

IN THE HIGH COURT OF ANDHRA PRADESH

+ WRIT PETITION NO: 29672 of 2023 & Batch**W.P.No.29672/2023**

Between:

A.P. Textile Mills Association,
2nd Floor, Manoharam Skin Clinic,
4/2 Lakshmipuram, Guntur 522 007,
Rep. By its Vice-Chairman
Mr. Patchala Chalapathi Rao

... Petitioner / Petitioners

\$ AND

- \$ 1. State of Andhra Pradesh, Energy Department, Secretariat,
Velagapudi, Amaravathi, Guntur District, rep. By its Principal
Secretary.
2. Southern Power Distribution Company of Andhra Pradesh Ltd.,
Tiruchanoor Road, Kesvyana Gunta, Tirupati – 517 501, rep. By its
Managing Director.
3. Central Power Distribution Company of Andhra Pradesh Ltd.,
Corporate Office, Beside Polytechnic College, ITI Road, Vijayawada,
rep. By its Managing Director.
4. Eastern Power Distribution Company of Andhra Pradesh Ltd., P & T
Colony, Seethammadhara, Visakhapatnam 530 020, rep. By its
Managing Director.

.... Respondents

Date of Judgment pronounced on : 26.06.2025**HON'BLE THE CHIEF JUSTICE DHIRAJ SINGH THAKUR****HON'BLE SRI JUSTICE R RAGHUNANDAN RAO**

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|--|----------|
| 1. Whether Reporters of Local newspapers
May be allowed to see the judgments? | : Yes/No |
| 2. Whether the copies of judgment may be marked
to Law Reporters/Journals: | : Yes/No |
| 3. Whether The Lordship wishes to see the fair copy
Of the Judgment? | : Yes/No |

***IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

***HON'BLE THE CHIEF JUSTICE DHIRAJ SINGH THAKUR**

And

HON'BLE SRI JUSTICE R RAGHUNANDAN RAO

+ WRIT PETITION NO: 29672 of 2023 & Batch

% Dated: 26.06.2025

W.P.No.29672/2023

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Velagapudi, Amaravathi, Guntur District, rep. By its Principal
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4. Eastern Power Distribution Company of Andhra Pradesh Ltd., P & T
Colony, Seethammadhara, Visakhapatnam 530 020, rep. By its
Managing Director.

.... Respondents

! Counsel for Petitioner : Sri K. Gopal Chowdary appearing vice
Sricharan Telaprolu;
Mr. B. Adinarayana Rao Sr. Counsel;
Mr. Alladi Ravinder, Sr. Counsel

^Counsel for Respondents : The Advocate General appearing vice
G.P. for Energy

<GIST :

>HEAD NOTE:

? Cases referred:

1. (2004) 2 SCC 249
2. (2022) 10 SCC 700
3. (2023) 3 SCC 1
4. (1990) 4 SCC 366
5. 1985 Supp SCC 432
6. AIR 1968 SC 1232
7. (1999) 8 SCC 667
8. 1985 Supp SCC 205 : 1985 SCC (Tax) 447 : AIR 1985 SC 1041
9. (2007) 5 SCC 447 [Paras 138 and 139]
10. (1975) 2 SCC 131
11. (1954) 2 SCC 82
12. AIR 1965 SC 1107 :: (1965) 2 SCR 477
13. AIR 1967 SC 1895
14. {1973 (2) SCC 1 [Paragraphs 5, 14 to 18]
15. 1975 (1) SCC 492 [Paragraphs 9 and 18],
16. 1989 (4) SCC 187 [Paragraphs 62, 99 and 100]
17. 1989 (4) SCC 683 [paragraphs 3 and 5 to end],
18. 1997 (5) SCC 516 [Paragraphs 6,7 21 to 26]
19. AIR 1984 AP 75:: 1983 SCC Online AP 61
20. AIR 1952 SC 369
21. AIR 1960 SC 1080

APHC010575252023



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3446]

THURSDAY, THE TWENTY SIXTH DAY OF JUNE
TWO THOUSAND AND TWENTY FIVE

PRESENT

HONOURABLE THE CHIEF JUSTICE DHIRAJ SINGH THAKUR

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

WRIT PETITION NO: 29672 of 2023

Along with W.P.Nos:29987, 30666, 30668, 30768, 31043, 31065, 31104, 31106, 31116, 31118, 31153, 31157, 31207, 31215, 32024, 32026, 32036, 32043, 32047, 32048, 32204, 32205, 32261, 32276, 32279, 32280, 32288, 32293, 32309, 32316, 32317, 32318, 32320, 32321, 32324, 32327, 32329, 32349, 32458, 32478, 32524, 32533, 32554, 32561, 32660, 32871, 32888, 32891, 32912, 32988, 32990, 32994, 32995, 32996, 33121, 33132, 33133, 33137, 33418, 33420, 33425, 33557, 33558, 33644, 33728, 33729, 33745, 33764 of 2023;

179, 180, 182, 183, 184, 185, 329, 391, 500, 586, 594, 680, 797, 798, 810, 811, 816, 818, 819, 824, 870, 877, 947, 988, 997, 1049, 1099, 1123, 1125, 1321, 1421, 1437, 1448, 1490, 1491, 1505, 1524, 1532, 1612, 1623, 1625, 1680, 1682, 1776, 1781, 1782, 1783, 1784, 1786, 1791, 1793, 1800, 1813, 1818, 1819, 1865, 1873, 1874, 1908, 1910, 1919, 1921, 1981, 2002, 2006, 2071, 2087, 2158, 2165, 2183, 2200, 2204, 2205, 2207, 2209, 2210, 2211, 2213, 2214, 2215, 2216, 2225, 2264, 2272, 2281, 2326, 2361, 2365, 2366, 2368, 2369, 2379, 2382, 2383, 2388, 2400, 2401, 2433, 2440, 2476, 2479, 2481, 2530, 2551, 2552, 2553, 2554, 2556, 2557, 2559, 2560, 2562, 2563, 2565, 2568, 2569, 2571, 2572, 2573, 2626, 2644, 2674, 2676, 2677, 2682, 2686, 2697, 2699, 2700, 2702, 2720, 2721, 2724, 2727, 2729, 2731, 2733, 2736, 2741, 2748, 2749, 2752, 2755, 2757, 2763, 2764, 2812, 2820, 2837, 2852, 2896, 2943, 2959, 2993, 3022, 3024, 3026, 3027, 3034, 3035, 3045, 3093, 3096, 3101, 3102, 3104, 3106, 3125, 3135, 3144, 3155, 3163, 3170, 3172, 3178, 3191, 3223, 3334, 3348, 3385, 3388, 3435, 3486, 3525, 3591, 3595, 3606, 3641, 3656, 3695, 3728, 3739, 3795, 3804, 3808, 3809, 3810, 3811, 3814, 3833, 3952, 3961, 3977, 3990, 4001, 4003, 4175, 4190, 4208, 4212, 4214, 4221, 4250, 4253, 4256, 4276, 4328, 4350, 4351, 4352, 4363, 4373, 4406, 4414, 4422, 4465, 4477,

4527, 4528, 4529, 4569, 4596, 4601, 4603, 4606, 4618, 4620, 4623, 4625, 4630, 4639, 4641, 4643, 4644, 4648, 4656, 4739, 4753, 4758, 4760, 4761, 4765, 4777, 4783, 4817, 4818, 4829, 4858, 4879, 4897, 4902, 4907, 4935, 4946, 4979, 4990, 4993, 5008, 5025, 5134, 5136, 5232, 5253, 5255, 5271, 5277, 5279, 5284, 5299, 5316, 5322, 5338, 5347, 5353, 5355, 5357, 5388, 5389, 5392, 5394, 5399, 5400, 5401, 5405, 5416, 5417, 5437, 5448, 5460, 5462, 5475, 5486, 5501, 5509, 5521, 5531, 5534, 5537, 5539, 5548, 5551, 5554, 5555, 5556, 5559, 5561, 5563, 5566, 5572, 5573, 5575, 5578, 5600, 5621, 5625, 5631, 5633, 5635, 5640, 5673, 5682, 5692, 5704, 5708, 5711, 5716, 5723, 5729, 5734, 5737, 5784, 5792, 5823, 5829, 5831, 5864, 5865, 5873, 5874, 5876, 5881, 5889, 5899, 5900, 5902, 5906, 5908, 5920, 5921, 5923, 5925, 5926, 5927, 5961, 5964, 5971, 5977, 5996, 6002, 6022, 6023, 6025, 6030, 6078, 6111, 6117, 6118, 6119, 6120, 6121, 6122, 6123, 6128, 6129, 6133, 6190, 6218, 6220, 6225, 6226, 6283, 6295, 6315, 6320, 6337, 6355, 6384, 6389, 6394, 6403, 6404, 6415, 6418, 6421, 6422, 6425, 6428, 6448, 6459, 6460, 6461, 6462, 6463, 6464, 6465, 6468, 6496, 6569, 6571, 6581, 6582, 6585, 6587, 6589, 6591, 6595, 6596, 6600, 6611, 6612, 6617, 6618, 6624, 6626, 6627, 6638, 6644, 6679, 6702, 6748, 6786, 6796, 6805, 6807, 6851, 6871, 6874, 6879, 6880, 6887, 6889, 6890, 6893, 6894, 6909, 6912, 6914, 6915, 6916, 6920, 6928, 6930, 6973, 6975, 7001, 7024, 7028, 7068, 7082, 7086, 7093, 7102, 7104, 7105, 7107, 7125, 7151, 7166, 7170, 7173, 7190, 7191, 7193, 7214, 7233, 7262, 7285, 7316, 7352, 7354, 7355, 7360, 7366, 7372, 7375, 7393, 7402, 7405, 7427, 7429, 7467, 7478, 7482, 7483, 7499, 7500, 7505, 7506, 7509, 7513, 7514, 7515, 7519, 7520, 7524, 7534, 7565, 7569, 7590, 7598, 7599, 7601, 7602, 7610, 7611, 7615, 7616, 7625, 7665, 7701, 7721, 7722, 7723, 7725, 7726, 7728, 7762, 7801, 7803, 7806, 7809, 7811, 7813, 7814, 7815, 7820, 7822, 7832, 7833, 7834, 7835, 7836, 7837, 7855, 7885, 7899, 7901, 7902, 7905, 7908, 7919, 7931, 7934, 7936, 7939, 7941, 7954, 7958, 7984, 8020, 8033, 8046, 8049, 8104, 8137, 8158, 8165, 8178, 8179, 8181, 8182, 8185, 8187, 8188, 8189, 8190, 8194, 8208, 8212, 8259, 8393, 8452, 8488, 8497, 8498, 8501, 8502, 8508, 8513, 8525, 8539, 8546, 8578, 8590, 8601, 8612, 8631, 8646, 8650, 8675, 8686, 8694, 8700, 8701, 8706, 8710, 8797, 8835, 8848, 8897, 8937, 8941, 8951, 8952, 9000, 9012, 9044, 9111, 9121, 9124, 9286, 9294, 9298, 9299, 9301, 9302, 9377, 9413, 9462, 9481, 9556, 9561, 9563, 9610, 9615, 9616, 9617, 9618, 9619, 9626, 9628, 9636, 9644, 9666, 9719, 9759, 9766, 9767, 9768, 9787, 9812, 9815, 9820, 9840, 9861, 9910, 9911, 9913, 9918, 9928, 10044, 10071, 10088, 10089, 10104, 10108, 10112, 10123, 10165, 10197, 10244, 10256, 10269, 10306, 10314, 10317, 10319, 10324, 10325, 10328, 10330, 10331, 10333, 10342, 10397, 10416,

10421, 10437, 10481, 10482, 10497, 10508, 10513, 10515, 10516, 10517, 10520, 10540, 10541, 10584, 10616, 10623, 10630, 10667, 10672, 10691, 10706, 10708, 10716, 10744, 10769, 10786, 10787, 10788, 10789, 10822, 10834, 10844, 10846, 10847, 10852, 10853, 10858, 10859, 10877, 10893, 10897, 10908, 10922, 10946, 10947, 10967, 10971, 10979, 10996, 11006, 11012, 11025, 11045, 11047, 11065, 11076, 11111, 11117, 11183, 11188, 11236, 11287, 11300, 11321, 11327, 11329, 11330, 11331, 11342, 11367, 11369, 11395, 11421, 11432, 11445, 11447, 11460, 11546, 11608, 11648, 11658, 11665, 11672, 11683, 11695, 11697, 11704, 11804, 11816, 11820, 11841, 11847, 11922, 11939, 11961, 12061, 12108, 12137, 12306, 12309, 12367, 12368, 12374, 12375, 12420, 12422, 12423, 12425, 12444, 12451, 12454, 12472, 12497, 12504, 12536, 12544, 12553, 12582, 12583, 12590, 12604, 12611, 12689, 12711, 12712, 12713, 12714, 12718, 12728, 12730, 12741, 12780, 12804, 12825, 12831, 12845, 12851, 12966, 12971, 12975, 12979, 12981, 13104, 13139, 13159, 13170, 13206, 13209, 13210, 13224, 13259, 13283, 13285, 13305, 13309, 13310, 13350, 13384, 13391, 13465, 13497, 13504, 13517, 13519, 13522, 13525, 13529, 13545, 13573, 13589, 13592, 13639, 13690, 13695, 13696, 13706, 13708, 13711, 13713, 13733, 13784, 13822, 13831, 13870, 13971, 14150, 14175, 14198, 14199, 14220, 14228, 14229, 14230, 14234, 14287, 14414, 14418, 14420, 14498, 14505, 14530, 14586, 14588, 14646, 14690, 14696, 14697, 14715, 14718, 14720, 14721, 14788, 14858, 14861, 14897, 14901, 14910, 14924, 14942, 14946, 14958, 14960, 14970, 14976, 15096, 15166, 15176, 15198, 15209, 15219, 15222, 15234, 15253, 15288, 15292, 15294, 15300, 15302, 15304, 15306, 15324, 15330, 15332, 15334, 15338, 15357, 15431, 15447, 15452, 15467, 15470, 15487, 15505, 15535, 15561, 15615, 15698, 15715, 15718, 15745, 15762, 15820, 15828, 15873, 15874, 15900, 15962, 15972, 15996, 16024, 16032, 16050, 16070, 16071, 16085, 16160, 16164, 16169, 16171, 16192, 16201, 16207, 16216, 16236, 16292, 16337, 16383, 16458, 16462, 16474, 16501, 16526, 16562, 16573, 16586, 16604, 16614, 16649, 16650, 16652, 16667, 16670, 16680, 16720, 16723, 16754, 16786, 16789, 16829, 16861, 17003, 17005, 17037, 17076, 17079, 17135, 17158, 17159, 17160, 17241, 17267, 17307, 17332, 17342, 17352, 17388, 17414, 17438, 17444, 17451, 17482, 17492, 17516, 17543, 17574, 17651, 17695, 17701, 17702, 17710, 17730, 17732, 17808, 17810, 17813, 17816, 17822, 17825, 17934, 17981, 18002, 18003, 18005, 18047, 18066, 18176, 18177, 18265, 18268, 18273, 18289, 18321, 18367, 18386, 18436, 18441, 18451, 18547, 18556, 18585, 18603, 18612, 18663, 18720,

18774, 18776, 18852, 18854, 18888, 18890, 18930, 18943, 18950, 18955, 18956, 18990, 19013, 19014, 19031, 19035, 19038, 19080, 19117, 19161, 19175, 19252, 19298, 19345, 19354, 19384, 19388, 19404, 19410, 19421, 19428, 19493, 19508, 19514, 19592, 19667, 19765, 19768, 19813, 19890, 19906, 19909, 19931, 20006, 20117, 20169, 20206, 20229, 20256, 20260, 20354, 20361, 20379, 20413, 20432, 20475, 20482, 20491, 20610, 20630, 20689, 20718, 20720, 20723, 20748, 20791, 20831, 20835, 20953, 21035, 21127, 21262, 21267, 21294, 21318, 21334, 21337, 21339, 21341, 21350, 21402, 21417, 21459, 21482, 21498, 21519, 21526, 21542, 21550, 21551, 21557, 21565, 21566, 21575, 21577, 21580, 21593, 21636, 21653, 21657, 21708, 21761, 21801, 21820, 21878, 21900, 21998, 22007, 22205, 22224, 22272, 22299, 22330, 22379, 22408, 22416, 22478, 22480, 22500, 22519, 22534, 22583, 22774, 22793, 22817, 22823, 22844, 22855, 22867, 22912, 22993, 23006, 23036, 23037, 23053, 23065, 23134, 23212, 23243, 23281, 23315, 23369, 23373, 23391, 23393, 23440, 23445, 23447, 23452, 23464, 23502, 23558, 23560, 23587, 23593, 23600, 23613, 23668, 23701, 23793, 23827, 23852, 23906, 23938, 23946, 24051, 24080, 24091, 24104, 24152, 24154, 24265, 24266, 24279, 24303, 24353, 24414, 24423, 24450, 24488, 24572, 24586, 24678, 24718, 24721, 24722, 24726, 24727, 24731, 24732, 24740, 24742, 24744, 24748, 24752, 24756, 24772, 24782, 24821, 24828, 24840, 24889, 24952, 25039, 25129, 25143, 25144, 25246, 25309, 25400, 25424, 25426, 25452, 25493, 25498, 25538, 25553, 25579, 25710, 25782, 25792, 25818, 25823, 25854, 25900, 25923, 25999, 26081, 26084, 26097, 26156, 26157, 26222, 26223, 26259, 26447, 26460, 26504, 26505, 26508, 26517, 26584, 26615, 26711, 26729, 26793, 26817, 26830, 26859, 26869, 26887, 26906, 26978, 27019, 27094, 27100, 27102, 27107, 27124, 27136, 27182, 27196, 27234, 27325, 27372, 27376, 27377, 27378, 27382, 27385, 27503, 27583, 27640, 27701, 27704, 27707, 27739, 27740, 27836, 27848, 27866, 28005, 28055, 28088, 28105, 28149, 28207, 28255, 28277, 28382, 28525, 28530, 28533, 28576, 28736, 28835, 28836, 28876, 28953, 28983, 28984, 28988, 29044, 29052, 29053, 29070, 29103, 29184, 29264, 29294, 29296, 29372, 29488, 29552, 29558, 29592, 29641, 29674, 29685, 29711, 30010, 30015, 30041, 30052, 30064, 30133, 30206, 30255, 30267, 30330, 30342, 30363, 30369, 30395, 30396, 30436, 30487, 30505, 30580, 30608, 30698, 30699, 30929, 30965, 30970, 30996, 31036, 31069, 31139, 31157, 31168, 31226, 31243, 31403, 31413, 31429, 31430, 31511 of 2024;

145, 221, 253, 358, 469, 512, 524, 596, 665, 690, 697, 708, 868, 931, 936, 989, 1053, 1089, 1105, 1122, 1124, 1184, 1186, 1204, 1233, 1380, 1399, 1449, 1472, 1488, 1601, 1665, 1852, 1863, 2090, 2264, 2483, 2501, 2511, 2636, 2816, 2927, 3017, 3060, 3180, 3197, 3238, 3321, 3486, 3488, 3646, 3667, 3679, 3680, 3907, 4019, 4021, 4041, 4490, 4494, 4652, 4818, 4879, 4991, 5027, 5127, 5129, 5224, 5496, 5530, 5531, 5545, 5615, 5633, 5706, 5762, 5811, 5940, 5985, 5995, 6048, 6098, 6108, 6247, 6262, 6274, 6297, 6319, 6334, 6447, 6546, 6601, 6663, 7196, 7309, 7344, 7348, 7568, 7596, 7884, 7971, 7979, 8034, 8081, 8100, 8101, 8215, 8243, 8248, 8426, 8885, 9000, 9001, 9029, 9124, 9472, 9768, 9897, 9922, 9974, 10030, 10042, 10233 of 2025;

W.A. Nos. 1043, 1062, 1069, 1071, 1077, 1084, 1085, 1086, 1087, 1088, 1089, 1090, 1091, 1092, 1093, 1094, 1095, 1096, 1097, 1098, 1099, 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1135, 1136, 1145, 1146, 1147, 1154, 1156, 1235, 1236, 1237, 1238, 1239, 1242, 1243, 1244, 1245, 1246, 1247, 1248, 1275 of 2023;

16, 20, 23, 104, 202, 225, 227, 228, 244, 251, 255, 262, 267, 281, 282, 286, 297, 301, 306, 308, 322, 323, 325, 326, 327, 328, 331, 332, 333, 355, 356, 359, 361, 365, 378, 384, 389, 390, 393, 395, 397, 398, 399, 400, 401, 402, 405, 406, 412, 423, 426, 427, 428, 429, 430, 431, 434, 435, 444, 445, 447, 450, 453, 460, 461, 462, 463, 470 of 2024;

W.P.No.29672/2023

Between:

A.p. Textile Mills Association,

...PETITIONER

AND

State Of Andhra Pradesh and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1. SRICHARAN TELAPROLU

Counsel for the Respondent(S):

1. VENKATA RAMA RAO KOTA SC FOR APSPDCL

2. GP FOR ENERGY

3. V V SATISH (SC for APEPDCL)

4. METTA CHENDRA SEKHAR RAO

Court made the following Common Judgment:

(per Hon'ble Sri Justice R.Raghunandan Rao)

All these matters are being disposed of by way of this common order as common issues are raised.

2. Heard Sri B. Adinarayana Rao, learned Senior Counsel, Sri A. Ravinder, learned Senior Counsel, Sri K. Gopal Chowdary, Sri Sricharan Tellaprolu, Sri P. Narasimha Rao, Sri Challa Gunaranjan, learned counsel appearing for the petitioners, and learned Advocate General appearing for the respondents.

3. The A.P. Electricity Duty Act, 1939 (hereinafter referred to as "the Duty Act") was enacted for levying duty on the sale of electrical energy by "licensees". The term Licensee was originally defined to mean any person licensed under the Indian Electricity Act, 1910 to supply energy or any person who was authorized under section 28 of the same Act to supply energy. This definition was amended to mean a person who has been granted a licence under section 14 of the Electricity Act, 2003. Prior to the impugned amendments, Duty, at the rate of 6 paise per unit, was levied on the Licensees, under Section 3 of the Duty Act. Under section 7, the Government, by way of previous sanction, could permit the licensees to pass on the Duty, to the consumers. Section 3A, empowered the Government to exempt payment of Duty. Section 3, prior to the amendments, which are under challenge, in the present batch of cases, reads as follows:

3. Levy of a duty in certain sales of electrical energy.

(1) Save as otherwise provided in sub-section (2), every licensee in the State of Andhra Pradesh shall pay every month to the State Government in the prescribed manner, a duty calculated at the rate of six paise per unit of energy, on and in respect of all sales of energy except sales to the Government of India for consumption by that Government or sales to the Government of India or a railway company operating any railway for consumption in the construction, maintenance or operation of the railway effected by the licensee during the previous month at a price of more than Twelve paise per unit and on and in respect to all energy which was consumed by the licensee during the previous months for purposes other than those connected with the construction, maintenance and operation of his electrical undertaking and which, if sold to a private consumer under like conditions, would have fetched a price of more than Twelve paise per unit.

Provided that no duty under this sub-section shall be payable on and in respect of sale of energy effected –

(a) by the Andhra Pradesh State Electricity Board to any other licensee;

(b) by the National Thermal Power Corporation to the Andhra Pradesh State Electricity Board.

(2) A licensee shall be exempt from duty under sub-section (1) in any month if in the previous month the total sales of energy effected by him at whatever price together with the energy consumed by him for purposes other than those connected with the construction, maintenance and operation of his electrical undertaking, did not exceed 16,666 units:

Provided that if at the end of any financial year, it is found that in such year the total sales of energy effected by the licensee at whatever price together with the energy consumed by him for purposes other than those connected with the construction, maintenance and operation of his electrical undertaking, were not less than 2,00,000 units, the licensee shall pay the duty in respect of any month or months comprised in such year in which the total of the sales and of the consumption as aforesaid did not exceed 16,666 units.

(3) Where a licensee holds more than one licence duty shall be calculated and levied under this section separately in respect of each licence.

(4) Where a licensee who is liable to pay duty under this section sells energy to the Government of India for

consumption by that Government or to a railway company operating any railway for consumption, in the construction, maintenance or operation of that railway, the price charged on such sales shall be less by the amount of the duty than the price charged to other consumers of a substantial quantity of energy, provided the price last mentioned is more than twelve paise per unit.

In this sub-section, the expression 'price charged to other consumers' shall include the duty, if any, recoverable from the consumer under sub-section (1) of Section 7.

Explanation. - The expression 'railway' in this section and in Section 9 shall have the meaning assigned to it in clause (20) of Article 366 of the Constitution."

4. Sections 2 and 3 of the Duty Act were amended by Act 10/2021.

These amendments were as follows:

1. xxxx

2. In the Andhra Pradesh Electricity Duty Act, 1939 (hereinafter referred to as the Principal Act), in Section 2, for sub-clause (i) of clause (b), the following shall be substituted, namely, (Amendment of Section 2. Act No.5 of 1939, Central Act No.36 of 2003).

"(i) a person who has been granted a license under Section 14 of the Electricity Act, 2003"

3. (Amendment of Section 3)

"3. In Section 3 of the Principal Act, in sub-section (1), for the words "a duty calculated at the rate of six paise per unit of energy", the words "a duty calculated at the rate notified by the State Government from time to time for different consumer categories", shall be substituted."

5. After this amendment, the Government of A.P. issued G.O.Ms.No.7, dated 08.04.2022, which reads as follows:

GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

Andhra Pradesh Electricity Duty Act, 1939 – Levy of duty on certain sales of energy under Section 3(1) of the A.P. Electricity Duty Act, 1939 – Notification – Issued.

ENERGY (POWER-iii) DEPARTMENT

G.O.MS.No.7

Date:08.04.2022

1. Andhra Pradesh Electricity Duty (Amendment) Act, 2003 (A.P. Act No.14 of 2003)
2. The Electricity Act, 2003
3. Act 10 of 2021, Andhra Pradesh Electricity Duty (Amendment) Act, 2020.

ORDER:

Whereas State Government levied electricity duty @6 paise per unit on all the sales of electrical energy from the year 1994, except to the exempted categories; and whereas, sub section (1) of Section 3 of Electricity Duty Act 1939 as amended by Act 10 of 2021, empowered the State Government to notify the rate of electricity duty from time to time to be paid by different consumer categories Consumers on energy sales.

2. Whereas, in other States like Maharashtra, Madhya Pradesh, Karnataka, Odisha, Tamil Nadu, West Bengal, Gujarat and Kerala the electricity duty is as a percentage of consumption charges. Precisely, in the States of Gujarat, Karnataka, Madhya Pradesh, Maharashtra, Himachal Pradesh, Kerala Manipur, Punjab, West Bengal and Jammu & Kashmir the rate of duty is from 14 paise to 180 paise per unit sale of energy, whereas in the State of Andhra Pradesh, electricity duty is being levied @6 paise per unit only on all the sales of

electrical energy from the year 1994 except the exempted categories.

3. Whereas, post bifurcation of the erstwhile State of Andhra Pradesh, the successor State remained a predominantly agrarian one, with the agriculture sector contributing to 35.47% as per the advance estimates of GVA for the financial year 2021-22. Owing to the requirement of providing the necessary support to the agriculture sector, the State exchequer is having to endure a huge burden, in the form of agriculture subsidy to the State Distribution Utilities.

4. Whereas, the gap between the ARR (Average Revenue Realization) and COS (Average Cost of Supply) has widened significantly over the years increasing the subsidy requirement from Rs.2,607 crores in financial year 2014-15 to Rs.11,123 crores in financial year 2022-23. The Average Cost of Supplying power approved by the Andhra Pradesh Electricity Regulatory Commission, has increased by 29.26% over the last seven years. A key reason that has primarily contributed to this increase in cost of service is the substantial increase in debt of the State public sector undertakings in power sector, over the period 2014-19. Inadequate release of subsidy during the period 2024-19 has also resulted in the Distribution utilities and AP GENCO availing huge working capital liabilities to sustain operations. Cost associated with servicing of this debt was partly allowed by APERC while determining the tariff and this has contributed to an increase in the subsidy component. If the disallowed portion is also taken into consideration, the subsidy requirement from the Government is higher.

5. Whereas, the economic recovery from the Covid – 19 pandemic led disruptions has resulted in a steep rise in the demand for power and the coal production in the Country is not adequate to meet the higher requirements of the thermal power plants, leading to increase in cost of power available in power exchanges. Added to this, the geopolitical tensions have resulted in an unprecedented surge in the costs of import coal and also the crude oil prices, indirectly impacting the mining costs of coal. Owing to these reasons, the subsidy burden on the Government is likely to be higher than what is anticipated. In view of the above, there is imperative need for the State Government to augment revenue by tapping all available sources.

6. Whereas, due to the above compelling reasons, State Government have felt the inevitable need to enhance the electricity duty.

7. Now, therefore, the Government have decided to revise electricity duty on energy sales for different categories of Consumers in exercise of the powers conferred by Sub-Section (1) of Section 3 of the Andhra Pradesh Electricity Duty Act, 1939.

8. Accordingly, the following notification will be published in the extraordinary issue of Andhra Pradesh Gazette:

NOTIFICATION

In exercise of the powers conferred by sub-section (1) Section 3 of the Andhra Pradesh Electricity Duty Act, 1939, the Government of Andhra Pradesh hereby levy an electricity duty of 1 (one) rupee per kWh (unit) on energy sales for the Commercial and Industrial Consumers as indicated in the relevant yearly Retail Supply Tariff Order issued by Hon'ble APERC. For Domestic Consumers, the

existing electricity duty of 6 paise per KWh (unit) shall continue to be levied, while Agriculture consumers shall be exempted from levy of any such duty.

9. The notification shall come into force with immediate effect.

**(BY ORDER AND IN THE NAME OF THE GOVERNOR OF
ANDHRA PRADESH)**

Sd/- B. Sreedhar Secretary to Government”

6. By virtue of the aforesaid Amendment Act and G.O.Ms.No.7 dated 08.04.2022, the rate of electricity duty, payable by the licensee, on the sales made to commercial and industrial consumers, had been increased from six paise per unit to Rs.1 per unit. The rate of duty remained at six paise per unit for domestic consumers and the sales made to agricultural consumers were exempted from levy of any duty. It may also be noted that even earlier, electricity sold to agricultural consumers had already been exempted from Duty, by way of G.O.Ms.No.82 dated 08.04.2003. The licensees sought to collect the enhanced duty from the consumers. Aggrieved by this increase of duty, and the attempts of the licensees, to collect this enhanced duty, various commercial and industrial category consumers filed writ petitions before this Court (for ease of reference, the petitioners, in this batch and the various other consumers who have subsequently joined the litigation, by way of fresh writ petitions are hereinafter referred to, compendiously, as petitioners) All these writ petitions came to be disposed of by a learned Single Judge of this Court, by his order, dated 15.09.2023, in W.P.No.16619 of 2022 and batch.

7. The petitioners had raised various contentions, before the learned single judge. The primary contentions, which are relevant for the purposes of this batch of cases, were:

A) There is hostile discrimination against commercial and industrial consumers, as they are being singled out for additional taxation, though they are in the same category of consumers.

B) There is no reasonable differentia to exempt domestic and agricultural consumers, from payment of duty.

C) The fixation of tariff, by the Andhra Pradesh Electricity Regulatory Commission, (herein after referred to as APERC), under the provisions of the Electricity Act, 2003 takes in to account the question of subsidy and cross subsidy. The tariff order, of 30.03.2022, passed by APERC had taken in to account these issues and consequently the government could not have issued G.O.Ms.No.7, on 08.04.2022, increasing the rate of duty, for the purposes of subsidizing sale of power to agricultural consumers.

D) The Appellate Tribunal, under the Electricity Act, 2003 had stipulated that the upper limit of cross subsidy, between different consumers, cannot cross 120% of the cost of supply and the present increase takes the cost of supply beyond this limit.

E) The Licensees cannot collect the duty from the consumers, beyond 6 paise per unit, as there is no previous sanction, under Section 7 of the Duty Act.

8. The learned Single Judge, after hearing both sides, formulated the following, as the issues which arise for consideration:

A. Whether G.O.Ms.No.7, Energy (Power-III) Department, dated 08.04.2022, deserves to be quashed on the grounds of -

- (1) Colourable exercise of power;
- (2) Violating Article 14 of the Constitution of India by imposing duty on industrial and commercial consumers of electricity, but granting exemption to agricultural consumers as also for the rate of duty being unreasonable and excessive;

B. Whether the licensees can recover the duty imposed on them, from the petitioners / consumers, under Section 7 of the APED Act?

C. Whether the petitioners / Alloy Industries have to pay the same duty?

D. Whether the petitioners / cold storage industries are agriculture consumers and exempted from payment of duty?

9. The learned Single Judge, after considering these issues, had observed that there was no challenge to Act 10 of 2021 or the amended or un-amended provisions of Section 3 of the Duty Act and to the classification of

electricity energy consumers, and that the challenge was only to G.O.Ms.No.7 dated 08.04.2022.

10. The learned Single Judge, after considering the submissions made by both sides, had summarized his findings and decided the issues formulated by him, in the following manner:

189. Accordingly, this Court holds as under:

(a) **Point No.A (1) and (2):**

The G.O.Ms.No.7, dated 08.04.2022, does not suffer from vice of colourable exercise of power, nor violative of Article 14 of the Constitution of India.

(b) **Point No.B:**

The licencees can recover duty from the petitioners / consumers only @ 6 paisa kWh under the sanction order under G.O.Ms.No.277, dated 09.12.1994, and not in excess thereof. There is no other previous sanction of the State Government for any amount of duty now imposed on licensees, in excess of 6 paisa kWh.

(c) **Point No.C:**

The petitioners / Alloy Industries have to pay the same duty as in Point No.B (supra), unless they are granted exemption under the statutory provisions.

(d) **Point No.D:**

The petitioners / Cold Storage industries failed to establish that they are agricultural consumers. Consequently, they are not exempted from payment of duty, in terms of Point B (supra).

190. In the result,

- i. The challenge to the impugned G.O.Ms.No.7, Energy (Power-III) Department, dated 08.04.2022, fails. The writ petitions are dismissed to that effect.
- ii. The demand notices by licensees to the petitioners in excess of @6 paise kWh, to the extent of excess, cannot be enforced.
- iii. It is clarified that the petitioners shall have to pay duty @6 paise kWh, subject to any other previous sanction of State Government under Section 7 of APED Act for the rate of duty in excess of 6 paise kWh.
- iv. The petitioners / consumers are granted liberty to file applications before their respective licensees for refund or adjustment of the excess amount of the duty, if paid by them, in excess of 6 paise kWh, upon which, the respective licensees shall proceed accordingly.
- v. All the writ petitions are allowed in part in the aforesaid terms.

11. The learned single judge had held that Duty to the extent of 6 paise per unit, could be passed on to the consumers on account of G.O.Ms.No.277, dated 09.12.2024, which reads:

“2. After careful examination of the above issue and in exercise of the powers under sub-section (1) of Section 7 of the Andhra Pradesh Electricity Duty Act, 1939, as amended from time to time the Government hereby accord permission to Andhra Pradesh State Electricity Board to recover the Electricity Duty from any consumer or class of consumers, to whom energy is sold at a price of more than 12 paise per unit

and who fall under the durable categories, except consumers using Low Tension Electrical energy for agricultural purposes, at an effective tariff rate, presently below twelve paise per unit the duty, which falls to be paid the Board with effect from 01.12.1993, at the rate of six paise per unit on the energy sold, subject to the following conditions:-”

12. Aggrieved by this judgment, both the petitioners as well as the State preferred appeals before this Court. During the pendency of the writ appeals, the government, apparently to get over the finding of the learned single judge that, on account of absence of previous sanction, the duty of one rupee per unit, levied on the licensees, cannot be collected, beyond 6 paise per unit, had issued G.O.Ms.No.22, dated 23.10.2023, according permission to the licensees to recover electricity duty, at the rates notified in G.O.Ms.No.7, dated 08.04.2022 from the consumers / class of consumers against whom such rates had been notified. This G.O., as well as G.O.Ms.No.7 and the amendment, to Section 3(1) of the Duty Act, brought in by Act 10 of 2021, came to be challenged by way of W.P.No.29672 of 2023 and batch.

13. The petitioners, in W.P.No.29672 of 2023 and batch, apart from assailing G.O.Ms.No.7, Act 10 of 2021 and, G.O.Ms.No.22, dated 23.10.2023, on various grounds, had also contended that Act 10 of 2021 had never been notified and as such never came into effect. Consequently, G.O.Ms.No.7, which is based on Act 10 of 2021, would also fail. The petitioners also contended that G.O.Ms.No.22, which empowered the licensees to collect the

duty levied on them, from the consumers, would at best, only operate prospectively, from 23.10.2023 and there can be no collection of duty, beyond 6 paise per unit till 23.10.2023.

14. While the batch of writ appeals and W.P.No.29672 of 2023 and batch were pending, Act 10 of 2024 was enacted to give retrospective effect to Act 10 of 2021, to take away the complaint that Act 10 of 2021 was not notified. The Duty Act was again amended, by way of Act No.23 of 2024, with retrospective effect from 26.08.2021, to answer the contentions that there was no previous sanction for collection of electricity duty up to 23.10.2023. This Act amended Section 3(1) as well as Section 7(1) of the Electricity Duty Act.

15. As can be seen from the legislative developments, the objections being raised by the petitioners, to each of the impugned Amendment Acts, as well as G.Os were sought to be rectified by way of fresh amendments and G.Os. These amendments have culminated in Act 23 of 2024, which has effectively subsumed all the earlier amendments. Act No. 23 of 2024 has been challenged by way of W.P.No.3017 of 2025 and batch.

16. The issues that arise, on the basis of the submissions made by either side, for the consideration of this court, are:

1. Whether the amendment to Section 3 of the Duty Act, by Act 23 of 2024 is valid and within the limits of delegated legislation and whether Act 10 of 2021, as validated by Act 10 of 2024 needs to be gone into?

2. Whether the amendments, to Section 7 of the Duty Act, by Act 23 of 2024 is valid?
3. Whether G.O.Ms.No.7, dated 08.04.2022 is valid?
4. Whether G.O.Ms.No.22, dated 23.10.2024 is valid?

ISSUE NO.1

Whether the amendment to Section 3 of the Duty Act, by Act 23 of 2024 is valid and within the limits of delegated legislation and whether the validity of Act 10 of 2021, as validated by Act 10 of 2024 needs to be gone into?

17. The changes brought in by the two amendment Acts in Section 3(1) read as follows:

Section 3(1) (As stood prior to its amendment)	Section 3(1) (as amended by Act No.10 of 2021)	Section 3(1) (as amended by Act No.23 of 2024)
Save as otherwise provided in sub-section (2), every licensee in the State of Andhra Pradesh shall pay every month to the State Government in the prescribed manner, <u>a duty calculated at the rate of (six paise) per unit of energy</u> , on and in respect of all sales of energy except sales to the Government of India for consumption by that Government or sales to the Government of India or a railway company operating any railway for consumption in the construction, maintenance or operation of the railway) effected by the licensee	Save as otherwise provided in sub-section (2) every licensee in the State of Andhra Pradesh shall pay every month to the State Government in the prescribed manner, <u>a duty calculated at the rate notified by the State Government from time to time for different consumer categories</u> , on and in respect of all sales of energy except sales to the Government of India for consumption by that Government or sales to the Government of India or a railway company operating any railway for consumption in the construction, maintenance	Save as otherwise provided in sub-section (2) every licensee in the State of Andhra Pradesh shall pay every month to the State Government in the prescribed manner, <u>a duty calculated at the rate notified by the State Government from time to time for different consumer categories which shall not be less than 6 paise (Rs.0.06) per unit of energy and not be more than 100 Paise, (Rs.1.00 rupee) per unit of energy</u> , on and in respect of all sales of energy except sales to the Government of India for consumption by that Government or sales to

during the previous month at a price of more than (Twelve paise) per unit (and on and in respect to all energy which was consumed by the licensee during the previous months for purposes other than those connected with the construction, maintenance and operation of his electrical undertaking and which, if sold to a private consumer under like conditions, would have fetched a price of more than (Twelve paise) per unit. Provided that no duty under this sub-section shall be payable on and in respect of sale of energy effected (a) by the Andhra Pradesh State Electricity Board to any other licensee; (b) by the National Thermal Power Corporation to the Andhra Pradesh State Electricity Board.	or operation of the railway) effected by the licensee during the previous month at a price of more than (Twelve paise) per unit (and on and in respect to all energy which was consumed by the licensee during the previous months for purposes other than those connected with the construction, maintenance and operation of his electrical undertaking and which, if sold to a private consumer under like conditions, would have fetched a price of more than (Twelve paise) per unit. Provided that no duty under this sub-section shall be payable on and in respect of sale of energy effected (a) by the Andhra Pradesh State Electricity Board to any other licensee; (b) by the National Thermal Power Corporation to the Andhra Pradesh State Electricity Board.	the Government of India or a railway company operating any railway for consumption in the construction, maintenance or operation of the railway) effected by the licensee during the previous month at a price of more than (Twelve paise) per unit (and on and in respect to all energy which was consumed by the licensee during the previous months for purposes other than those connected with the construction, maintenance and operation of his electrical undertaking and which, if sold to a private consumer under like conditions, would have fetched a price of more than (Twelve paise) per unit. Provided that no duty under this sub-section shall be payable on and in respect of sale of energy effected (a) by the Andhra Pradesh State Electricity Board to any other licensee; (b) by the National Thermal Power Corporation to the Andhra Pradesh State Electricity Board. <u>Provided further that in the absence of any rate of duty notified by the State Government for different consumer categories at any given time, a minimum duty of 6 paise (Rs.0.06) per unit of energy shall be levied.</u>
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18. By virtue of Act 10 of 2021, the fixed rate of duty of 6 paise per unit was changed to a rate of duty which would be fixed by the Government. Further, the Government could also fix different rates of Duty for electricity sold to different categories of consumers, with complete discretion being given to the Government to decide the basis on which consumers are to be categorized.

19. This amendment is challenged, by the petitioners, on the following grounds:

A) The levy of duty on sale of electricity, which is in the nature of a Tax, can be done only by the State legislature, under Entry 53 of List II of the VII Schedule to the Constitution of India. It would also be open to the legislature to delegate certain parts of this exercise, after laying down guidelines, to the discretion of the executive. However, there are limitations on the extent to which such discretion can be delegated. The ratio laid down by the Hon'ble Supreme Court, in a series of judgments, is to the effect that essential legislative functions cannot be delegated and any delegation would have to meet the test of whether such delegation has been made after laying down guidelines and limits. Failure to lay down such guidelines and limits would render such delegation invalid and void.

B) The guidelines and limits have to be discernible in the Legislation itself and such guidelines and limits cannot be imported from any other source. There is nothing, either in the preamble or the scheme of the Duty

Act, to discern any policy or guidelines, for exercise of discretion by the executive.

C) The delegation of fixing the rate of tax, without prescribing a maximum limit, and the delegation of discretion, in determining categories of consumers, without prescribing the basis on which such categories are to be determined, is beyond the valid limits of delegation. This would amount to delegation of essential legislative powers. Hence, all the amendments are invalid and have to be struck down.

D) The Amendment, to Section 3 of the Duty Act, by Amendment Act 10 of 2021, is still born as the amendment Act was not notified.

E) Section 12 (4) of the Andhra Pradesh Electricity Reforms Act, 1998, casts a duty on the Government to consult the APERC, before enacting any law relating to the field of electricity. No such consultation was carried out, before Act 10 of 2021 or Act 23 of 2024, were enacted. This lack of consultation is sufficient to invalidate the Amendment Acts. Reliance is placed on **M.P. Cement Manufacturers Association vs. State of M.P.**¹ Further, the slight difference in the phraseology of the Madhya Pradesh Act, which was under consideration in the above judgment, and the language of the A.P. Reforms Act, does not make any difference for the application of the said judgment to the present case.

¹ (2004) 2 SCC 249

F) The levy of additional duty, is a form of cross subsidy and has to be set aside on the ground that such cross subsidy is violative of the requirement of the national tariff policy of 2016, capping the tariff at 120% of the cost of supply.

20. The learned Advocate General, appearing for the State, at the stage of challenge to Act 10 of 2021, Act and G.O.Ms.No.7 and G.O.Ms.No.22 had sought to defend Act 10 of 2021 on the following grounds:

A) Section 3 (1) of the Duty Act, is not bereft of legislative guidelines as it sets out the taxable event, the person who is to be taxed, the measure of tax, that is the duty on a per unit basis and consequently there is no excessive delegation. Reliance is placed on **Union of India and another vs. Mohit Minerals Private Limited²** and **Vivek Narayan Sharma and others vs. Union of India³**.

B) The objects and reasons in the Bill introduced for Act 10 of 2021, set out the reason for increase of electricity duty and the same is a sufficient guideline.

C) The circumstances which prevailed, at the time the law was made, can be looked into for ascertaining the guidelines. The circumstances have been set out in the objects and reasons in the Bill and they provide sufficient guidelines. Reliance is placed in **Shashikant Laxman Kale and**

² (2022) 10 SCC 700

³ (2023) 3 SCC 1

another vs. Union of India and another⁴ and **B. Prabhakar Rao and Ors., vs. State of Andhra Pradesh and Ors.**,⁵.

D) The judgment of the Hon'ble Supreme court, in **Municipal Corporation of Delhi vs. Birla Cotton, Spinning and Weaving Mills, Delhi and another**⁶, requires to be considered in view of the following tests set out, in paragraph 97, in the subsequent judgment of the Hon'ble Supreme Court, in **Union of India and another vs. Mohit Minerals Private Limited**. Once the legislation under question meets these tests, the challenge, on the basis of excessive delegation would fail. As set out in Ground A, there is compliance of these tests and Act 10 of 2021 would be valid. The said tests, as set out in the above judgment, in **Union of India v. Mohit Minerals (P) Ltd.**, are as follows:

97. In assessing this claim, this Court is bound by a decision of the Constitution Bench in **Mathuram Agrawal vs. State of M.P.**,⁷ which has identified three essential elements of taxation:

- (i) The subject of the tax;
- (ii) The person who is liable to pay the tax; and
- (iii) The rate at which the tax is to be paid.

This test has been further elaborated by a two-Judge Bench of this Court in **Govind Saran Ganga Saran [Govind Saran Ganga Saran v. CST]**,⁸ by further requiring the designation of the measure or the value to

⁴ (1990) 4 SCC 366

⁵ 1985 Supp SCC 432

⁶ AIR 1968 SC 1232

⁷ (1999) 8 SCC 667

⁸ 1985 Supp SCC 205 : 1985 SCC (Tax) 447 : AIR 1985 SC 1041

which the rate of the tax will be applied. Thus, the four canons of taxation are as follows:

- (i) The taxable event;
- (ii) The person on whom the levy is imposed;
- (iii) The rate at which the levy is imposed; and
- (iv) The measure or the value to which the rate will be applied.

E) The Duty Act, enacted under Entry 53 of the State list, in the VII Schedule of the Constitution of India, deals with levy of duty on the sale of electricity, while the Andhra Pradesh Electricity Reforms Act, 1998 and the Electricity Act, 2003, enacted under Entry 38 in List 3 of the VII schedule to the Constitution of India, deal with regulation of the generation, transmission and distribution of electricity and the tariff to be fixed for such activities. The inclusion of cross subsidy, in the fixation of tariff, by APERC would not affect the power of the State to levy duty under the Duty Act.

F) The lack of consultation with APERC, before passing the Amendment Acts, would not render the Amendment acts invalid, even according to the judgment of the Hon'ble Supreme Court in **M.P. Cement Manufacturers Association vs. State of M.P.**

G) Though, the government had not issued any notification to bring Act 10 of 2021, into force, Act 10 of 2024 came to be passed for bringing the provisions of Act 10 of 2021 into force, with effect from 26.08.202. Consequently, the contention, that Act 10 of 2021 is still born, is incorrect.

21. The subsequent amendment, of section 3 of the Duty Act, by Act 23 of 24, was assailed by the petitioners, on the following grounds:

A) Though an upper limit and a lower limit, on the rate of duty that can be fixed, by the government, has been stipulated, the same would continue to suffer from the vice of excessive delegation. This is because the range of six paise to one rupee per unit means that the government can fix any rate of duty from six paise per unit to one rupee which is about sixteen times that value. Such a large range is excessive delegation.

B) The objection, relating to the discretion granted in relation to identification of categories, raised against Act 10 of 2021 remains and has not been addressed.

C) Act 10 of 2021 was reserved for the assent of the Hon'ble president of India and was brought into force after obtaining such assent. However, no such assent of the Hon'ble President of India was obtained for Act 23 of 2024 and as such Act 23 of 2024 is invalid.

D) The Appellate Tribunal, under the Electricity Act, 2003 had stipulated that the upper limit of cross subsidy, between different consumers, cannot cross 120% of the cost of supply and the outer limit of one rupee per unit takes the cost of supply beyond this limit. No additional duty could have been levied, once APERC had fixed the tariff after fixing the cross subsidy.

22. The learned Advocate General, answering the challenge raised to Act 23 of 2024, contended that:

A) The fixation of a minimum and maximum limit, by Act 23 of 2024, on the rate of duty, is a sufficient guideline and the ground of excessive delegation would not remain.

B) The objects and reasons, set out in Act 23 of 2024, set out the guidelines for identification of categories and the same would suffice to meet the challenge, of lack of guidelines, raised by the petitioners.

C) The objections relating to cross subsidy and the alleged breach of the upper limit fixed by the Appellate tribunal do not arise as the levy of duty to subsidize the tariff payable by agricultural consumers is outside the purview of the regulatory commissions and the ambit of the Electricity Reforms Act, 1998 or the Electricity Act, 2003.

CONSIDERATION OF THE COURT:

23. In view of these rival submissions, Issue No.1, can be subdivided into the following issues:

1A. Whether, lack of consultation with APERC, said to be required under section 12 (4) of the Andhra Pradesh Electricity Act, 1998, would invalidate Act 10 of 2021 and Act 23 of 2024?

1B. Whether, levy of additional duty, under the Duty Act, can be set

aside on the ground that it amounts to cross subsidy which goes beyond the limit set out in the national tariff policy and is against the tariff fixed by APERC or the appellate commission?

- 1C. Whether the Amendment, to Section 3 of the Duty Act, by Amendment Act 10 of 2021, is still born as the Amendment Act was not notified?
- 1D. Whether the lack of Presidential assent would invalidate Act 10 of 2024 or Act 23 of 2024?
- 1E. Whether Act 10 of 2021 and Act 23 of 2024 would amount to abdication of essential legislative functions of the legislature on account of excessive delegation of power to the executive, in terms of fixation of rates of duty and identification of categories of consumers?

ISSUE 1A:

24. Section 12 (4) of the Andhra Pradesh Electricity Reforms Act, 1998, reads as follows:

12(4). The State Government shall consult the Commission in relation to any proposed legislation or rules concerning any policy direction and shall duly take into account the recommendation by the Commission on all such matters.

25. The Madhya Pradesh Vidyuth Sudhar Adhiniyam, 2000 was enacted for the purposes of carrying out electricity reforms, in the same manner as the Andhra Pradesh Electricity Reforms Act, 1998. Section 12 (3) of this Act reads as follows:

“12. (3) The State Government shall consult the Commission in relation to any policy directive which it proposes to issue or any legislation is proposed to be enacted *affecting the electricity industry* it shall duly take into account the recommendation if any, given by the Commission within such reasonable time as the State Government may specify.

26. An earlier Act, known as the Madhya Pradesh Upkar Adhiniyam 1981, was sought to be amended for the purposes of levying a cess of 20 paise per unit of power produced by captive power producers in the State of Madhya Pradesh. This amendment was challenged on various grounds, including the ground that, the requirement of consulting the Commission, before enacting the amendment act, was not undertaken. The Hon'ble Supreme Court after considering this objection, in **M.P.Cement Manufacturers Association Vs. State of M.P.**, held as follows:

33. The first question, therefore, is, whether Section 12(3) does in fact impose any fetter on the power of the State to legislate. Sub-section (3) refers to “any policy directive which it proposes to issue” or “any legislation proposed to be enacted affecting the electricity industry”. It does not stop the State from enacting the legislation but merely states that prior to any legislation being *proposed*, the Government shall “duly take into account the recommendation if any, given by the Commission”. It was and is open to the State Legislature to repeal this law. As long as it continues to be operative, it must be assumed that it was not a mere exercise in futility and some effect must be given to the words of sub-section (3) of Section 12. As we read the sub-section, it is a mandate to the policy-makers who, before proposing legislation, are required to consult the State Regulatory Commission.

38. In our opinion, the consequence of non-consultation in terms of Section 12(3) of the Sudhar Adhiniyam would not

be an incompetent piece of legislation but a legislation introduced in breach of a salutary requirement to consult an expert statutory body. The statutory requirement for consultation with a body of experts before proposing legislation will serve as an inbuilt safeguard against a challenge under Article 14 of the Constitution apart from anything else.

39. Nevertheless, we do not propose to decide, whether by reason only of such non-consultation, Section 3(2) of the 1981 Adhiniyam is violative of Article 14, nor do we propose to decide whether the cess of 20 paise is excessive, nor the other grounds urged by the appellants pertaining to Article 14. We have referred to the provisions of the Sudhar Adhiniyam so that the State Government may in future act in consonance with Section 12(3).

27. Though, the Hon'ble Supreme Court had held that it would not go into this question, the ratio laid down in paragraph 38, of the above judgment, would be binding on this court. There was some objection raised, by the State, that there was some difference, in the language of section 12 (4) of the Andhra Pradesh Electricity Reforms Act, 1998, and section 12 (3) of the Madhya Pradesh Vidyuth Sudhar Adhiniyam, 2000. This objection need not detain us, as the judgment of the Hon'ble Supreme Court would not in any manner assist the case of the petitioners. This issue is held against the petitioners.

ISSUE 1B :

28. The learned single Judge, in W.P.No.16619 of 2022 and batch, had held that the issue of fixation of tariff and levy of duty arise out of different Acts and no conflict arises between the two Acts. The learned single judge

had also held that the plenary power of taxation available under Entry 53 of the 2nd list, in the VII schedule of the constitution, cannot be controlled by the regulatory power granted under Entry 38 of the 3rd list. We have not been shown any reason to differ with this view of the learned single judge. However, we think it would be appropriate, to add our reasons, in support of the view of the learned single judge.

29. Entry 38 of the 3rd list, (concurrent list) in the VII schedule to the Constitution, empowers both the Central and the State government to regulate all aspects of electricity. The Electricity Reforms Act, 1998 and the Electricity Act, 2003, had been enacted under this entry. It may be noted that this entry does not give power to either the state or central legislature to levy any tax or duty on any aspect of electricity. However, Entry 53 of the 2nd list (state list) in the VII Schedule empowers a state legislature to levy duty on the sale and consumption of electricity. The Duty Act, though it is a pre-constitutional legislation, would draw its sustenance from this entry. Both Acts operate in different and discrete zones, with no overlap. Clearly, the regulation of tariffs, by appropriate commissions, cannot extend to a supervisory role over the power of the State, under the provisions of the Duty Act, to levy Duty. We are fortified, in this view, by the judgment of the Hon'ble Supreme Court, in **Southern Petrochemical Industries Company Ltd., vs. Electricity Inspector Etio And Ors.**⁹.

⁹ (2007) 5 SCC 447 [Paras 138 and 139]

30. Even if such a supervisory role is permissible, the contentions of the petitioners are not made out. Part VII of the Electricity Act, 2003, consisting of sections 61 to 66 sets out the manner and method in which tariff is to be fixed. Section 61, empowers the appropriate regulatory commission, subject to the guidelines set out in section 61, to frame regulations, specifying the terms and conditions for the determination of tariff. One such guideline is Section 61 (g), which stipulates that the Tariff should progressively reflect the cost of supply of electricity and to reduce cross subsidies in the manner specified by the Appropriate Commission. The petitioners contend that the requirement of reducing cross subsidies falls squarely within the ken of the regulatory scheme of the Electricity Act, 2003 and the regulation of Tariff by the APERC or the appellate Commission. They contend that the levy of duty, where it seeks to subsidize any class of consumers or even otherwise would have to be subject to the regulation of tariff, by APERC. The petitioners contend that, the levy of additional duty is an attempt at cross subsidy, by indirect means. They contend that, as long as the cost of subsidy is being recovered from them, by way of extra duty, or by increase in tariff rates, it would remain a cross subsidy.

31. The producers of electricity and the intermediaries such as transmission and distribution service providers, whether in the form of monolithic state electricity boards or private entities, were entitled to the price of electricity and the price of their services. The fixation of such price was

done by the state governments, under the provisions of the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948. Initially, the state governments fixed tariff on the basis of the cost incurred by the entities producing, transmitting or distributing electricity. Over time, the state governments, sought to cushion the burden of increasing tariffs on certain categories, including agricultural consumers. This could only be done by subsidizing such consumers. For this purpose, the tariff was fixed at a rate, higher than the cost of supply, for some categories of consumers such as industrial and commercial consumers and the surplus, so obtained, was adjusted against the Tariff fixed for other consumers. This method of subsidizing the electricity charges payable by consumers is “cross subsidy”. In this method, one category of consumers subsidizes the cost of supply of electricity to another category of consumers.

32. This method of subsidy casts a huge burden on certain categories of consumers and skewed the system of Tariff fixation. The Electricity Act, 2003 seeks to end this method of subsidy and bring in a system of direct subsidy by the state. The scheme of the Act and the guidelines, in the form of regulations or the Tariff policy is to ensure that the tariff fixed for consumers is as close as possible, to the cost of supply of electricity. The regulatory authorities, under the Electricity Act, 2003, are empowered to regulate and fix the tariff for consumers. This power would be restricted to deciding the components of the Tariff. Cross subsidy is a part of

the Tariff and can be regulated. At this stage, it is necessary to understand that Tariff is the cost of supply of energy and other components, including cross subsidy, which goes to the coffers of the person generating, transmitting or distributing electricity. Duty is the amount which is paid by such persons to the State, over and above the Tariff, with discretion to the State to permit such person to reimburse itself from the consumer. Electricity duty is outside the Tariff and is additional to Tariff. Hence, levy of Duty cannot be regulated under the provisions of the Electricity Act, 2003. In fact, the Electricity Act itself does not speak of doing away with all forms of subsidy or regulating all forms of subsidy. It only seeks to remove or reduce cross subsidy, while permitting direct subsidy by the State. Section 65 of the Electricity Act, 2003, which reads as follows, makes it clear:

65. Provision of subsidy by State Government.–

If the State Government requires the grant of any subsidy to any consumer or class of consumers in the tariff determined by the State Commission under section 62, the State Government shall, notwithstanding any direction which may be given under section 108, pay, in advance and in such manner as may be specified, the amount to compensate the person affected by the grant of subsidy in the manner the State Commission may direct, as a condition for the licence or any other person concerned to implement the subsidy provided for by the State Government:

Provided that no such direction of the State Government shall be operative if the payment is not made in accordance with the provisions contained in this section and the tariff fixed

by the State Commission shall be applicable from the date of issue of orders by the Commission in this regard.

33. Under this provision, a fair price/tariff is to be fixed for all categories of consumers. In the event of the State being desirous of subsidizing the tariff for any category of consumer, an estimate would have to be made about the quantum of such subsidy and the state government would pay this subsidy to the licensees, who are supplying such electricity.

34. When the State pays the subsidy amount, it would be a direct subsidy. The decision to pay such subsidy is within the purview of the State. The appropriate commission can only insist on payment of the subsidy amount, to the licensee, and would not have any control over how much of the Tariff can be subsidized by the State. The language of section 65 does not give such regulatory oversight to the appropriate commission.

35. The Central Government, in Paragraph 8.3 of the Tariff policy, dated 28.01.2016, also took the following view:

“In terms of the Section 61(g) of the Act, the Appropriate Commission shall be guided by the objective that the Tariff progressively reflects the efficient and prudent cost of supply of electricity.

36. The State Governments can give subsidy, to the extent they consider appropriate, as per the provisions of Section 65 of the Act. Direct subsidy is a better way to support the poorer categories of consumers than the mechanism of cross- subsidizing the Tariff across the board. Subsidies

should be targeted effectively and in a transparent manner. As a substitute of cross subsidies, the State Government has the option of raising resources through the mechanism of electricity duty and giving direct subsidies to only needy consumers. This is a better way of targeting subsidies effectively.”

37. To sum up, cross subsidy which is a part of the Tariff can be regulated under the provisions of the Electricity Act. However, levy of Duty, either for the purposes of subsidizing consumers or for any other purpose, would be outside the scope of the regulatory process under the Electricity Act, 2003. The levy of Duty or additional Duty is the sole prerogative of the State and cannot be regulated under the Electricity Act, 2003. This issue is held against the petitioners.

ISSUE 1C:

38. Though this issue may not arise for consideration, it is being dealt with as it has been raised by the petitioners. Section 1 (2) of Act 10 of 2021 stated that: "It shall come into force on such date as the State government may, by notification, appoint".

39. There is no dispute that no notification has been issued by the State Government. However, Section 1 (2) of Act 10 of 2021 was amended by Act 10 of 2024, to read as follows: "It shall be deemed to have come into force on the date of publication of the Act in the A.P. Gazette, dated 26th August 2021" By virtue of this amendment, the requirement of issuing a notification, to bring Act 10 of 2021, into force has been dispensed with. Even if it is held that

Act 10 of 2021 did not come into effect, till Act 10 of 2024 had been enacted, the same would not make any difference as the amended provision of Section 1(2) had brought Act 10 of 2021 into force, with effect from 26.08.2021. Accordingly, the contention of the Petitioners, that Act 10 of 2021 is a still born Act which never came into force, cannot be accepted.

ISSUE 1D:

40. Act 10 of 2021 was reserved by the Governor on the 24th of December, 2020 for the consideration and assent of the President and received the assent, of the President, on 07.08.2021. The subsequent amendment Acts 10 of 2024 and 23 of 2024, were neither reserved for the assent of the President nor was such assent received. The petitioners contend that since consent was not obtained, both Act 10 of 2024 and 23 of 2024 are invalid.

41. It cannot be said that the assent of the President is required, for the amending Act, on the sole ground that the principal Act had obtained the assent of the President, unless it can be shown that such assent is required under any of the provisions of the Constitution. The petitioners, except contending that the assent of the President is needed for Act 10 of 2024 and 23 of 2024, have not explained why such assent of the President was required. The assent of the President is required, in the circumstances enumerated under Article 301 read with 304, Article 254 and where the

Governor, reserves a Bill for the assent of the President, under Article 200 and 201 of the Constitution.

42. In case of Article 254 (2), If a law is made by the State legislature, with respect to any matter enumerated in the Concurrent list and contains any provision which is repugnant to any earlier law made by parliament or any existing law, the State law would prevail if the assent of the President is received. Act 10 of 2024 and Act 23 of 2024 have been enacted in respect of matters enumerated in Entry 53 of the State list and not under any entry in the concurrent list. The impugned Acts are not related to any entry in the concurrent list. The question of seeking the assent of the president, on this ground, would not arise. The Duty Act seeks to levy Duty on the sale of electricity, within the State. This Act does not restrict any interstate trade or commerce, to attract the provisions of Article 301 to 304 of the Constitution. The main Duty Act, which is a pre Constitutional Act, obviously did not receive the assent of the President. However, Act 10 of 2021, which amended section 3 of the Duty Act, received the assent of the President, after it had been reserved, for such assent, by the Governor. However, the reasons for such a course of action have not been explained, either by the petitioners or the State. The Hon'ble Supreme Court, when faced with a similar situation, had held in **Syed Ahmed Aga And Ors., vs. State Of Mysore And Ors.**,¹⁰ that reservation of a Bill, for the assent of the President, is not necessary for

¹⁰ (1975) 2 SCC 131

an Act seeking to amend a principal Act, which has obtained such assent, if the amendment is within the purview of the principal Act. In the present case the amendments to section 3 and 7 of the Duty Act, are within the purview of the main Duty Act and as such no further assent would be required. This issue is held against the petitioners.

ISSUE 1E:

43. The delegation of the functions of (1) fixation of rate of duty and (2) identification of categories of consumers is challenged on the ground of excessive delegation. It would be necessary to consider this twin challenge, separately.

44. The limits of legislative delegation came to be considered by, a 7 member Bench of, the Hon'ble Supreme Court, while answering a reference, by the President, under Article 143 of the Constitution, in **Delhi Laws Act, 1912, In Re, 1951 SCC 568 : 1951 SCC OnLine SC 45 at page 606**. Separate opinions were given by the Bench. The summary of these opinions has been set out, in a subsequent judgment, by the Hon'ble Supreme Court in **Rajnarin Singh vs. Patna Administration Committee**¹¹, in the following manner:

26. The Court had before it the following problems. In each case, the Central Legislature had empowered an executive authority under its legislative control to apply, at its discretion, laws to an area which was also under the legislative sway of the Centre. The variations occur in the

¹¹ (1954) 2 SCC 82

type of laws which the executive authority was authorised to select and in the modifications which it was empowered to make in them. The variations were as follows:

1) Where the executive authority was permitted, at its discretion, to apply without modification (save incidental changes such as name and place), the whole of any Central Act already in existence in any part of India under the legislative sway of the Centre to the new area:

This was upheld by a majority of six to one.

2) Where the executive authority was allowed to select and apply a Provincial Act in similar circumstances:

This was also upheld, but this time by a majority of five to two.

3) Where the executive authority was permitted to select future Central laws and apply them in a similar way:

This was upheld by five to two.

4) Where the authorization was to select future Provincial laws and apply them as above:

This was also upheld by five to two.

5) Where the authorization was to repeal laws already in force in the area and either substitute nothing in their places or substitute other laws, Central or Provincial, with or without modification:

This was held to be ultra vires by a majority of four to three.

(6) Where the authorization was to apply existing laws, either Central or Provincial, with alterations and modifications; and

(7) Where the authorisation was to apply future laws under the same conditions:

The views of the various members of the Bench were not as clear cut here as in the first five cases, so it will be necessary to analyse what each Judge said.

32. In our opinion, the majority view was that an executive authority can be authorised to modify either existing or future laws but not in any essential feature. Exactly what constitutes an essential feature cannot be enunciated in general terms, and there was some divergence of view about this in the former case, but this much is clear from the opinions set out above; it cannot include a change of policy.

45. The issue again came up in **Calcutta Corporation vs. Liberty Cinema**¹². In this case, section 548 of the Calcutta Corporation Act, granted absolute discretion to the Corporation to fix the license fee that can be collected from cinema theatres. A change in the method of calculating the said fees resulted in the fee being increased from Rs. 400 per annum to Rs. 6000 per annum approximately. The scope of delegation came to be challenged, on the ground of unguided delegation amounting to abdication of the essential legislative functions. The Hon'ble Supreme Court, in its majority decision held that fixation of rate of tax was not an essential legislative function and even otherwise such delegation was permissible if guidelines are given. In that case, the Hon'ble Supreme court also held that such guidance could be found in the financial needs of the corporation and the purposes for which the funds would be used, under the Corporation Act.

¹² AIR 1965 SC 1107 :: (1965) 2 SCR 477

46. The aforesaid view, of the Hon'ble Supreme Court, came up for consideration in **Devi Dass Gopalkrishnan and Others vs. The State of Punjab and Others**¹³. In this case, Section 5 of the East Punjab General Sales Tax Act which had provided for levy of sales tax on the turnover of the dealer at such rates as the provincial Government notified, was declared to be void by the High Court of Punjab. It was declared to be void on the ground that it gave unlimited power to the Government to levy a tax at any rate it thought fit. Thereafter, Section 5 was amended to include and be deemed to have always included the words "not exceeding two paise in a rupee". The High Court held that the amendment cured the defect and gave new life to section 5. This view was challenged before the Hon'ble Supreme Court. The State, in its defense, relied upon the judgment of the Hon'ble Supreme Court in **Calcutta Corporation vs. Liberty Cinema**. The Hon'ble Supreme court held as follows:

The law on the subject is fairly well settled though difficulties are met in its application to each case. In *Corporation of Calcutta v. Liberty Cinema (1)*, on which Mr. Ganapathy Iyer relied, relates to a levy imposed on cinema houses under the Calcutta Municipal Act (33 of 1951). There, the majority held that the levy therein was a tax, that the fixing of a rate of tax was not of the essence of legislative power, that the fixing of rates might be left to a non-legislative body and that when it was so left to such a body, the Legislature must provide guidance for such

¹³ AIR 1967 SC 1895

fixation. The majority held in that case that such a guidance was found in the monetary needs of the municipality for discharging the functions entrusted to it under the Act. Sarkar, J., speaking for the majority, said thus:

"It (the Municipal Corporation) has to perform various statutory functions. It is often given power to decide when and in what manner the functions are to be performed. For all this it needs money and its needs will vary from time to time with the prevailing exigencies. Its power to collect tax, however, is necessarily limited by the expenses required to discharge those functions. It has, therefore, where rates have not been specified in the statute, to fix such rates as may be necessary to meet its needs. That, we think, would be sufficient guidance to make the exercise of its power to fix the rates valid."

If this decision is an authority for the position that the Legislature can delegate its power to a statutory authority to levy taxes and fix the rates in regard thereto, it is equally an authority for the position that the said statute to be valid must give a guidance to the said authority for fixing the said rates and that guidance cannot be judged by stereotyped rules but would depend upon the provisions of a particular Act. To that extent his judgment is binding on us. But we cannot go further and hold, as the learned counsel for the respondents asked us to do, that whenever a statute defines the purpose or purposes for which a statutory authority is constituted and empowers it to levy a tax that statute necessarily contains a guidance to fix the rates; it depends upon the provisions of each statute.

Learned counsel for the State argued that under Article 162 of the Constitution the executive power of the State shall extend to matters with respect to which the Legislature of a State has power to make laws: that is to say, the executive power of a State extends to matters mentioned in List II of the Seventh Schedule to the Constitution; that under Article 266(1) of the Constitution all the taxes collected will go to the Consolidated Funds of the State, that the State has an unlimited power to raise funds by taxation to discharge its vast constitutional duties and that necessarily the amount of tax required would depend upon its needs which can only be known to it. In the said circumstances, the argument proceeds, the doctrine of constitutional and statutory needs would afford reasonable guidelines for the Government to fix the rate and that the principle laid down by this Court in the aforesaid decision would equally apply to this case. If this argument be accepted, it would mean that every statute conferring a naked power on the Government to impose taxes would be good, for in every case the discharge of the constitutional duties by the Government would be deemed to be a sufficient guide for fixing the rate. We cannot accept this argument for three reasons, namely, (1) the decision of this Court in *Calcutta Corporation v. Liberty Cinema*(1) should be confined only to the provisions of the Calcutta Municipal Act wherein this Court found a guidance; (2) the provisions of the Sales Tax Act, including the preamble, do not disclose any policy or guidance to the State for fixing the rates; and (3) the general constitutional power to impose taxes has no relevance for discovering a statutory policy under a particular Act.

47. The next case of importance, was **Municipal Corporation of Delhi Vs. Birla Cotton Spinning and Weaving Mills**. In this case, another 7 judge bench, of the Hon'ble Supreme Court, was again called upon to consider the limits of delegation of legislative power. The Hon'ble Supreme Court reviewed the law and held as follows:

20. The last case to which reference may be made is *Devi Das Gopal Krishnan v. State of Punjab* [AIR (1967) SC 1895]. There the law on the subject of excessive delegation on was summarized thus at p. 1901:

“The Constitution confers a power and imposes a duty on the legislature to make laws. The essential legislative function is the determination of the legislative policy and its formulation as a rule of conduct. Obviously it cannot abdicate its functions in favour of another. But in view of the multifarious activities of a welfare State, it cannot presumably work out all the details to suit the varying aspects of a complex situation. It must necessarily delegate the working out of details to the executive or any other agency. But there is danger inherent in such a process of delegation. An over-burdened legislature or one controlled by a powerful executive may unduly overstep the limits of delegation. It may not lay down any policy at all; it may declare its policy in vague and general terms; it may not set down any standard for the guidance of the executive; it may confer an arbitrary power on the executive to change or modify the policy laid down by it without reserving for itself any control over subordinate legislation. This self effacement of legislative power in

favour of another agency either in whole or in part is beyond the permissible limits of delegation. It is for a court to hold on a fair, generous and liberal construction of an impugned statute whether the legislature exceeded such limits. But the said liberal construction should not be carried by the courts to the extent of always trying to discover a dormant or latent legislative policy to sustain an arbitrary power conferred on executive authorities. It is the duty of the court to strike down without any hesitation any arbitrary power conferred on the executive by the legislature.”

It may be added that *Devi Dass case* [AIR (1967) SC 1895] did not differ from the *Liberty Cinema case* [(1965) 2 SCR 477] . What was held there was that there can be no general principle that merely the needs of the delegate can necessarily and always be a guideline. It was further held that each statute has to be examined to find out whether there are guidelines therein which prevent delegation from being excessive.

28. A review of these authorities therefore leads to the conclusion that so far as this Court is concerned the principle is well established that essential legislative function consists of the determination of the legislative policy and its formulation as a binding rule of conduct and cannot be delegated by the legislature. Nor is there any unlimited right of delegation inherent in the legislative power itself. This is not warranted by the provisions of the Constitution. The legislature must retain in its own hands the essential legislative functions and what can be delegated is the task of subordinate legislation necessary for implementing the purposes and objects of the Act. Where the legislative policy is enunciated with sufficient

clearness or a standard is laid down, the courts should not interfere. What guidance should be given and to what extent and whether guidance has been given in a particular case at all depends on a consideration of the provisions of the particular Act with which the Court has to deal including its preamble. Further it appears to us that the nature of the body to which delegation is made is also a factor to be taken into consideration in determining whether there is sufficient guidance in the matter of delegation.

29. What form the guidance should take is again a matter which cannot be stated in general terms. It will depend upon the circumstances of each statute under consideration; in some cases guidance in broad general terms may be enough; in other cases more detailed guidance may be necessary. As we are concerned in the present case with the field of taxation, let us look at the nature of guidance necessary in this field. The guidance may take the form of providing maximum rates of tax upto which a local body may be given the discretion to make its choice, or it may take the form of providing for consultation with the people of the local area and then fixing the rates after such consultation. It may also take the form of subjecting the rate to be fixed by the local body to the approval of the Government which acts as a watch-dog on the actions of the local body in this matter on behalf of the legislature. There may be other ways in which guidance may be provided. But the purpose of guidance, whatsoever may be the manner thereof, is to see that the local body fixes a reasonable rate of taxation for the local area concerned. So long as the legislature has made provision to achieve that reasonable rates of taxation are

fixed by local bodies, whatever may be the method employed for this purpose — provided it is effective — it may be said that there is guidance for the purpose of fixation of rates of taxation. The reasonableness of rates may be ensured by fixing a maximum beyond which the local bodies may not go. It may be ensured by providing safeguards laying down the procedure for consulting the wishes of the local inhabitants. It may consist in the supervision by Government of the rate of taxation by local bodies. So long as the law has provided a method by which the local body can be controlled and there is provision to see that reasonable rates are fixed, it can be said that there is guidance in the matter of fixing rates for local taxation. As we have already said there is pre-eminently a case for delegating the fixation of rates of tax to the local body and so long as the legislature has provided a method for seeing that rates fixed are reasonable, be it in one form or another, it may be said that there is guidance for fixing rates of taxation and the power assigned to the local body for fixing the rates is not uncontrolled and uncanalised. It is on the basis of these principles that we have to consider the Act with which we are concerned.

27. The last case to which reference may be made is *Devi Das Gopal Krishnan* [AIR (1967) SC 1895]. This was not a case of municipal taxation. In this case the legislature gave power to the State Government to fix sales tax at such rates as the State Government thought fit. The case of *Liberty Cinema* [(1965) 2 SCR 477] was distinguished in this case and it was pointed out that the needs of the State and the purposes of the Act could not give sufficient guidance for the purpose of fixing rate of

sales tax by the State Government. There is in our opinion a clear distinction between delegation of fixing the rate of tax like sales tax to the State Government and delegation of fixing rates of certain taxes for purposes of local taxation. The needs of the State are unlimited and the purposes for which the State exists are also unlimited. The result of making delegation of a tax like sales tax to the State Government means a power to fix the tax without any limit even if the needs and purposes of the State are to be taken into account. On the other hand, in the case of a municipality, however large may be the amount required by it for its purposes it cannot be unlimited, for the amount that a municipality can spend is limited by the purposes for which it is created. A municipality cannot spend anything for any purposes other than those specified in the Act which creates it. Therefore, in the case of a municipal body, however large may be its needs, there is a limit to those needs in view of the provisions of the Act creating it. In such circumstances there is a clear distinction between delegating a power to fix rates of tax, like the sales tax, to the State Government and delegating a power to fix certain local taxes for local needs to a municipal body.

48. The learned Counsel, appearing on both sides, cited subsequent judgments, to buttress their point of view. These judgments, which are discussed below have, with some variations, adhered to the above principles. **{V. Nagappa vs. Iron Ore Mines Cess Commissioner and Anr.,¹⁴, M.K. Papaiah & Sons vs. Excise Commissioner and Anr.,¹⁵, Supreme Court**

¹⁴ {1973 (2) SCC 1 [Paragraphs 5, 14 to 18]

¹⁵ 1975 (1) SCC 492 [Paragraphs 9 and 18],

Employees' Welfare Association vs. Union of India and Anr.,¹⁶ A.N. Parasuraman and Ors., vs. State of Tamil Nadu,¹⁷ Agricultural Market Committee vs. Shalimar Chemical Works Ltd.,¹⁸ and Union of India and Anr., vs. Mohit Minerals Private Limited}.

49. In **V. Nagappa vs. Iron Ore Mines Cess Commissioner and Anr**, the Hon'ble Supreme Court was faced with a challenge to the Iron Ore Mines Labour Welfare Cess Act (Central Act 58 of 1961), on the ground of excessive delegation of legislative power as the power to fix the rate of cess has been delegated to the government without any guidelines. This contention was negated by the Hon'ble Supreme Court on the ground that the Act itself gave guidelines in the following manner:

18. The policy of the Act has been clearly stated; the purposes for which the tax collected should be expended have been enumerated and the purposes are such that it is reasonably possible for the delegate to calculate the amount necessary to meet them. In these circumstances, we think that the necessary guidance for fixing the rate can be found in the amount of expenditure necessary for carrying out the purposes of the Act. Quite apart from these circumstances, the fact that Section 2 has fixed the maximum rate would indicate that the delegate is not given an uncontrolled discretion in the matter of fixing the rate. The area within which the discretion has to be exercised having been clearly demarcated, it cannot be

¹⁶ 1989 (4) SCC 187 [Paragraphs 62, 99 and 100]

¹⁷ 1989 (4) SCC 683 [paragraphs 3 and 5 to end],

¹⁸ 1997 (5) SCC 516 [Paragraphs 6,7 21 to 26]

said that a blanket power to fix the rate has been delegated to Government.

This judgment would not be applicable to the present case, as the Duty Act does not set out the purposes for which the Duty, collected under the Duty Act, is to be expended. In the absence of such purposes being enumerated, no estimate of the quantum of Duty, required for such purposes can be calculated.

50. In **M.K. Papaiah & Sons vs. Excise Commissioner and Anr.**, Section 22 of the Mysore Excise Act, which gave power to the government to fix rates of excise duty on the arrack purchased by excise contractors from government depots was challenged on the ground of excessive delegation. This plea was negatived by the Hon'ble Supreme Court on the basis of the following ratio:

18. That laying of rules before the Legislature is control over delegated legislation is implied in the speech of Lord Thankerton in the House of Lords in *Minister of Health v. King* [1931 AC 524] where he said:

“In this case, as in similar cases that have come before the courts, Parliament has delegated its legislative function to a Minister of the Crown, but in this case Parliament has retained no specific control over the exercise of the function by the Minister, such as a condition that the order should be before Parliament and might be annulled by a resolution of either House within a limited period.”

51. In the present case, the fixation of rates and categorization of consumers is by executive order and not by way of rules issued under the Duty Act. In such a situation, the principle laid down in the above judgment would not be applicable to the present case.

52. The judgment in **Supreme Court Employees Welfare Association vs. Union Of India And Anr.**, , has been cited for the purposes of contending that the validity of subordinate legislation has to be considered on the basis of the nature, objects and scheme of the parent Act and the purpose for which the power has been delegated. There can be no quarrel with this proposition of law.

53. In **A.N. Parasuraman and Ors., vs. State of Tamil Nadu**, certain provisions of The Tamil Nadu Private Educational Institutions (Regulation) Act, 1966, came to be challenged on the ground that the government has been vested with unrestricted discretion amounting to abdication of legislative power. The Hon'ble Supreme Court, upheld this challenge, by observing:

8. The provisions of the Act indicate that the State Government has been vested with unrestricted discretion in the matter of the choice of the competent authority under Section 2(c) as also in picking and choosing the institutions for exemption from the Act under Section 22. Such an unguided power bestowed on the State Government was struck down as offending Article 14 in the case of the *State of W.B. v. Anwar Ali Sarkar* [(1952) 1 SCC 1 : AIR 1952 SC 75 : 1952 SCR 284 :

1952 Cri LJ 510] . A similar situation arose in *K.T. Moopil Nair v. State of Kerala* [AIR 1961 SC 552 : (1961) 3 SCR 77] where, under Section 4 of the Travancore-Cochin Land Tax Act, 1955, all lands were subjected to the burden of a tax and Section 7 gave power to the Government to grant exemption from the operation of the Act. The section was declared ultra vires on the ground that it gave un-canalized, unlimited and arbitrary power, as the Act did not lay down any principle or policy for the guidance of exercise of the discretion in respect of the selection contemplated by Section 7.

9. Similar is the position under Sections 6 and 7 of the present Act. The learned counsel for the respondent State contended that by reference in Section 4 to the particulars to be supplied in the application for permission, it can be easily imagined that the competent authority has to take into account all that may be validly relevant for the grant or refusal of permission. We are afraid, the section cannot be saved by recourse to this argument in absence of any helpful guidance from the Act. The position in this case cannot be said to be on a better footing than that of the Gold (Control) Act, 1968, which was challenged in *Harakchand Ratanchand Banthia v. Union of India* [(1969) 2 SCC 166 : (1970) 1 SCR 479] . As is indicated by the judgment, the Gold (Control) Act had to be passed as gold was finding its way into the country through illegal channels, affecting the national economy and hampering the country's economic stability and progress, and the customs department was found unable to effectively combat the smuggling. Section 27(6)(a) of the said Act stated that in the matter of issue or renewal of licences the "Administrator shall have regard to the number of dealers existing in the region in which the applicant intends to carry on business as a dealer". The expression "region" was not defined in the Act and Section

27(6)(b) required the Administrator to have regard to “the anticipated demand, as estimated by him, of ornaments in the region”. The argument in support of the validity of the Act was that these provisions provided adequate guidance to the Administrator, which the Court rejected, holding that the expression “anticipated demand” was vague and not capable of objective assessment and, therefore, was bound to lead to a great deal of uncertainty. The other provisions mentioning “suitability of the applicant” in Section 27(6)(e) and “public interest” in Section 27(6)(g) were also held to have failed in laying down any objective standard or norm so as to save the Act. The provisions of the Act, with which we are dealing in the present cases, are far less helpful for the purpose of upholding its validity.

54. In **Agricultural Market Committee vs. Shalimar Chemical Works Ltd.**, the question that came up before the Hon’ble Supreme Court was whether a rule which created a legal fiction of sale within the area of market committee if the agricultural product was weighed within the market area, was beyond the legislative policy. The Hon’ble Supreme court, after noticing that the provisions of the Act did not provide for such a legal fiction had held as follows:

26. The principle which, therefore, emerges out is that the essential legislative function consists of the determination of the legislative policy and the legislature cannot abdicate essential legislative function in favour of another. Power to make subsidiary legislation may be entrusted by the legislature to another body of its choice but the legislature should, before delegating, enunciate

either expressly or by implication, the policy and the principles for the guidance of the delegates. These principles also apply to taxing statutes. The effect of these principles is that the delegate which has been authorized to make subsidiary rules and regulations has to work within the scope of its authority and cannot widen or constrict the scope of the Act or the policy laid down thereunder. It cannot, in the garb of making rules, legislate on the field covered by the Act and has to restrict itself to the mode of implementation of the policy and purpose of the Act.

27. Applying the above principles to the instant case, it will be seen that the market fee can be levied under the Act only on the sales and purchase of notified agricultural produce within the notified area. Explanation I to Section 12 creates a legal fiction and provides that if any notified agricultural produce is taken out of a notified market area, it shall be presumed to have been purchased or sold within such area. The presumption is a rebuttable presumption and can be shown to be not correct. The policy in enacting this provision is only to cover such transactions of sale and purchase for which direct evidence may not be available. Since a notified agricultural produce can be sold only within the notified market area, and, that too, by a trader having a licence issued to him by the committee, it is obvious that if such commodity is moved out of the notified area, it would mean either that it has been sold or purchased. Otherwise, there would be no occasion to move such commodity out of the notified market area. The legal fiction was thus limited to the “moving” of the commodity from within the market area to a place outside the market area.

28. The Government to whom the power to make rules was given under Section 33 and the committee to whom power to make bye-laws was given under Section 34 widened the scope of “presumption” by providing further that if a notified agricultural produce is weighed, measured or counted within the notified area, it shall be deemed to have been sold or purchased in that area. The creation of legal fiction is thus beyond the legislative policy. Such legal fiction could be created only by the legislature and not by a delegate in exercise of the rule-making power. We are, therefore, in full agreement with the High Court that Rule 74(2) and Bye-law 24(5) are beyond the scope of the Act and, therefore, ultra vires. The reliance placed by the assessing authority as also by the appellate and revisional authority on these provisions was wholly misplaced and they are not justified in holding, merely on the basis of weighment of “copra” within the notified area committee that the transaction of sale took place in that market area.

55. In **Union of India and Anr., vs. Mohit Minerals Private Limited**, two notifications, issued under the GST regime, were under challenge. In the course of the challenge, certain provisions of law were also challenged on the ground of excessive delegation. The Hon’ble Supreme Court, while considering such contentions, had held as follows:

92. The contention of the respondents is that Section 5(3) of the IGST Act only delegates the power to identify the categories of goods or services on which the tax shall be paid on reverse charge basis. It is contended that since Notification No. 10 of 2017 identifies an importer as a

service *recipient* for the purposes of Section 5(3), it is ultra vires the parent Act on the ground of excessive delegation.

93. The legislature is required to perform its essential legislative functions. Once the skeletal structure of the policy is framed by the legislature, the details can emerge through delegated legislations. [*MCD v. Birla Cotton Spg. & Wvg. Mills*, AIR 1968 SC 1232; *Avinder Singh v. State of Punjab*, (1979) 1 SCC 137.] It is a settled position that the legislature cannot delegate its “essential legislative functions”. [*Delhi Laws Act, 1912, In re*, 1951 SCC 568; *Edward Mills Co. Ltd. v. State of Ajmer*, AIR 1955 SC 25; *A.N. Parasuraman v. State of T.N.*, (1989) 4 SCC 683.] The essential legislative functions with respect to the GST law are the levy of tax, subject-matter of tax, taxable person, rate of taxation and value for the purpose of taxation. The principles governing these essential aspects of taxation find place in the IGST Act : Section 5(1) identifies the subject-matter of taxation as inter-State supplies of goods, services or both; Section 2(107) of the CGST Act identifies a taxable person; Section 5(1) provides a maximum cap of 40% as the rate of taxation; and Section 5(1) stipulates that the value of taxation be determined under Section 15 of the CGST Act.

96. In determining the vires of the impugned notifications, a few preliminary contentions raised by the respondents would have to be addressed. The respondents have argued that no charge has been created for the ocean freight transaction to be taxed in the hands of the importer. It has been alleged that only Section 5(1) is a charging provision and Sections 5(3) and 5(4) cannot independently create a charge.

97. In assessing this claim, this Court is bound by a decision of the Constitution Bench in *Mathuram Agrawal* [*Mathuram Agrawal v. State of M.P.*, (1999) 8 SCC 667] which has identified three essential elements of taxation:

- (i) The subject of the tax;
- (ii) The person who is liable to pay the tax; and
- (iii) The rate at which the tax is to be paid.

This test has been further elaborated by a two-Judge Bench of this Court in *Govind Saran Ganga Saran* [*Govind Saran Ganga Saran v. CST*, 1985 Supp SCC 205 : 1985 SCC (Tax) 447 : AIR 1985 SC 1041] by further requiring the designation of the measure or the value to which the rate of the tax will be applied. Thus, the four canons of taxation are as follows:

- (i) The taxable event;
- (ii) The person on whom the levy is imposed;
- (iii) The rate at which the levy is imposed; and
- (iv) The measure or the value to which the rate will be applied.

98. Section 5(1) of the IGST Act specifies the four canons of taxation : (i) the inter-State supply of goods and services as the taxable event; (ii) the “taxable person” as the person on whom the levy is imposed; (iii) the taxable rate as such a rate notified by the Union Government on the recommendation of the GST Council, capped at forty per cent; and (iv) the taxable value as the value determined under Section 15 of the CGST Act.

56. In **Vivek Narayan Sharma and Ors., vs. Union Of India**, a Constitution Bench of the Hon'ble Supreme Court, had reviewed the law, in this regard, in the following manner:

135. It is thus necessary to cull out the legislative policy from various factors like the words in the statute, the Preamble to the Act, the Statement of Objects and Reasons, and in a given case, even the attendant circumstances. After the legislative policy is found, then the words used in the statute must be so interpreted such that it advances the purpose of the statute and does not defeat it.

179. K.N. Wanchoo, C.J., speaking for himself and J.M. Shelat, J. held in *Birla Cotton, Spinning and Weaving Mills [MCD v. Birla Cotton, Spg. & Wvg. Mills, (1968) 3 SCR 251 : AIR 1968 SC 1232]* that where the legislative policy is enunciated with sufficient clarity or a standard is laid down, the courts should not interfere. What guidance should be given and to what extent and whether guidance has been given in a particular case at all depends on a consideration of the provisions of the particular Act with which the Court has to deal, including its Preamble. They further held that the nature of the body to which delegation is made is also a factor to be taken into consideration in determining whether there is sufficient guidance in the matter of delegation. The Court further held that what form the guidance should take is again a matter which cannot be stated in general terms. It will depend upon the circumstances of each statute under consideration. It further held that in some cases guidance in broad general terms may be enough, in other cases more detailed guidance may be necessary.

190. It has been held in *Gwalior Rayon [Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. v. CST, (1974) 4 SCC 98 : 1974 SCC (Tax) 226]* that the essential legislative function is the determination of the legislative policy and its formulation as a rule of conduct. The legislature cannot abdicate its functions in favour of another. However, in view of the multifarious activities of a welfare State, it cannot presumably work out all the details to suit the varying aspects of a complex situation. It must, therefore, necessarily delegate the working out of details to the executive or any other agency. The Court also cautions about the danger inherent in the process of delegation. It observed that an overburdened legislature or one controlled by a powerful executive may unduly overstep the limits of delegation. It may not lay down any policy at all; it may declare its policy in vague and general terms; it may not set down any standard for the guidance of the executive; it may confer an arbitrary power on the executive to change or modify the policy laid down by it without reserving for itself any control over subordinate legislation. It has been held that it is for the court to hold on a fair, generous and liberal construction of an impugned statute to examine whether the legislature exceeded such limits.

191. We may gainfully refer to the following observations in the concurring judgment of K.K. Mathew, J. : (*Gwalior Rayon Silk case [Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. v. CST, (1974) 4 SCC 98 : 1974 SCC (Tax) 226]* , SCC pp. 121-22, para 57)

“57. Delegation of “law-making” power, it has been said, is the dynamo of modern Government. Delegation by the legislature is necessary in order that the exertion of legislative power does not become a futility. *Today, while*

theory still affirms legislative supremacy, we see power flowing back increasingly to the executive. Departure from the traditional rationalisation of the status quo arouses distrust. The legislature comprises a broader cross-section of interests than any one administrative organ; it is less likely to be captured by particular interests. We must not, therefore, lightly say that there can be a transfer of legislative power under the guise of delegation which would tantamount to abdication. At the same time, we must be aware of the practical reality, and that is, that Parliament cannot go into the details of all legislative matters. The doctrine of abdication expresses a fundamental democratic concept but at the same time we should not insist that law-making as such is the exclusive province of the legislature. The aim of Government is to gain acceptance for objectives demonstrated as desirable and to realise them as fully as possible. The making of law is only a means to achieve a purpose. It is not an end in itself. That end can be attained by the legislature making the law. But many topics or subjects of legislation are such that they require expertise, technical knowledge and a degree of adaptability to changing situations which Parliament might not possess and, therefore, this end is better secured by extensive delegation of legislative power. The legislative process would frequently bog down if a legislature were required to appraise beforehand the myriad situations to which it wishes a particular policy to be applied and to formulate specific rules for each situation. The presence of Henry VIII clause in many of the statutes is a pointer to the necessity of extensive delegation. The hunt by Court for legislative policy or guidance in the crevices of a statute or the nook and cranny of its Preamble is not an edifying spectacle. It is

not clear what difference does it make in principle by saying that since the delegation is to a representative body, that would be a guarantee that the delegate will not exercise the power unreasonably, for, if ex hypothesi the legislature must perform the essential legislative function, it is certainly no consolation that the body to which the function has been delegated has a representative character. *In other words, if, no guidance is provided or policy laid down, the fact that the delegate has a representative character could make no difference in principle.*"

(emphasis supplied)

192. Though the learned Judge in *Gwalior Rayon [Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. v. CST*, (1974) 4 SCC 98 : 1974 SCC (Tax) 226] cautions against abdication under the guise of delegation, he also emphasises a necessity to be aware about the practical reality i.e. Parliament cannot go into the details of all legislative matters. The learned Judge observed that the aim of the Government is to gain acceptance for objectives demonstrated as desirable and to realize them as fully as possible. The learned Judge observed that there are many topics or subjects of legislation which are such that they may require expertise, technical knowledge and a degree of adaptability to changing situations which Parliament might not possess and, therefore, this end is better secured by extensive delegation of legislative power. It has been held that the legislative process would frequently bog down if a legislature were required to appraise beforehand the myriad situations to which it wishes a particular policy to be applied and to formulate specific rules for each situation. The Court further emphasised for guidance for the delegate to exercise the delegated power.

208. For considering the question as to whether the RBI Act provides guidance to the delegatee or not, the entire scheme, object and the purpose of the Act has to be taken into consideration. The guidance could be sought from the express provision empowering delegation or the other provisions of the statute, the Preamble, the scheme or even the very subject-matter of the statute. If the guidance could be found in whatever part of the Act, the delegation has to be held to be valid. A great amount of latitude has to be given in such matters. It has been consistently held that Parliament and the State Legislatures are not bodies of experts or specialists. They are skilled in the art of discovering the aspirations, the expectations and the needs of the people whom they represent. It has been held that they function best when they concern themselves with general principles, broad objectives and fundamental issues instead of technical and situational intricacies which are better left to better equipped full-time expert executive bodies and specialist public servants.

210. We are of the considered view that there is sufficient guidance in the Preamble as well as the scheme and the object of the RBI Act. As already discussed hereinabove, there cannot be a straitjacket formula, and the question whether excessive delegation has been conferred or not has to be decided on the basis of the scheme, the object and the purpose of the statute under consideration.

57. The principles that can be extracted, from these judgments, are:

1. The function of the legislature is to formulate legislative policy and to enact it into binding Law.

2. After such formulation, the legislature may fill in the details of implementation or delegate the same to the executive or any other agency. However, such delegation, for the purposes of implementing the enactment, has to be within the guidelines and limits set out in the enactment itself. Any delegation beyond that would amount to excessive delegation and would be invalid.
3. The guidelines or limits can be explicit or should be discernible from the scheme and objects of the enactment.
4. The extent of guidance necessary and the form of guidance would differ, on a case to case basis, and would also be dependent upon the nature of the authority, to whom, legislation has been delegated.

58. Applying these principles, the delegation of fixing the rate of duty, without any minimum or maximum limit, by way of Act 10 of 2021, prima facie, appears to be excessive delegation. The State has contended that this prima facie view would not stand further scrutiny, once the attendant circumstances and scheme of the Act are taken into account. However, the law which needs to be tested is the Duty Act, as amended by Act 23 of 2024, as it had effectively subsumed the amendment put in place by Act 10 of 2021. The impugned part of Section 3 (1) of the Duty Act, as it stands today, is:

A duty calculated at the rate notified by the State Government from time to time for different consumer categories which shall not be less than 6 paise

(Rs.0.06) per unit of energy and not be more than 100 Paise, (Rs.1.00 rupee) per unit of energy,

59. The executive is delegated the power to fix the rate of duty between 6 paise and 1 rupee, per unit of electricity. The Hon'ble Supreme Court, in **Municipal Corporation of Delhi Vs. Birla Cotton Spinning and Weaving Mills**, had held that stipulation of the outer limit would be a sufficient guideline, in the following passage:

29. What form the guidance should take is again a matter which cannot be stated in general terms. It will depend upon the circumstances of each statute under consideration; in some cases guidance in broad general terms may be enough; in other cases more detailed guidance may be necessary. As we are concerned in the present case with the field of taxation, let us look at the nature of guidance necessary in this field. The guidance may take the form of providing maximum rates of tax upto which a local body may be given the discretion to make its choice, or it may take the form of providing for consultation with the people of the local area and then fixing the rates after such consultation. It may also take the form of subjecting the rate to be fixed by the local body to the approval of the Government which acts as a watch-dog on the actions of the local body in this matter on behalf of the legislature. There may be other ways in which guidance may be provided. But the purpose of guidance, whatsoever may be the manner thereof, is to see that the local body fixes a reasonable rate of taxation for the local area concerned. So long as the legislature has made provision to achieve that reasonable rates of taxation are

fixed by local bodies, whatever may be the method employed for this purpose — provided it is effective — it may be said that there is guidance for the purpose of fixation of rates of taxation. The reasonableness of rates may be ensured by fixing a maximum beyond which the local bodies may not go. It may be ensured by providing safeguards laying down the procedure for consulting the wishes of the local inhabitants. It may consist in the supervision by the Government of the rate of taxation by local bodies. So long as the law has provided a method by which the local body can be controlled and there is provision to see that reasonable rates are fixed, it can be said that there is guidance in the matter of fixing rates for local taxation. As we have already said there is pre-eminently a case for delegating the fixation of rates of tax to the local body and so long as the legislature has provided a method for seeing that rates fixed are reasonable, be it in one form or another, it may be said that there is guidance for fixing rates of taxation and the power assigned to the local body for fixing the rates is not uncontrolled and uncanalized. It is on the basis of these principles that we have to consider the Act with which we are concerned.

60. One of the guidelines that can be given, as per the above passage, would be the fixation of a maximum rate of tax or Duty. Though, this passage arises in a case of municipal taxation, the principle, of guidance being given by fixing the maximum rate, would be applicable even to taxes imposed by the State. The petitioners had further contended that, the range of six paise to one rupee, which is approximately 16 times the minimum rate,

is too wide a gap and amounts to unbridled discretion being given to the executive. However, this gap is not so large, if the value of money, in absolute terms, is taken into account. Further, the rate of Duty, at 6 paise per unit had not been touched for 28 years. Keeping in view the fall, in the value of money, the range of 6 paise to one rupee per unit cannot be termed to be too excessive. For these reasons, it must be held that the amendment to Section 3 of the Duty Act, by Act 23 of 2024, to the extent of giving discretion, to the executive, to fix the rate of Duty between six paise and one rupee per unit, is valid.

61. The learned Advocate General also sought to rely upon the judgment of the Hon'ble Supreme Court, in **Govind Saran Ganga Saran vs. CST.**, to contend that delegation of the power to fix the rate of duty, after fixing various other parameters would not amount to excessive delegation. This court is not going into this question in view of the opinion of this court that the fixation of a maximum rate is a sufficient guideline to save it from the vice of excessive delegation.

62. The question of identification of categories of consumers remains. The case of the petitioners is that the Duty Act, is a taxing statute, enacted for the purpose of raising funds, which can be used for any purpose, by the Government. Apart from this, no other object can be gleaned from the provisions of the Duty Act. The object of raising funds does not give out any guideline or policy for fixing the basis of categorization. In the absence of any

such guidance, the identification of categories of customers could not have been delegated.

63. The learned Advocate General, contends that, under G.O.Ms.No.7, different rates of duty are levied on sale of electricity, based on the categories of consumers mentioned in the yearly retail supply tariff orders that would be passed by APERC. He submits that G.O.Ms.No.7 is mentioned in the objects and reasons of Act 23 of 2024 and as such the categorization of consumers, by APERC, in the yearly retail supply orders, is the guidance that would be followed by the Government, while identifying different categories of consumers. He would also contend that, in similar circumstances, the erstwhile High Court of Andhra Pradesh, in **D.K.V.Prasada Rao and Ors., vs. The Government Of Andhra Pradesh**¹⁹, had upheld similar delegation to fix rates of admission to various classes, within cinema theatres.

64. The petitioners contend that Objects and Reasons cannot be looked into, for interpreting the provision of an Act. Reliance is placed upon **Aswini Kumar Ghose and Anr., vs. Arabinda Bose and Anr.**,²⁰ and **Kavalappara Kottarathil Kochuni @ Moopil Nayar and Ors., vs. States of Madras and Kerala and Ors.**,²¹. Further, the petitioners also contend that, the provisions of G.O.Ms.No.7 cannot be read into the provisions of the Duty Act, as Act 23 of 2024, mentions G.O.Ms.No.7, in passing and there is nothing in

¹⁹ AIR 1984 AP 75:: 1983 SCC Online AP 61

²⁰ AIR 1952 SC 369

²¹ AIR 1960 SC 1080

the language of the Objects and Reasons of Act 23 of 2024 to make out a case for reading such guidelines as part and parcel of the Duty Act. The petitioners also dispute the applicability of the judgment in **D D.K.V.Prasada Rao and Ors., vs. The Government Of Andhra Pradesh**. The learned Advocate General contends that the Objects and Reasons of an Act, on the basis of **Vivek Narayan Sharma and Ors., vs. Union Of India** and **Dharani Sugars and Chemicals Limited vs. Union of India and Ors.**, , can be looked into for obtaining guidance.

65. It is necessary to first go into the question of whether the Objects and Reasons of an Act can be looked into for obtaining guidance. The Hon'ble Supreme Court, which was considering the question of whether an Advocate enrolled with the Hon'ble Supreme Court was entitled to act before the Hon'ble High Court of Calcutta, in the case of **Aswini Kumar Ghose v. Arabinda Bose**, at page 266, refused to take the aid of the statement in the Objects and Reasons, for interpreting the Act, for the following reason:

32. As regards the propriety of the reference to the Statement of Objects and Reasons, it must be remembered that it seeks only to explain what reasons induced the mover to introduce the Bill in the House and what objects he sought to achieve. But those Objects and Reasons may or may not correspond to the objective which the majority of members had in view when they passed it into law. The Bill may have undergone radical changes during its passage through the House or Houses, and there is no guarantee that the reasons which led to its

introduction and the objects thereby sought to be achieved have remained the same throughout till the Bill emerges from the House as an Act of the Legislature for they do not form part of the Bill and are not voted upon by the members. We, therefore, consider that the Statement of Objects and Reasons appended to the Bill should be ruled out as an aid to the construction of a statute.

66. This principle was followed, by a Constitution bench of the Hon'ble Supreme Court, in **Kavalappara Kottarathil Kochuni @ Moopil Nayar and Ors., vs. States of Madras and Kerala and Ors.**

67. In **Dharani Sugars and Chemicals Limited vs. Union of India and Ors.**, the Hon'ble Supreme Court, while considering the question of lack of guidance, in the course of delegation of legislative functions, had held:

28. When it comes to lack of any guidelines by which the power given to RBI is to be exercised, it is clear from a catena of judgments that such guidance can be obtained not only from the Statement of Objects and Reasons and the Preamble to the Act, but also from its provisions. Thus, in *Harishankar Bagla v. State of M.P.* [*Harishankar Bagla v. State of M.P.*, (1955) 1 SCR 380 : AIR 1954 SC 465 : 1954 Cri LJ 1322] , this Court held: (SCR pp. 388-89 : AIR p. 468, para 9)

“9. The next contention of Mr Umrigar that Section 3 of the Essential Supplies (Temporary Powers) Act, 1946, amounts to delegation of legislative power outside the permissible limits is again without any merit. It was settled by the majority judgment in *Delhi Laws Act case* [*Delhi Laws Act, 1912, In re*, 1951 SCC 568 : 1951 SCR 747 :

AIR 1951 SC 332] that essential powers of legislature cannot be delegated. In other words, the legislature cannot delegate its function of laying down legislative policy in respect of a measure and its formulation as a rule of conduct. The legislature must declare the policy of the law and the legal principles which are to control any given cases and must provide a standard to guide the officials or the body in power to execute the law. The essential legislative function consists in the determination or choice of the legislative policy and of formally enacting that policy into a binding rule of conduct.

In the present case the legislature has laid down such a principle and that principle is the maintenance or increase in supply of essential commodities and of securing equitable distribution and availability at fair prices. The principle is clear and offers sufficient guidance to the Central Government in exercising its powers under Section 3. Delegation of the kind mentioned in Section 3 was upheld before the Constitution in a number of decisions of their Lordships of the Privy Council, vide *Russell v. R.* [*Russell v. R.*, (1882) LR 7 AC 829 (PC)] , *Hodge v. R.* [*Hodge v. R.*, (1883) LR 9 AC 117 (PC)] and *Shannon v. Lower Mainland Dairy Products Board* [*Shannon v. Lower Mainland Dairy Products Board*, 1938 AC 708 (PC)] and since the coming into force of the Constitution delegation of this character has been upheld in a number of decisions of this Court on principles enunciated by the majority in *Delhi Laws Act case* [*Delhi Laws Act, 1912, In re*, 1951 SCC 568 : 1951 SCR 747 : AIR 1951 SC 332] . As already pointed out, the Preamble and the body of the sections sufficiently formulate the legislative policy and the ambit and character of the Act is

such that the details of that policy can only be worked out by delegating them to a subordinate authority within the framework of that policy. Mr Umrigar could not very seriously press the question of the invalidity of Section 3 of the Act and it is unnecessary therefore to consider this question in greater detail.”

68. At first blush, there does appear to be a contradiction between these two judgments. However, a closer look would reveal that there is no such contradiction. In **Aswini Kumar Ghose v. Arabinda Bose**, the Hon’ble Supreme Court had held that the statement in the Objects and Reasons, cannot be used to interpret a provision of the Statute. In **Dharani Sugars and Chemicals Limited vs. Union of India and Ors.**, the Hon’ble Supreme Court was not looking at an interpretation of the Statute. The Hon’ble Supreme Court, after considering whether any guidelines, for exercise of discretion by the executive, can be extracted from the statement in the Objects and Reasons of that Statute, had held that such an exercise was permissible. In such circumstances, it would be open to this court to see if any such guidelines can be made out from the statement of Objects and Reasons, set out in Act 23 of 2024.

69. The law, as laid down by the Hon’ble Supreme Court, in the judgments cited above, is that the function of the legislature is to formulate the policy and purpose for which a Statute is sought to be enacted, leaving the details of the implementation to the executive. This latitude has to be given to the executive due to the complexity of present day economic activity and the

multifarious requirements of the regulatory and taxation framework. However, this latitude is, explicitly or implicitly, controlled by the requirement of adhering to the purposes of the Statute. Therefore, this Court is required to see what the purpose and object of the Act is, and consider whether such an inherent control, over the discretion given to the executive, can be found and formulated.

70. The Duty Act has been enacted to levy Duty on the sale and consumption of electricity in the State of Andhra Pradesh. It is a taxation statute, brought into existence to create revenue for the State. The Duty, collected under the Duty Act, is not a cess, which is to be used for a specific purpose. It would go into the general revenue stream of the State. No guidance can be gleaned from the structure of the Duty Act or from any of the attendant circumstances. The Learned Advocate General also does not contend that there is guidance, in the Duty Act, relating to categorization of consumers, even prior to Act 23 of 2024. It is his case that such guidelines have been introduced, by mention of G.O.Ms.No.7, in the objects and reasons given in Act 23 of 2024. For this purpose it is necessary to take a closer look at G.O.Ms.No.7 and the objects and reasons of Act 23 of 2024.

71. The relevant part of G.O.Ms. No.7, reads as follows:

In exercise of the powers conferred by sub-section (1) Section 3 of the Andhra Pradesh Electricity Duty Act, 1939, the Government of Andhra Pradesh hereby levy an electricity duty of 1 (one) rupee per kWh (unit) on energy

sales for the Commercial and Industrial Consumers as indicated in the relevant yearly Retail Supply Tariff Order issued by Hon'ble APERC. For Domestic Consumers, the existing electricity duty of 6 paise per KWh (unit) shall continue to be levied, while Agriculture consumers shall be exempted from levy of any such duty.

72. The Retail Supply Tariff Order, dated 30.03.2022, for 2022-23, which has been placed before this court, is the relevant Tariff Order. In this order, consumers have been categorized, for purposes of fixing Tariff, at the retail level, into two broad categories, namely LT category and HT category, with further sub division in the following manner:

LOW TENSION

(I) Domestic, (II) Commercial, (III) Industry, (IV) Institutional, (V) Agriculture & related.

Each sub category is further categorized, on the basis of consumption of electricity or on the basis of the nature of the consumer.

HIGH TENSION

(I) HT at 11 KV

A. Townships, Colonies, Gated Communities and Villas, B. Commercial & others, C. Industry D. Institutional and E. Agriculture and Related.

(II) HT at 33 KV,

A. Townships, Colonies, Gated Communities and Villas, B. Commercial & others, C. Industry D. Institutional and E. Agriculture and Related.

(III) HT at 132 KV.

A. Townships, Colonies, Gated Communities and Villas, B. Commercial & others, C. Industry D. Institutional and E. Agriculture and Related.

73. In G.O.Ms.No.7, the Government, while fixing the rates of Duty, appears to have relied upon this categorization. However, there are certain significant variations. The Tariff order speaks of two categories of Low Tension (LT) and High Tension (HT) consumers which are, sub-divided into 5 sub-categories. G.O. Ms. No. 7, does not differentiate between LT and HT consumers and only refers to Domestic, Commercial, Industrial and Agricultural categories. There is no mention of the sub categories, within the categories relating to Low Tension consumers. There is no mention of Institutional consumers, in LT or HT categories or of "Townships, Colonies, Gated Communities and Villas", in the HT category. There is neither levy of Duty or exemption from Duty, on these two classes of consumers. In such a situation, it can only be said that the classification, in G.O.Ms.No.7, is an adaptation and not an unequivocal adoption of the categories in the Tariff order.

74. Another aspect that needs to be gone into is the relevance and effect, of the mention of G.O.Ms.No.7, in the Objects and Reasons of Act 23 of 2024. The Objects and Reasons, given for enacting Act 23 of 2024, are as follows:

- i. The rate of Duty, at 6 paise per unit, which was fixed on 01.12.1993, had remained unchanged for the past 28 years and there was a need to increase it, especially because other states had increased the rate of Duty substantially. Since, the attempt to increase this rate of Duty, by way of Act 10 of 2021, was found to be burdened by some defects, it was necessary to bring in a fresh legislation to rectify these defects;
- ii. to provide legislative guidance for the range of Duty rates, in the Act itself;
- iii. to protect all Duty recovery actions, by the licensees, from various persons (iv) to protect the collection of Duty, between 26.08.2021, when Act 10 of 2021 was brought into force, by Act 10 of 2024 and the notification of Duty, by G.O.Ms.No.7, dated 08.04.2022.

75. The relevant extract of the Objects and Reasons, where G.O. Ms. No. 7 is mentioned is:

To achieve the above objectives, the State Legislature has passed the Act No.10 of 2021 i.e., Andhra Pradesh Electricity Duty (Amendment) Act, 2020. As the said Act was published, pursuant to securing all the mandatory assents, by way of Gazette Notification on 26th August 2021, the same date was intended for the purposes of bringing the Act No. 10 of 2021 into force. However, the terms “appoint” / “appointed date” could not be defined under section 1 (2) of the said Amendment Act, which provides that “it shall come into force on such date as the

State Government may, by notification, appoint,” and a separate “notification” could not be issued due to an inadvertent omission. To avoid potential legal complications, the State Legislature passed Act No. 10 of 2024 i.e., Andhra Pradesh Electricity Duty (Amendment) Act, 2024 on March 6th, 2024, which amended the A.P.E.D. Amendment Act of 2020. This 2024 amendment brought the APED; Amendment Act of 2020 into force from the date of its publication in the A.P. Gazette on 26th August, 2021.

Further, due to the imminent need to 1) protect all duty recovery actions of the licensees from various persons or classes of persons for the entire extent of the electricity duty collected by the State Government from the licensees, 2) to protect the collection of electricity duty during the period between the date of A.P.E.D. Amendment Act 2020 coming into force, i.e., 26.08.2021, and the duty rates notified vide G.O.Ms.No.7, dated 08.04.2022, and 3) to provide appropriate legislative guidance on the range of duty by way of validating amendments and substitutions to the fiscal statute with retrospective effect, it has been felt necessary to propose amendments to sections 3(1) and 7(1) of the Andhra Pradesh Electricity Duty Act, 1939 (as amended by Act No.10 of 2021 and Act No.10 of 2024) (hereinafter referred to as “the Act”).

In order to provide legislative guidance for the range of duty rates in the Act itself, a rate of duty between 0.06 rupees (6 paise) per unit (KWH) of energy and 1.00 rupees (100 paise) per unit (KWH) of energy is being provided in Section 3 (1) of the Act. Within the range of duty provided, the State Government may decide on the

rate to be levied, considering the increase in cost of supply and current consumption year by year, the costs and obligations of developing physical infrastructure, and a variety of dynamic factors with a bearing on the subject which vary from time to time.

76. None of the Objects and Reasons relate to the question of categorization. They are either relating to fixation of rate of Duty or the need to rectify the legal defects, in the earlier legislative attempts, to increase the rate of Duty and the recovery of such Duty, by the licensees. Even the part relating to fixation of Duty, is on the question of the range within which such discretion is to be given, and not on categorization. G.O.Ms.No.7 is a solitary executive order, adapting the classification, adopted by the APERC, in its Tariff order. Neither the Text nor the Context, of G.O.Ms.No.7, indicates that this adaptation of the classification, in the Tariff order, is a long term or permanent feature of classification by the executive. The adaptation or adoption of the nomenclature, used in the Tariff Order, in G.O.Ms.No.7, does not make out any case of giving future guidance, in relation to the method or basis of identifying categories of consumers. There is every possibility of the Government coming up with a new and different basis for classification of consumers and the classification, mentioned in G.O.Ms.No.7, does not bind the Government to adhere only to this classification.

77. The Objects and Reasons, of Act 23 of 2024, state that the Act is being enacted for protecting the collection and recovery of Duty levied under

G.O.Ms.No.7. In view of the context, in which it has been mentioned, the mere mention of G.O.Ms.No.7, in the Objects and Reasons, would not mean that guidance is being provided to the executive.

78. The stand of the State is that, guidance has to be elicited on the basis of the Objects and Reasons, of Act 23 of 2024. As discussed above, no guidance can be obtained from these Objects and Reasons. Consequently, the delegation of power, to the executive, to identify categories without any guideline or policy, would amount to excessive delegation, which is not permissible.

79. The learned Advocate General, had contended, in the alternative, that the ratio in **D.K.V. Prasada Rao and Ors., vs. The Government of Andhra Pradesh**, would be applicable to the facts of the present case. In the above case, the delegation of the power to fix rates of admission, to various classes, in cinema theatres, was challenged before the erstwhile High Court of Andhra Pradesh. The challenge was negatived on the ground that fixation of rates, in that case, had sufficient guidance. The said judgment would not be of assistance to the State, as there was no challenge to the classification of the different classes of admission into the theatres and this case only dealt with fixation of rates and not with the issue of classification or categorization.

80. Accordingly, it is held that the delegation of the power, to categorize, is not accompanied by any guidance, either in the Duty Act or otherwise and consequently, the amendment to section 3, by Act 23 of 2024,

as well as Act 10 of 2021, to the extent of giving discretion to the government to categorize consumers as per its discretion is invalid. This invalidity is on account of excessive delegation. The other amendments to section 3 do not suffer from any infirmity and are upheld.

ISSUE NO. 2

Whether the amendment to Section 7 of the Duty Act, by Act 23 of 2024 is valid?

81. The changes made in section 7, of the Duty Act are as follows:

Section 7(1) (As stood prior to its amendment)	Section 7(1) (as amended by Act No.23 of 2024)
Any licensee may with the previous sanction of the State Government and subject to such conditions as they may impose, recover from any person or class of persons to whom energy, is sold at a price of more than twelve paise per unit, the duty which falls to be paid by the licensee in respect of energy so sold or any part of it, as may be determined by the State Government.	Any Licensee may, with the sanction of the state government, <u>whether granted prior or post facto and subject to such condition as may be imposed at any time</u> , recover from any person or class of persons to whom energy, is sold at a price of more than twelve paise per unit, the duty which falls to be paid by the licensee in respect of energy so sold or any part of it, as may be determined by the State Government. Provided that the duty recovered or to be recovered by the licensee from any person or class of persons, for the full amount of duty paid/falls to be paid by the licensee to the state government, shall always be deemed to have been recovered with the

	sanction of the State Government, which sanction can be granted either before or after any action for recovery.
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82. The petitioners contend that, under section 7 of the un-amended Duty Act, prior sanction was necessary for recovery of duty, by the Licensees from the consumers, whereas the amendment removes this safeguard and gives unbridled and unguided power to the executive to grant sanction post or pre facto, for collection of Duty from the consumers. They would point out to a situation where, the licensee recovers Duty, without sanction and is permitted to utilize the same, for any length of time, on the pretext that the Government had not taken a decision to sanction such recovery or not. The petitioners contend that in such a situation, there would be collection of Duty without authority of Law. Further, such power is given, to the licensees, without any guidelines and would be bad for excessive delegation of power.

83. The learned Advocate General would contend that the plenary power of the legislature would include the power to legislate retrospectively. He would also contend that the State is the ultimate beneficiary of the collection of Duty and as such, pre or post facto sanction would not make any difference. It is further contended that this amendment had been carried out for the purposes of saving the collection of the Duty from 26.08.2021 till 19.12.2024, when Act 23 of 2024 had been brought into force.

84. The scheme of the Duty Act, prior to the impugned amendment of Section 7 of the Duty Act, needs to be considered. The Duty, under the Duty Act is levied and collected, by the State, from the licensee. However, the State, under Section 7, can permit the licensee to reimburse itself, by collecting the said Duty from its consumers. This permission was to be obtained before any Duty could be collected from the consumers. At this stage another facet needs to be considered. Taxation statutes are broadly categorized into direct taxes and indirect taxes. Direct taxation statutes are Acts where the levy and collection is on the taxpayer under that Act, without any opportunity to pass on the liability. Indirect Taxation statutes are Acts where the person who is liable to pay the tax, is permitted to pass on the burden. Normally, passing on the burden is again a matter of contract between the person liable to pay the tax and the person to whom such liability is being passed on. In short, the person to whom the liability is sought to be passed on has a say in the matter and can decline to bear the burden. This does not appear to be the case, under the Duty Act. The language of Section 7 makes it clear that this permission is a sanction to collect, without reference to consent of the consumers. The consumer has no say in the matter and the licensee is entitled to pass on the Duty. Effectively, wherever such prior sanction is given, the levy and collection of Duty is shifted to the consumer. This can also be seen in the language in which G.O.Ms.No.277, dated 09.12.1994, has been couched. In this G.O., sanction is granted to collect

Duty from the consumers subject to certain conditions contained therein. None of the conditions require the consent of the consumers for collection of Duty from them. On the contrary, it is stipulated, in condition (d) that the licensee can exercise powers under section 24 (1) of the Indian Electricity Act, 1910 to recover the Duty. Condition (e) directs that interest at the rate of 24% per annum can be collected as interest, on unpaid Duty, from the consumer.

85. Under the above scheme, the Duty Act is neither a classical direct tax nor indirect tax system. It is a statute where a direct tax regime could be changed into an indirect tax regime, of sorts, by the government giving prior sanction. The option of making such a switch was delegated to the government alone. This scheme is now modified to permit the licensees to collect the Duty, levied on them, without any prior sanction. The sanction can be pre or post facto. The collection of Duty, from the consumers, is at the sole discretion of the licensees. In effect, the burden and liability of payment of Duty, on the consumers, can be decided by the licensees, who are non state entities, without reference to the government and the situation can be rectified only if the government intervenes, subsequently. This kind of delegation is not delegation to the government, but delegation to private/public entities, with oversight given to the government. Such a delegation, by any stretch of imagination, would not be permissible.

86. The Hon'ble Supreme Court in **M.P.Cement Manufacturers Association vs. State of M.P.**, had held that electricity Duty is a tax. Under

the amended Section 7, a licensee, without prior approval, can collect Duty from its consumers. This collection, as observed above, is not a matter of contract between the licensee and the consumers. It is collection of tax, by the licensee, under authority of Law, acting as an agent of the State. The government which does not interfere in such collection can at a later stage refuse post facto sanction. This would mean that a tax has been collected, from the consumers, without authority of Law. Such a recovery of tax would be violative of Article 265 of the Constitution of India. A provision of law, which enables such a situation, would also be violative of Article 265 of the Constitution.

87. It was open to the legislature to have shifted to an indirect tax regime, by simply stipulating that Duty can always be collected, by a licensee, from its consumers, subject to an exemption being given by the government, from such collection. Instead, the legislature chose to amend section 7, in the manner set out above. It would have to be construed that, the legislature was not proposing to change the system, except to the extent of giving discretion to the licensees to collect Duty from the consumers. The learned Advocate General contends that this amendment is for the purposes of protecting the collection of Duty between 21.08.2021 and 19.12.2024. Such a contention could have been considered, if the amendments had restricted itself to this period, by treating the same as a onetime ratification of the collection of Duty.

However, the open ended provision, permitting such collection in the future also, militates against any such consideration.

88. In the circumstances, the amendment to section 7, including the proviso would have to be declared to be invalid and violative of Article 265 of the Constitution of India apart from amounting to excessive delegation.

ISSUE – 3

Whether G.O.Ms.No.7, dated 08.04.2022 is valid?

89. G.O.Ms.No.7 has been issued on the basis of the amended section 3 of the Duty Act, empowering the government to fix different rates of Duty to different categories of consumers. The power to fix any rate of Duty, between six paise to one rupee per unit, has been upheld by this court. The power to categorize consumers has been struck down. Consequently, the fixation of different rates of Duty, for different categories identified by the government would have to be set aside. In view of the above, this court is not going into the other contentions raised by either side. Accordingly, G.O.Ms.No.7 is struck down.

90. However, it would also have to be observed that the proviso to Section 3, fixing the minimum rate of Duty at 6 paise per unit is valid. Consequently, levy of Duty, irrespective of the category of the consumer, subject to such exemptions that may have been given, under section 3A of the Duty Act, would be valid.

ISSUE – 4

Whether G.O.Ms.No.22, dated 23.10.2024 is valid?

91. Clause 3 (a) of G.O.Ms.No.22 reads as follows:

3. Without prejudice to the Government's stand that the levy as undertaken pursuant to the G.O.Ms.No.7, date 08.04.2022 is strictly in accordance with law and in accordance with the sanction as obtained in G.O.Ms.No.277 (Energy & Forests (Pr.III) Department), date 09.12.1994. However, as an abundant precaution, Government after careful examination of the above issue and in exercise of the powers under sub-section (1) of Section 7 of the Andhra Pradesh Electricity Duty Act, 1939 (as amended from time to time)

a. Accords permission to the Licenses / DISCOMSs (APCPDCL, APSPDCL and APEPDCL) to recover the Electricity Duty at the rate(s) and from the consumers / class of consumers as notified in the G.O.Ms.No.7, Energy (Power.III) Department, dated 08.04.2022, to whom energy is sold at a price of more than 12 paise per unit, subject to the following conditions.

i) The electricity duty recoverable from such consumer or class of consumers shall not be a part of the price charged for the energy sold by the Licensees / DISCOMSs.

ii) The duty recoverable from a consumer or class of consumers shall be a first charge on the amounts recoverable by the Licensees / DISCOMSs for the energy supplied by the Licensees / DISCOMSs and shall be a debt due by the Licensees / DISCOMSs to the State Government.

92. As can be seen from the above extract, this G.O. has been issued for permitting licensees to collect, from consumers, the Duty fixed under G.O.Ms.No.7. Since G.O.Ms.No.7, has been struck down, the question of granting sanction to collect Duty, fixed under G.O.Ms.No.7, would not arise. Accordingly, G.O.Ms.No.22 is also struck down. As this G.O. has been struck down, on this ground, this court is not going into the other contentions raised against this G.O.

93. The Government, while issuing G.O.Ms.No.22, had stated, in clause 3, that earlier sanction, for licensees, to collect Duty from consumers, was already available, under G.O.Ms.No.277, dated 09.12.1994. This G.O. has not been challenged. Therefore, sanction, to collect Duty, at the rate of six paise per unit, from the consumers would continue to be in effect.

94. For the aforesaid reasons, all the cases are disposed of in terms of the following order:

1. The amendment to Section 3, by Act 23 of 2024, to the extent of granting power to the government to fix the rate of Duty between six paise to one rupee per unit is upheld.
2. The amendment to Section 3, by Act 10 of 2021 and Act 23 of 2024, to the extent of granting power to the government to identify categories of consumers, for purposes of fixing the rate of tariff is set aside.

3. The proviso, to Section 3, stipulating that, in the absence of the rate of duty notified by the state government for different consumer categories at any given time, a minimum duty of 6 paise (Rs. 0.06) per unit of energy shall be levied, shall remain unaffected.
4. The amendments to Section 7, by Act 23 of 2024, are struck down.
5. G.O.Ms.No.7, dated 08.04.2022 is struck down. However, the government is entitled to collect Duty at the rate of 6 paise per unit, throughout the period from the date when Act 10 of 2021 was published in the Gazette till such time as the rate of duty is modified, in accordance with law. Further, the exemption granted to agricultural consumers under G.O.Ms.No.82, dated 07.07.2003, remains in force.
6. G.O.Ms.No.22, dated 23.10.2024, is struck down. However, G.O.Ms.No.277, dated 09.12.1994, remains in force throughout the disputed period and the Licensees are permitted to recover Duty, at the rate of 6 paise per unit, from the consumers, subject to any exemption that may have been granted, or would be granted, under section 3A of the Duty Act.

There shall be no order as to costs.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

DHIRAJ SINGH THAKUR, CJ

R. RAGHUNANDAN RAO, J

Js.

HON'BLE MR. JUSTICE DHIRAJ SINGH THAKUR, CHIEF JUSTICE
&
HON'BLE MR. JUSTICE R. RAGHUNANDAN RAO

W.P.No.29672 of 2023 & batch
(per Hon'ble Sri Justice R.Raghunandan Rao)

26th June, 2025

Js