own terms. Rule 11 (XII) of the DST Rules, does not prescribe that exemption would be admissible to the *successors* of the licensees under the 1910 Act.

36. Further, the Counsel submitted that the judgment in the case of *Suresh Jindal (supra)* is not apt for the question of exemption under the DST Act read with Rules of 1975 as the two Acts are not *pari-materia*. It was further submitted that *Suresh Jindal (supra)* related to the responsibilities towards replacement of meters provided to the consumers. The discussion in the judgment of the court was under an entirely different context where the it was held that the responsibilities performed by DVB should henceforth be without any doubt be by the DISCOMS.

37. It was argued also that the benefit of an exemption should be strictly construed and if there is any doubt, the interpretation by the court should be in favour of the revenue, since taxing statutes cannot be construed on the basis of equitable principles: they are to receive strict construction. Reliance was placed on *Commissioner of Customs (Import) v M/s Dilip Kumar & Company & Ors.* 2018 (9) SCC 1. Mr. Satyakam submitted that the said ruling clearly stated that every taxing statue including, charging, computation and exemption clause (at the threshold stage) should be interpreted strictly. In case of ambiguity in a charging provision, the benefit must necessarily go in favour of subject/assessee, but that is not true for an exemption notification wherein the benefit of ambiguity must be strictly interpreted in favour of the Revenue/State. Learned counsel also relied on the judgment reported as *District Mining Officer v. Tisco [District Mining Officer v. Tisco*, (2001) 7 SCC 358] which held that:

"18. ... A statute is an edict of the legislature and in construing a statute, it is necessary, to seek the intention of its maker. A statute has to be construed according to the intent of them that make it and the duty of the court is to act upon the true intention of the legislature. If a statutory provision is open to more than one interpretation the court has to choose that interpretation which represents the true intention of the legislature. This task very often raises difficulties because of various reasons, inasmuch as the words used may not be scientific symbols having any precise or definite meaning and the language may be an imperfect medium to convey one's thought or that the assembly of legislatures consisting of persons of various shades of opinion purport to convey a meaning which may be obscure. It is impossible even for the most imaginative legislature to forestall exhaustively situations and circumstances that may emerge after enacting a statute where its application may be called for. Nonetheless, the function of the courts is only to expound and not to legislate. Legislation in a modern State is actuated with some policy to curb some public evil or to effectuate some public benefit. The legislation is primarily directed to the problems before the legislature based on information derived from past and present experience. It may also be designed by use of general words to cover similar problems arising in future. But, from the very nature of things, it is impossible to anticipate fully the varied situations arising in future in which the application of the legislation in hand may be called for, and, words chosen to communicate such indefinite referents are bound to be in many cases lacking in clarity and precision and thus giving rise to controversial questions of construction. The process of construction combines both literal and purposive approaches. In other words, the legislative intention i.e. the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed."

Issues

Relevant provisions

38. The provisions of the DST Act are as follows:

"Section 4(2)(a)(vi):-(2) For the purposes of this Act, "taxable turnover" means that part of a dealer's turnover during the prescribed period in any year which remains after deducting there from, --
(a) his turnover during that period on-
(i) to (v) ...
(vi) such other sales as are exempt from payment of tax under section 66 or as may be prescribed:
Provided that no deduction in respect of any sale referred to in sub-clause (iv) shall be allowed unless the goods, in respect of which deduction is claimed, are proved to have been sold by the dealer within a period of twelve months from the date of his registration and the claim for such deduction is included in the return required to be furnished by the dealer in respect of the said sale:

Provided further that no deduction in respect of any sale referred to in sub-clause (v) shall be allowed unless a true declaration duly filled and signed by the registered dealer to whom the goods are sold and containing the prescribed particulars in the prescribed form obtainable from the prescribed authority is furnished in the prescribed manner and within the prescribed time, by the dealer who sells the goods:

Provided also that where any goods are purchased by a registered dealer for any of the purposes mentioned in sub-clause (v), but are not so utilised by him, the price of the goods so purchased shall be allowed to be deducted from the turnover of the selling dealer but shall be included in the taxable turnover of the purchasing dealer; and.."

***************** *************

Section 71 (2) (c) of the DST Act reads as follows:

"(1) The Administrator may make rules for carrying out the purposes of this Act

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for, -

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(c) the period of turnover, the manner in which the turnover in relation to sale of any goods under this Act shall be determined and the sales turnover which may be deducted under sub clause (vi) of clause (a) of sub-section (2) of section 4"

Section 66 of the DST Act provides as under; -

Exemptions
"(1) If the Administrator is of opinion that it is necessary or expedient in the public interest so to do, he may, with the previous approval of the Central Government, exempt, by notification in the official Gazette, and subject to such conditions, if any, as he may impose any specified class of sales by any specified class of dealers from payment of the whole or any part of the tax payable under this Act.
(2) If in respect of any sales which are exempt from payment of tax under sub-section (1), a breach of any of the conditions subject to which such exemption was granted is committed, the dealer responsible for such breach shall be liable to pay tax in respect of all such sales as if no such exemption had been granted."

39. Rule 11(XII) of the DST Rules prescribes the list of such other sales which may be deducted from the turnover by a dealer. Clause XII of Rule 11 which is relevant for the purposes of this writ is extracted below: -

"*Rule 11. Other sales which may be deducted from the turnover by a dealer: -*

In calculating his taxable turnover, a registered dealer may deduct from his turnover-
(XII) Sales made to any undertaking supplying electrical energy to the public in Delhi, under a license or sanction granted or deemed to have been granted under the Indian Electricity Act,1910 (9 of 1910), of goods for use in Delhi by it directly in the generation or distribution of electrical energy in Delhi:
PROVIDED that the dealer claiming exemption on this account shall furnish to the appropriate assessing authority upto the time of assessment by it-
(a) copy of the bill(s)/ cash memo(s) on account of such sales bearing the name and signature of the officer of such undertaking receiving the goods;
(b) a certificate in the following form issued by such undertaking and signed by an officer authorized in this behalf by such undertaking:

Sub-section (5) of Section 185 of the Electricity, Act, 2003 reads thus:

"(5) Save as otherwise provided in subsection (2}, the mention of particular matters in that section, shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897),with regard to the effect of repeals."

Section 6 of the General Clauses Act reads as under:-

"6. Effect of repeal - Where this Act, or any [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to: be made, then, unless a different intention appears, the repeal shall not –
(a) revive anything not in force or existing at the time at which the repeal takes effect; or
(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
(c) affect any right, privilege obligation or liability acquired, accrued or incurred under any enactment so repealed; or
{d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;' and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

Analysis and conclusions

40. The question that needs to be decided is whether the authorities have been justified in holding that the DISCOMs., *viz* BSES, BSES (Y), NDPL and Transco to whom the assessees had made sales were not "undertakings" supplying electricity. Halsbury's Laws of England, 3rd Edition, Volume VI (1954), defines 'undertaking' as:

".. though various ingredients make up an undertaking, the term describes not just the ingredients but the completed work from which earnings arise."

The Law Lexicon Dictionary (Page 1932) defines' undertaking as:

"as any business or any work or project which one engages in or attempts as an enterprise analogous to business or trade."

41. In *P. Alikunju, M. A. Nazeer Cashew Industries v Commissioner of Income Tax* (1987) 1661TR 80, it was held that *"undertaking means an enterprise, venture or engagement"*. In *Ansal Housing and Construction Ltd. v Commissioner of Income Tax*185 Taxman 74 (Del) "undertaking" was held to be the one that partakes the character of a business. *Rustom Cavajee Cooper v. Union of India* [AIR 1970 SC 564] also explained the meaning of undertaking in context of Banking Regulation Act, 1949 whereby in 1969

several banks were regarded as undertaking and were acquired by the government.

42. The assessee submitted that Parliament wisely prefixed "any" to undertaking as it never intended to restrict the benefit of Rule 11(XII) to a particular type of entity whether government or non-government, the intent was for the purpose of extending its meaning to all types of organizations.

43. The Bengal Finance (Sales tax) Act, 1941 -which was repealed by the DST Act-made provision regarding deduction/exemption in respect of sales made to electricity undertakings. These were continued under the DST Act, which came into force on 21.10.1975, and in were reflected in the DST Rules 1975.

44. The tribunal in the impugned order has correctly held that the DISCOMS are covered within the word "undertaking" and the word "government" cannot be read into the Rule 11(XII) of the DST Rules, 1975. The relevant paragraphs of the impugned order are extracted hereunder:

> *"39. Plain reading of the provisions stated above would show that the word "undertaking" in no way has been treated to be a Government establishment" In fact till the enactment of Electricity Act of i1948 the distribution of Electricity was in the hands of private entitles or the local authorities and the Acts so envisaged. It is only in the Act of 1948 that for the First time the State Electricity Boards came to be constituted and the rights and obligations of licensee under the India Electricity Act 1910 was conferred on the.*
>
> *40. It is also profitable to refer to the judicial quittance available on the interpretation of the statues which lay down the principles of interpretations.*

41. Generally, the rule of strict construction is adopted in taxing statutes. The House of Lords in the case of Top Ten Promotions (1969)3 All E.R 39 observed
"In a Taxing Act one has to look merely at what is clearly:said; there is room for any intent; One can only look; fairly at the language use

42. Premanand v. Mohan Koikal the Supreme Court has explained the literal rule of interpretation of statutes. Governing the interpretation of statutes, the literal rule is the often invoked rule pressed into action to ascertain the legislative intention behind the framing of the enactment. The rule governs and regulates the meaning of the law in as much as the rule provides that the meaning has to be ascertained from the text of the law itself.

43. In Mis Hiralal Ratanlal vs. STO, AIR 1973 SC 1034, the Apex Court observed:
"In construing a statutory provision the first and foremost rule of construction is the literal construction. All that the Court has to see at the very outset is what does the provision say. If the provision is unambiguous and if from the provision the legislative intent is clear, the Court need not call into aid the other rules of construction of statutes. The other rules of construction are called into aid only when the legislative intent is not clear."
We have noticed that the Words "Any Undertaking" in respect of sales made to Electricity Undertakings has been used for the First time in the Bengal Finance (Sales Tax) Act of 1941. At that point of time the Electricity Act of 1948 was not in force.

44. In Shiv Shakti Co-operative Housing Society vs. Swaraj Developers AIR 2003 SC 2434, the Supreme Court observed:

"It is a well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent."

45. In Union of India and another vs. Hansoli Devi and others 2002(7) SCC (vide para 9), the Supreme Court observed: lilt is a cardinal principle of construction of a statute that when the language of the statute is plain and unambiguous, then the court must give effect to the words used in; the statute and it would not be open to the courts to adopt a hypothetical construction on the grounds that such construction is more consistent with the alleged object and policy of the Act."

46. Revenue has failed to establish that the private entities cannot be called undertakings. On the other hand the foregoing discussion clearly shows that the DISCOMS are covered within the word J undertaking and the Word Govt. cannot be read into the said rule11(xii) of the Delhi Sales tax Rules 1975."

45. The issue for consideration is the whether the DISCOMS can be deemed to be licensee under the 1910 Act. During the course of the arguments, reliance was placed upon Section 8 of General Clauses Act 1899. It has been stated that regarding "construction of reference to repealed enactments" in an eventuality where any Act is repealed and reenacted with or without modifications any reference in any other enactment or in any instrument to provisions so repealed, unless a different intention appears, be considered as reference to provisions so re- enacted. In order to evaluate the applicability of above arguments the objects of the two legislations are reproduced below:

Indian Electricity Act 1910:

"An Act to amend the law relating to the supply and use: of electrical energy. WHEREAS it is expedient to amend the law relating to the supply and use of electrical energy"

The Preamble to the Indian Electricity Act 2003 is as follows:

"An Act to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers. and supply of electricity to all areas, rationalization of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient environmentally benign policies, constitution of Central Electricity Authority, Regulatory Commissions and establishment of Appellate Tribunal and matters connected therewith or incidental thereto."

46. The 1910 Act was the first Act in India which codified and created rights and obligations in regard to generation and distribution of electricity; thereafter, the Supply Act, was enacted. The objective of the Supply Act was to create Electricity Boards throughout India. This is evident from the statement of objects and reasons to the Supply Act, reproduced below:

"The coordinated development of electricity in India on a regional basis is a matter of increasingly urgent importance for post-war re-construction and development. The absence of coordinated system, in which generation is concentrated in the most efficient units and bulk supply of energy centralized under the direction and control of one authority is one of the factors that impedes the healthy and economical growth of electrical development in this country. Besides, it is becoming more and more apparent that if the benefits of electricity are to be extended to semi-urban and rural areas in the most efficient and economical manner consistent with the needs of an entire region, the area of development must transcend the geographical limits of a municipality, a cantonment board or notified area committee, as the case may be. It has, therefore, become necessary that the appropriate Government should be vested with the necessary legislative powers to link together under one control electrical development in contiguous areas by the establishment of what is generally known as the 'Grid System'. In the circumstances of this country such a system need not necessarily involve inter-connection throughout the length and

the breadth of a province; regional co-ordination inclusive of some measures of interconnection may be all that is needed. An essential pre-requisite is, however, the acquisition of necessary legislative power not only to facilitate the establishment of this system in newly licensed areas but also to control the operation of existing licensees so as to secure fully coordinated development.

Government feels that it is not possible to legislate for this purpose within the frame-work of the Indian Electricity Act, 1910, which was conceived for a very different purpose. In their view what is needed is specific legislation, on the broad lines of the Electricity (Supply) Act, 1926, in force in the United Kingdom, which will enable Provincial Governments to set up suitable organizations to work out 'Grid System' within the territorial limits of the Provinces. Although executive power under the proposed bill will necessarily vest in the provinces, two considerations indicate necessity for Central legislation-

(i) The need for uniformity in the organization and development of the 'Grid System', and

(ii) The necessity for the constitution of semi- autonomous bodies like Electricity Boards to administer the 'Grid System'. In the view of the Government it is bodies like these which are likely to be most suitable organisations for working the 'Grid Systems' on quasi- commercial lines. Such Board cannot, however, be set up by Provincial Governments under the existing Constitution Act as they would be in the nature of trading corporation within the meaning of entry 33 of the Federal Legislative List."

47. The Electricity Act 2003 was enacted with effect from 10th June 2003. This Act was comprehensive and it consolidated the provisions of all the three Acts, i.e. the 1910 Act, the Supply Act, and the Electricity Regulatory Commission Act, 1998.All the said three Acts were repealed, and consolidated in one enactment, namely the Electricity Act 2003. The Preamble to the 2003 Act states as follows:

"An Act to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalization of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies, constitution of Central Electricity Authority, Regulatory Commissions and establishment of Appellate Tribunal and for matters connected therewith or incidental thereto."

48. From the relevant provisions, it is clear that the Delhi Vidyut Board (DVB) was deemed to be a licensee under the 1910 Act. This is because the Delhi Electricity Control Order ("DECO") of 1959 was framed under provision of section 22 B of 1910 Act read with notification of Central Government dated 10.11.1959 to regulate transmission, distribution and utilisation of electricity and for maintaining the supply and securing equitable distribution of energy by all concerned in the Union Territory of Delhi. When functions to deal with electricity were delegated to Municipal Corporation of Delhi (MCD) under the Delhi Municipal Corporation Act 1957 as licensee, the Delhi Electricity Supply Undertaking (DESU) was functioning as undertaking of MCD and no Board was in existence. It was felt time and again that restrictions imposed under the provisions of DECO 1959 and by linking the policy for grant of electricity connections with building bye-laws impeded DESU/ DVB from freely granting electricity connections in terms of actual requirements of applicants. Genuine applicants faced difficulties and many were tempted to resort to drawing electricity by unfair means, causing loss of revenue. The restrictions imposed had not yielded the desired result of enforcing Bye-laws of various

government agencies. The Govt of NCT Delhi considered various difficulties and approved certain amendments in DECO 1959. Eventually, fresh regulations were framed under Section 79 of the Supply Act (1948) and a new undertaking (DVB) formed which took over the functions as licensee under the 1919 Act.

49. The right as licensees was conferred by proviso to Rule 10(2) on BSES Rajdhani, BSES Yamuna, NDPL and Delhi Transco Ltd. Rule 10 of the DERC Transfer Scheme Rules of 2001 reads as follows:

"Rights and powers of the Transferees

10. Rights and powers of the Transferees.

(1) Within sixty days of the effective date of transfer, the TRANSCO, shall apply to the Commission for the grant of licence under the Act to undertake the business of transmission and bulk supply of electricity in Delhi:

Provided however, that on and from the effective date of the transfer and till the grant of license by the Commission, the TRANSCO shall be entitled to exercise the rights and powers exercisable by the Board under the Electricity (Supply) Act, 1948 (54 of 1948), and undertake the business of transmission and bulk supply of electricity in Delhi, in the same manner as the Board was entitled to exercise prior to the effective date of the transfer.

(2) Within sixty days of the effective date of transfer, the DISCOMS, shall apply to the Commission for the grant of licence under the Act to undertake the business of distribution and retail supply of electricity in the respective areas of supply as specified in Schedule H:

Provided, however, that on and from the effective date of the transfer and till the grant of licence by the Commission, the

DISCOMS shall be entitled to exercise the rights and powers exercisable by the board under the Electricity (Supply) Act, 1948 (54 of 1948), and undertake the business of distribution and retail supply of electricity in the respective areas of supply as specified in Schedule H , in the same manner as the Board was entitled to, prior to the effective date of the transfer."

50. In the DERC Rules, "Board" was defined to mean DVB constituted under Section 5 of the Supply Act; Rule 2(f) defined DISCOMs to mean as companies with the principal object of engaging in the business of distribution and supply of electricity in the area as specified in Part II of Schedule H. *"Transferee"* was been defined in Rule 2(r) to mean "GENCO", "TRANSCO", "DISCOMS" and "PPCL", in whom the undertaking or undertakings or the assets, liabilities, proceedings and personnel of the DVB stood transferred.

51. The said DISCOMs (M/s NDPL, M/s BSES Rajdhani Power Limited, BSES Yamuna Power Ltd etc) distributed electricity in Delhi during the relevant period and Delhi Transco Ltd. transmitted electricity in Delhi during the relevant period. Therefore, they were licensees – or at least deemed to be licensees under the 1910 Act.

52. This court in *Suresh Jindal v. BSES Rajdhani* 132 (2006) DLT 339(DB) while upholding its earlier judgment in the case of *Suresh Jindal v. BSES Rajdhani*, 126 (2006) DLT 49, held that the three distribution companies i.e. BSES Rajdhani, BSES Yamuna and NDPL are duly licensed under the 1910 Act. The relevant extracts from the decision is extracted hereunder: -

"26. Unfortunately, the petition as drafted had a limited scope. However, counsel for the parties agreed that following issues need

to be decided:-(a) Whether' the respondent has a power to replace an existing meter not determined as a faulty meter(b) If question (a) is answered in favor of the distribution company, whether, while replacing the meter respondent can determine a particular type of meter to be installed for recording electricity supplied/consumed under a connection.(c) Whether prior to 11th March, 2004 the distribution companies were duly licensed to supply electricity in the respective area of distribution and whether they are vested with the powers of a licensee under the Indian Electricity Act, 1910, the Indian Electricity Rules, 1956 andthe Electricity (Supply) Act, 1948.(d) Whether till regulations are framed under Section 55 of the Electricity Act, 2003 by the authority, the distribution company has authority to determine what would be a correct meter.

27. The aforesaid four questions were framed during arguments vide order dated29.11.2005.

52. Legal position, therefore, is that as per the Delhi Electricity Reforms Act, 2000, Delhi Vidyut Board was to be firstly taken over by the Government and thereafter was to be split into generating, transmission and distribution companies. Three distribution companies were, envisaged. They were to supply electricity to consumers in their respective areas. Delhi Vidyut Board was the licensee under 'the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948. From the date of transfer, the distribution companies were empowered to exercise all rights and powers of Delhi Vidyut Board. Within 60 days of the date of transfer, the distribution companies had to apply to DERC for a formal license but till such time the license was granted, the distribution companies were empowered to act in terms of the powers of the Delhi Vidyut Board as a licensee.

55. Therefore, w.e.f. 1.7.2002, the respondent took over the rights and obligations of Delhi Vidyut Board as a licensee in respect of supply/distribution of electricity to the consumers in the area of its jurisdiction. The deemed license of the Delhi Vidyut Board as a licensee as per Section 26 of the Electricity (Supply) Act, 1948 became the license of the respondent: Needless to state, the licensed area was the area assigned to the respondent. In terms of Section 26 of the Electricity (Supply) Act, 1948 read with Rule

10(2) of the Delhi Electricity Reforms (Transfer Scheme) Rules, 2001, powers and obligations of the licensee (OVB) under the Indian Electricity Act, 1910became the powers and obligations of the respondent. Further, as per the Delhi Electricity Reforms (Transfer Scheme) Rules, 2001 read with Section 14 and 15 of Delhi Electricity Reforms Act, 2000, respondent became the successor- in-interest of Delhi Vidyut Board in respect of the license held by Delhi Vidyut Board in relation to the areas earmarked for the respondent within which it had to supply electricity. Section 63 of the Delhi Electricity Reforms Act, 2000 clearly indicated that the provisions of Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948 save in so far they were not inconsistent with the provisions of Delhi Electricity Reforms Act, 2000 would continue to prevail in the manner and to the extent provided in Sub-section (3) of Section 63. Vide Subsection(3) of Section 63, reference to State Electricity Board in the Indian Electricity Act, 1910 was to be read as referring to the DERC or distribution companies established under Section 14 as the case may be. Further, Section 3 to 11, 28, 36(ii), 49A, 50 and 51 of the Indian Electricity Act, 1910 became inapplicable in the National Territory of Delhi. Thus, as a licensee, respondent could not exercise powers under the said sections of the Indian Electricity Act, 1910.Further, license issued under the Indian Electricity Act,1910 'were deemed to be license issued under the Delhi Electricity Reforms Act, 2000. Further, Sections 5 to 18, 19, 20, 23 to 27, 37, 40 to 45, 46 to 54, 56 to 69, 72 and 75 to83 of the Electricity (Supply) Act, 1948 were not to apply in Delhi to the extent the Delhi Electricity Reforms Act, 2000made specific provisions. All other sections of the Electricity (Supply) Act, 1948 were to apply.

56. Section 26 of the Indian Electricity Act, 1910 continued to be applicable under the Delhi Electricity Reforms Act, 2000. Said section deals with the meters.

57. No doubt that the license was granted by the Delhi Electricity Regulatory Commission on 11.03.2004. However, the respondent had applied for the license under Rule 10(2) of the Delhi Electricity Reform (Transfer Scheme) Rules 2001 within sixty days of 01.07.2002 which was the notified date of transfer. Hence, the

respondents were duly licensed to supply electronic meters in the area of their distribution and was vested with the powers of the licensee under the Indian Electricity Act, 1910, Electricity (Supply) Act, 1948 and the rules framed thereunder.

93. Needless to state, the Delhi Electricity Reforms Act,2000 continues to apply in the National Capital Territory of Delhi, save and except its provisions are not inconsistent with the Electricity Act, 2003.

94. The legal position, therefore, would be that by virtue of the Delhi Electricity Reforms Act, 2000 and the rules framed there under, powers of the licensee under the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948 continue to ensure to the licensees in Delhi, save and except where the same are inconsistent with the provisions of Electricity Act, 2003. In the context of meters, the changed legal position would be the one contemplated by Section 55 of the Electricity Act, 2003. Meaning thereby that henceforth, powers to determine specifications of a correct meter stand vested in the Authority constituted under Section 70 of the Electricity Act, 2003. Power to be exercised by way of regulations framed. The language of Section 55 itself shows that till the regulations are framed the old regime continues."

53. This judgment was affirmed by Supreme Court-in the case of *Suresh Jindal v. BSES Rajdhani Power Ltd. & Others (supra)*. This court is of the opinion that the status of DISCOMs as licensees (by virtue of operation of the DERC Transfer scheme rules) has been clearly established. The NCT had argued – in this court's opinion unconvincingly- that the context of *Suresh Jindal (supra)* was different, since the court had to consider if the power to inspect meters vested in the DISCOMs. The court is of opinion that the contextual backdrop of the decision cannot undermine the principle established by it, viz. that DISCOMs are licensees and performed the functions of the DVB.

54. A conjoint reading of the provisions shows that the Supply Act did not repeal the 1910 Act; instead it stipulated that the provisions of the Supply Act were in addition to and not in derogation of the 1910 Act. Therefore, the deeming provisions of the 1910Act continued to be in force during even under the provisions of the2000 Act which remained in force. It is also a fact that the Electricity Act 2003 replaced the Indian Electricity Act, 1910, after 10th June, 2003; the DISCOMs were licensees under Electricity Act, 1910 and these licenses were never withdrawn even after coming into force of the said 2003 Act.

55. This court's reasoning is also fortified by the judgment of the Supreme Court in the case of *Brihanmumbai Electric Supply and Transport Undertaking Vs. Maharashtra Electricity Regulatory Commission (MERC) & Ors.* AIR 2015 SC 1224, where the issue which arose was whether TPC was a deemed distribution licensee for supply of electricity. The Supreme Court held that in first proviso to Section 14 of the Act, the period for which any person can be a deemed licensee is not only such period which is stipulated in license, but also from the time clearance or approval granted under repealed laws or such Act specified in Schedule. The relevant discussion and findings are as follows:

> *"16. There are two facets of the submissions made by Mr. Naphade. In the first instance it is to be found that there is a stipulation of period in the manner stated in the first proviso. Second aspect is as to whether it is incumbent, in all cases, to apply for licence under the provisions of Sections 14 and 15 of the Act immediately after the expiry of one year from the date of commencement of the said Act. In so far as first aspect is concerned, the argument of the Appellant loses sight of the fact that in the first proviso the period for which any person can be a*

deemed licensee is not only such period which is stipulated in the licence, clearance or approval granted to him under the repealed laws or such Act specified in the Schedule. It also provides that the provisions of repealed laws or such Act specified in the Schedule in respect of such a licence shall apply for a period of one year from the date of commencement of Act 2003 or such earlier period as may be specified at the request of the licensee by the Regulatory Commission. In the present case, the Regulatory Commission formulated MERC (Specific Conditions of License Applicable to TPCL) Regulation 2008 i.e. Specific Licence Conditions. These were formulated Under Section 16 of the Act 2003 and it is in these conditions there is a specific stipulation regarding term of TPC licence up to 15.8.2014. We, therefore, are unable to accept the submissions of the Appellant that the licence was valid for a period of one year only. It would be useful to refer to Section 16 of the Act under which aforesaid Specific Licence Conditions of TPC are formulated.

16. Conditions of licence.- The Appropriate Commission may specify any general or specific conditions which shall apply either to a licensee or class of licensees and such conditions shall be deemed to be conditions of such licence:

Provided that the Appropriate Commission shall, within one year from the appointed date, specify any general or specific conditions of licence applicable to the licensees referred to in the first, second, third, fourth and fifth provisos to Section 14 after the expiry of one year from the commencement of this Act.
Proviso to the aforesaid section very categorically enables the Regulatory Commission to specify general or specific condition of licence applicable to licensees referred to in the first to fifth proviso to Section 14 after expiry of one year after the commencement of that Act. Since as on the date of commencement of the Act, TPC became deemed licensee under the first proviso as its predecessors were holding the distribution licence under the repealed laws and thereafter specific conditions of licence are formulated by the Regulatory Commission Under Section 16 mentioning the period of 15.8.2014, it becomes clear that the

combined fact of that would be that YPC would be deemed licence till 15.8.2014.

Tata Power's license to supply electricity in the South Mumbai area is clearly established by virtue of the following:

(a) The Erstwhile Licensee authorized Tata Power to supply electricity to all consumers in Mumbai, including the South Mumbai area;
(b) When the new Act came into force, by virtue of the 1st Proviso to Section 14, Tata Power was deemed to be a licensee under that Act.
This is also clear from Section 172(b) of the Act. It is trite law that once the purpose of the deeming provision is ascertained, full effect must be given to the statutory fiction and the fiction is to be carried to its logical end.

17. An argument was sought to be raised before us that Regulation 2008 laying down specific conditions for TPC are flouted as they were not made by the Regulatory Commission within the mandatory period of one year. However, no such argument was raised earlier and there is no challenge to the validity of the aforesaid Regulations which are made by the Regulatory Commission under its statutory powers and therefore are having statutory force. Once, we come to the conclusion that TPC can be treated as deemed distribution licensee under the first proviso to Section 14 of the Act 2003 and the area of the licence is the same which overlaps with the area covered by BEST, argument predicated on sixth proviso to Section 14 would not be available to the BEST."

56. Section 172 of the 2003, which is the transitional provision, reads as follows:

"Section 172. (Transitional provisions): Notwithstanding anything to the contrary contained in this Act,-

(a) a State Electricity Board constituted under the repealed laws shall be deemed to be the State Transmission Utility and a licensee under the provisions of this Act for a period of one year from the appointed date or such earlier date as the State Government may notify, and shall perform the duties and functions of the State Transmission Utility and a licensee in accordance with the provisions of this Act and rules and regulations made thereunder:

Provided that the State Government may, by notification, authorise the State Electricity Board to continue to function as the State Transmission Utility or a licensee for such further period beyond the said period of one year as may be mutually decided by the Central Government and the State Government;

(b) all licences, authorisations approvals, clearances and permissions granted under the provisions of the repealed laws may, for a period not exceeding one year from the appointed date or such earlier period, as may be notified by the Appropriate Government, continue to operate as if the repealed laws were in force with respect to such licences, authorisations, approvals, clearances and permissions, as the case may be, and thereafter such licences, authorisations, approvals, clearances and permissions shall be deemed to be licences, authorisations, approvals, clearances and permission under this Act and all provisions of this Act shall apply accordingly to such licences, authorizations, approvals, clearances and permissions;

c) the undertaking of the State Electricity Boards established under section 5 of the Electricity (Supply) Act, 1948 may after the expiry of the period specified in clause (a) be transferred in accordance with the provisions of Part XIII of this Act;

(d) the State Government may, by notification, declare that any or all the provisions contained in this Act, shall not apply in that State for such period, not exceeding six months from the appointed date, as may be stipulated in the notification."

57. Section 185 of the 2003 Act, i.e. the repeal clause, reads as follows:

"Section 185. (Repeal and saving): --- (1) Save as otherwise provided in this Act, the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commissions Act, 1998 are hereby repealed.

(2) Notwithstanding such repeal, -

(a) anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorisation or exemption granted or any document or instrument executed or any direction given under the repealed laws shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

(b) the provisions contained in sections 12 to 18 of the Indian Electricity Act, 1910 and rules made thereunder shall have effect until the rules under section 67 to 69 of this Act are made;.

(c) the Indian Electricity Rules, 1956 made under section 37 of the Indian Electricity Act, 1910 as it stood before such repeal shall continue to be in force till the regulations under section 53 of this Act are made.

(d) all rules made under sub-section (1) of section 69 of the Electricity (Supply) Act, 1948 shall continue to have effect until such rules are rescinded or modified, as the case may be;

(e) all directives issued, before the commencement of this Act, by a State Government under the enactments specified in the Schedule shall continue to apply for the period for which such directions were issued by the State Government.

(3) The provisions of the enactments specified in the Schedule, not inconsistent with the provisions of this Act, shall apply to the States in which such enactments are applicable.

(4) The Central Government may, as and when considered necessary, by notification, amend the Schedule.

(5) Save as otherwise provided in sub-section (2), the mention of particular matters in that section, shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897, with regard to the effect of repeals."

58. By the Schedule to the Electricity Act, 2003, in Sl. No. 7, there is an express reference to the Delhi Electricity Reforms Act, 2000. Therefore, the provisions of the DERC Act, to the extent they were not inconsistent with the 2003 Act, continued, by reason of Section 185 (3). Therefore, the DVB's license devolved, for the purposes of its manifold activities, upon the concerned generation, transmission, and distribution companies (DISCOMs). These entities became licensees under Sections 172 and 185 of the 2003 Act.

59. In the decision of the Supreme Court in *State of Kerala vs. Attesee (Agro Industrial Trading Corporation)* AIR 1989 SC 222, where the context was whether the reference to a repealed enactment was found in an new law, whether the benefit or entitlement in the previous one, could be inferred to be part of the new law, it was held as follows:

"3. These are the relevant statutory provisions. On these the question to be considered is: what is the effect of the mention of the definition of "cotton fabrics" given in the 1944 Act in the Schedule to the 1963 Act? Does it attract only the said definition as on 1.4.1963 or also the subsequent amendments thereto? To appreciate the contentions urged, it is necessary to make a brief reference to the principles of interpretation of an enactment which, for purposes of convenience, refers to or incorporates a provision

of another. These have been discussed in various earlier decisions viz. Secretary of State v. Hindustan Cooperative Insurance Society Ltd. 1931 58 LA 259, Collector of Customs v. Nathella Sampathu Chatty & Ors 1962 3 S.C.R. 786, Ram Sarup v. State [1963]3SCR858 , Ram Kirpal v. State 1970CriLJ875 , New Central Jute Mills Co. Ltd. v. The Assistant Collector 1978(2)ELT393(SC) , State of Madhya Pradesh v. Narasimhan 1976 1 S.C.R. 61, Bhajya v. Gopikabai [1978]3SCR561, Mahindra & Mahindra Ltd. v. Union [1979]2SCR1038 and Western Coal Fields v. Special Area Development Authority [1982]2SCR1 . It is unnecessary to make a detailed reference to these decisions. It is sufficient to say that they draw a distinction between referential legislation which merely contains a 'reference to, or citation of, a provision of another statute and a piece of referential legislation which incorporates within itself a provision of another statute. In the former case, the provision of the second statute, along with all its amendments and variations from time to time, should be read into the first statute. In the latter case, the position will be as outlined in Narasimhan 1976 1 S.C.R. 61 where, after-referring to Secretary of State v. Hindustan Cooperative Insurance Society Ltd. 1931 58 I.A. 259, this Court summed up the position thus:

On a consideration of these authorities, therefore, it seems that the following proposition emerges:

Where a subsequent Act incorporates provisions of a previous Act then the borrowed provisions become an integral and independent part of the subsequent Act and are totally unaffected by any repeal or amendment in the previous Act. This principle, however, will not apply in the following cases:

(a) where the subsequent Act and the previous Act are supplemental to each other;
(b) where the two Acts are in part materia;
(c) where the amendment in the previous Act, if not imported into the subsequent Act also, would render the subsequent Act wholly unworkable and ineffectual; and

(d) where the amendment of the previous Act, either expressly or by necessary intendment, applies the said provisions to the subsequent Act"

60. From the reading of Rule 11(XII) it can be seen that a dealer is entitled to deduct the turnover of sales made by him to any undertaking supplying electrical energy to the public in Delhi under a license or sanction granted or deemed to have been granted under the Supply Act. Unlike an exemption granted through a notification, the effect of the rule is to exclude a *species* of transaction from calculation of taxable turnover. Several decisions have settled the principle of law that a subordinate legislation validly made becomes a part of the Act and should be read as such.

61. This proposition had been earlier stated as follows, in *Bhuri Nath & Ors. vs. State of J&K & Ors*1997 (2) SCC 745 which held that :

"The guidelines framed by the Governor are by exercising the rule-making power under Section 24 of the Act. So they acquired the status as subordinate legislation and became integral part of the proviso to Section 19 of the Act."

62. Likewise, in *State of U.P. v Babu Ram* AIR 1961 SC 751; *State of Tamil Nadu v Hind Stone* AIR 1981 SC 711 and Chief Forest Conservator v Nissar Khan 2003 (4) SCC 595, it was held that subordinate legislation that deals with a particular topic should be treated as part of the parent legislation. Likewise, it has been held that a general provision in an Act cannot apply to special provisions made by valid rules. (Ref *Collector of Central Excise v Raghubar Industries Ltd* AIR 2000 SC 2017).

63. If one considers the issue from this perspective- as well as the fact that the of the rules <u>are not by way of exemption,</u> but rather as a specific

clarification of what does not constitute part of taxable turnover, it is apparent that the rule of strict construction of exemptions -in favour of the revenue- cannot apply to the circumstances of this case. There is a compelling reason why the assessees' argument commends to this court. It is that for the period after DERC Act and regulations, there was no electricity board (DVB). Its multifarious functions were *statutorily transferred to different entities, such as generation, transmission and distribution of electricity*. By virtue of operation of Sections 14, 16 (2), 16 (3) read with Rules 3, 4 and 5 of the Transfer scheme Rules, 2001, the undertaking and activities of the DVB devolved, *by operation of law*, upon the respective DISCOMs. In this context, it is useful to quote from *Workmen Of American Express vs Management of American Express Corporation* AIR 1986 SC 458 where the Supreme Court observed that

> *"Judges ought to be more concerned with the 'colour', the 'content' and the 'context' of such statutes. (We have borrowed the words from Lord Wilbei force's opinion in Prenn v. Simmonds 1971 (3) AER 237). In the same opinion Lord Wilberforce pointed out that law is not to be left behind some island of literal interpretation but is to enquire beyond the language, un-isolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations."*

64. Adopting the NCT's argument, in the opinion of the court would entirely defeat the intent of the DST Rules, which was to allow a *"deduction"* from turnover of sales made to an undertaking supplying electricity*" under a license or sanction granted or deemed to have been granted under the Indian Electricity Act, 1910 (9 of 1910), of goods for use in Delhi by it directly in the generation or distribution of electrical energy in Delhi".* If the revenue/NCT is correct, there was no undertaking other than

the DISCOMs which supplied electricity in Delhi, after the DERC Act. DVB- the previous "undertaking" ceased to exist from the appointed date; its functions were taken over by various companies incorporated and functioning under the DERC Act and Transfer Scheme Rules, 2001. Necessarily, therefore, the undertakings referred to were the companies, such as DISCOMs which took over the functions of DVB. Any other interpretation would lead to absurdity, because the intent of the legislation to permit a deduction from the turnover, would be defeated; the rule would be rendered unworkable and otiose.

65. In view of the foregoing discussion, it is held that the assessees' appeals are to succeed; accordingly, VAT. APPEALS 16/2016, 17/2016, 18/2016, 19/2016, 20/2016, 21/2016 and 28/2016 are allowed. The Revenue's appeals have to fail; ST. APPL. 1/2017, 5/2017, 6/2017 & VAT. APPEAL 15/2017 are accordingly dismissed. There shall be no order on costs.

S. RAVINDRA BHAT
(JUDGE)

PRATEEK JALAN
(JUDGE)

MAY 1, 2019