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IN THE HIGH COURT OF KARNATAKA, BANGALORE

DATED THIS THE 30<sup>th</sup> DAY OF MARCH, 2011

PRESENT

THE HON'BLE MR. JUSTICE V.G.SABHAHIT

AND

THE HON'BLE MR.JUSTICE B. MANOHAR

WRIT APPEAL Nos. 1030/2007 C/W  
625/2007, 1126/2007, 2118/2007,  
2312/2007,1942/2007, 1456/2007, 1406/2007 &  
1457/2007 (GM-KEB)

WA No. 1030 OF 2007

BETWEEN:

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BIOCON LTD  
A COMPANY INCORPORATED  
UNDER THE PROVISIONS OF  
THE COMPANIES ACT, 1956,  
AND HAVING ITS REGISTERED OFFICE AT 20TH  
K.M. HOSUR ROAD,  
ELECTRONIC CITY P.O  
BANGALROE,  
PRESENTLY REPRESENTED BY ITS HEAD-  
LEGAL, MR. ABHYAN JAWAHARLAL.

... APPELLANT

(By SRI K.G. RAGHAVAN, SR. ADV. FOR  
M/S DUA ASSOCIATES, ADV.)

AND :

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- 1 STATE OF KARNATAKA  
MINISTRY OF LAW JUSTICE AND  
PARLIAMENTARY AFFAIRS,  
VIDHANA SOUDHA, VIDHANA VEEDHI  
BANGALORE 560 001.
- 2 GOVERNMENT OF KARNATKA,  
ENERGY DEPARTMENT,  
KARNATAKA GOVERNMENT SECRETARIAT,  
M.S. BUILDING,  
BANGALORE - 560 001.
- 3 DEPUTY CHIEF ELECTRICAL  
INSPECTORATE,  
BANGALORE SOUTH,  
JAYANAGAR,  
1<sup>ST</sup> FLOOR, MYSUGAR BUILDING,  
BANCALORE - 560 002.

... RESPONDENTS

(By SRI ASHOK HARANAHALLI, AG. &  
SRI K KRISHNA, AGA FOR R1 TO R4)

THIS WRIT APPEAL IS FILED U/S 4 OF THE  
KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE  
THE ORDER PASSED IN THE WRIT PETITION  
NO.17369/2004 DATE 22/12/2006 TO THE EXTENT IT  
UPHELD THE VALIDITY OF THE SUB SECTION (2) OF  
SECTION 3 OF THE KARNATAKA ELECTRICITY (TAXATION  
ON CONSUMPTION) ACT, 1959 AMENDED VIDE  
KARNATAKA ACT NO.5 OF 2004 - THE KARNATAKA  
ELECTRICITY (TAXATION ON CONSUMPTION)  
(AMENDMENT) ACT 2004.

WA No. 625 OF 2007

BETWEEN:

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TVS MOTOR CO LTD  
A COMPANY INCORPORATED UNDER THE  
PROVISIONS OF THE COMPANIES ACT, 1956,  
AND HAVING ITS REGSTD OFFICE AT  
JAYALAKSHMI ESTATES, 5TH FLOOR,  
8 HADDOWS ROAD, CHENNAI - 600 006.

AND HAVING ITS PLANT AT  
PB.NO.1, BYATHAHALLY,  
KADAKOLA, MYSORE - 571 311,  
NOW REP.BY ITS GENERAL MANAGER  
(LEGAL)MR.R. MURALI.

... APPELLANT

(By SRI K.G. RAGHAVAN, SR. ADV. FOR  
M/S DUA ASSOCIATES, ADV.)

AND :

- 
- 1 STATE OF KARNATAKA  
MINISTRY OF LAW JUSTICE AND  
PARLIAMENTARY AFFAIRS,  
VIDHANA SOUDHA, VIDHANA VEEDHI,  
BANGALORE - 560 001.
  - 2 GOVERNMENT OF KARNATAKA,  
ENERGY DEPARTMENT,  
KARNATAKA GOVERNMENT SECRETARIAT,  
M.S.BUILDING,  
BANGALORE- 560 001.
  - 3 ELECTRICAL INSPECTORATE  
NO.95/B, 3<sup>RD</sup> CROSS, IST STAGE,  
GANGOTHRI LAYOUT,  
MYSORE 570 009.

4 ELECTRICAL INSPECTORATE  
NETHRAVATHI BUILDING,  
2<sup>ND</sup> FLOOR, BALMATTA,  
MANGALORE - 575 001.

... RESPONDENTS

(By SRI ASHOK HARANAHALLI, AG. &  
SRI K KRISHNA, AGA FOR R1 TO R4)

THIS WRIT APPEAL IS FILED U/S 4 OF THE  
KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE  
THE ORDER PASSED IN THE WRIT PETITION NO.15703/04  
DATED 22/12/06.

WA No. 1126 OF 2007

BETWEEN:  
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THE SOUTH INDIA PAPER MILLS LTD  
CHIKKAYAN CIRCLE  
NANJANGUD 571 301,

REPRESENTED BY ITS  
DEPOT GENERAL MANAGER,  
HUMAN RESOURCES,  
MR N VASANTHKUMAR.

... APPELLANT

(By M/S S N MURTHY ASSOCIATES, ADV.)

AND :  
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1 THE STATE OF KARNATAKA  
BY CHIEF SECRETARY,  
VIDHANA SOUDHA,  
BANGALORE - 560 001.

2 THE ELECTRICAL INSPECTOR,  
MYSORE DIVISION,  
MYSORE.

... RESPONDENTS

(By SRI ASHOK HARANAHALLI, AG. &  
SRI K KRISHNA, AGA FOR R1 TO R4)

THIS WRIT APPEAL IS FILED U/S 4 OF THE  
KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE  
THE ORDER PASSED IN THE WRIT PETITION  
NO.53380/2003 DATED 22/12/2006.

WA No. 2118 OF 2007

BETWEEN:  
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RUCHI SOYA INDUSTRIES LTD.,  
A COMPANY INCORPORATED UNDER THE  
COMPANIES ACT, 1956. HAVING ITS  
HEAD OFFICE AT 301,  
MOHAKOSH HOUSE,  
NATH MANDIR ROAD, INDORE(M.P.)  
AND AMONG OTHERS AN INDUSTRIAL UNIT  
AT SURVEY NO 2(P),3(P)  
AND 4(P), KIADB INDUSTRIAL AREA,  
BAIKAMPADY,  
MANGALORE-10.  
NOW REP. BY ITS MANAGER (SERVICES),  
SRI GOVIND COWDA,  
S/O BASAVE GOWDA,  
AGED ABOUT 42 YEARS.

... APPELLANT

(By SRI B S SHANKARANARAYAN, ADV.)

AND :

-----

- 1 STATE OF KARNATAKA,  
MINISTRY OF LAW,  
JUSTICE AND PARLIAMENTARY AFFAIRS,  
REPRESENTED BY ITS SECRETARY  
VIDHANA SOUDHA, VIDHANA VEEDHI,  
BANGALORE - 01.
  
- 2 GOVERNMENT OF KARNATAKA,  
ENERGY DEPARTMENT,  
KARNATAKA GOVERNMENT SECRETARIAT,  
M.S.BUILDING,  
BANGALORE-01.
  
- 2 THE DEPUTY CHIEF ELECTRICAL  
INSPECTOR,  
GOVERNMENT OF KARNATAKA,  
ELECTRICAL INSPECTORATE,  
2ND FLOOR, NETRAVATHY BUILDING,  
BALMATA,  
MANGALORE.

... RESPONDENTS

(By SRI ASHOK HARANAHALLI, AG. &  
SRI K KRISHNA, AGA FOR R1 TO R3)

THIS WRIT APPEAL IS FILED U/S 4 OF THE  
KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE  
THE ORDER PASSED IN THE WRIT PETITION NO.17802/04  
DATED 21/9/2007.

WA No. 2312 OF 2007

BETWEEN:

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VASAVADATTA CEMENT,  
PROP:KESORAM INDUSTRIES LIMITED,  
LAKSHMINARAYANA NAGAR,  
SEDAM TALUK,  
GULBARGA DISTRICT,  
BY ITS JOINT PRESIDENT,  
MR.P.R.SHARMA.

... APPELLANT

(By SRI K.G. RAGHAVAN, SR. ADV. FOR  
M/S DUA ASSOCIATES, ADV.)

AND :

- 
- 1 THE STATE OF KARNATAKA  
BY ITS CHIEF SECRETARY,  
VIDHANA SOUDHA,  
DR.AMBEDKAR VEEDHI,  
BANGALORE-01.
  - 2 STATE OF KARNATAKA  
DEPARTMENT OF PARLIAMENTARY  
AFFAIRS AND LEGISLATION,  
VIDHANA SOUDHA,  
DR.AMBEDKAR VEEDHI,  
BANGLAORE-01.  
BY ITS SECRETARY.
  - 3 STATE OF KARNATAKA  
DEPARTMENT OF ENERGY,  
VIDHANA SOUDHA,  
DR.AMBEDKAR VEEDHI,  
BANGALORE-01.  
BY ITS SECRETARY.

- 4 THE CHIEF ELECTRICAL INSPECTOR,  
GOVERNMENT OF KARNATAKA,  
BANGALORE -560 001.
- 5 THE DEPUTY ELECTRICAL INSPECTOR  
GOVERNMENT OF KARNATAKA,  
PLOT NO.25,GURUNATHRAO  
SAJJAN BUILDING,  
JEEVARGI ROAD COLONY,  
GULBARGA.

... RESPONDENTS

(By SRI ASHOK HARANAHALLI, AG. &  
SRI K KRISHNA, AGA FOR R1 TO R5)

THIS WRIT APPEAL IS FILED U/S 4 OF THE  
KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE  
THE ORDER PASSED IN THE WRIT PETITION  
NO.50367/2003 DATED 07/08/2007.

WA No. 1942 OF 2007

BETWEEN:  
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M/S SOLARIS CHEM TECH LIMITED  
(FORMERLY BILT CHEMICALS LTD)  
BINAGA P.O 581 307, KARWAR,  
UTTARA KANNADA DISTRICT,  
KARNATAKA.  
REPRESENTED BY THE BUSINESS HEAD  
SRI U K UMESH SHENOY.

... APPELLANT

(By SRI N V VIJAY, ADV.)



AND :  
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- 1 STATE OF KARNATAKA,  
DEPARTMENT OF PARLIAMENTARY  
AFFAIRS AND LEGISLATIVE MULTISTORIED  
BUILDING, VIDHANA SOUDHA  
BANGALORE – 560 001.  
REPRESENTED BY ITS SECRETARY
  
- 2 THE CHIEF ELECTRICAL INSPECTOR,  
THE STATE OF KARNATAKA,  
MYSUGAR BUILDING  
J.C.ROAD  
BANGALORE.

... RESPONDENTS

THIS WRIT APPEAL IS FILED U/S 4 OF THE  
KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE  
THE ORDER PASSED IN THE WRIT PETITION  
NO.5850/2004 DATED 22/12/2006.

WA No. 1456 OF 2007

BETWEEN:  
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GRASIM INDUSTRIES LTD  
A COMPANY REGISTERED UNDER THE  
COMPANIES ACT, 1956 HAVING ITS  
REGISTERED OFFICE AT NAGDA(M.P)  
AND ITS TWO MANUFACTURING UNITS VIA.,  
HARIHAR POLYFIBERS & GRASILENE DIVISION  
AT KUMARAPATNAM-581 123,  
HAVERI DISTRICT,  
BY ITS ASST.GENERAL MANAGER(LEGAL)  
SRI SURESH HEGDE.

... APPELLANT

(By SRI K.G. RAGHAVAN, SR. ADV.)

AND :

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- 1 THE STATE OF KARNATAKA  
VIDHANA SOUDHA,  
DR.AMBEDKAR VEEDHI,  
BANGALORE – 560 001,  
BY ITS CHIEF SECRETARY.
- 2 STATE OF KARNATAKA  
DEPARTMENT OF PARLIAMENTARY  
AFFAIRS & LEGISLATION,  
VIDHANA SOUDHA,  
DR.AMBEDKAR VEEDHI,  
BANGALORE,  
BY ITS SECRETARY.
- 3 STATE OF KARNATAKA  
DEPARTMENT OF ENERGY,  
VIDHANA SOUDHA,  
DR.AMBEDKAR VEEDHI,  
BANGALORE-1,  
BY ITS SECRETARY.
- 4 THE CHIEF ELECTRICAL INSPECTOR,  
GOVERNMENT OF KARNATAKA,  
BANGALORE – 560 002.
- 5 THE DEPUTY ELECTRICAL INSPECTOR  
GOVERNMENT OF KARNATAKA,  
SNEHA BUILDING,  
BEHIND SANMATHI HOSTEL,  
DHARWAD – 580 001.                      ... RESPONDENTS

(By SRI ASHOK HARANAHALLI, AG. &  
SRI K KRISHNA, AGA FOR R1 TO R5)

THIS WRIT APPEAL IS FILED U/S 4 OF THE  
KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE

THE ORDER PASSED IN THE WRIT PETITION  
NO.52828/2003 DATED 22/12/2006.

WA No. 1406 OF 2007

BETWEEN:  
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- 1 M/S KIRLOSKAR FERROUS  
INDUSTRIES LTD.,  
BEVINAHALLI VILLAGE,  
HITNAL - 583234  
REP. BY ITS MANAGING DIRECTOR  
MR R.V.GUMASTHE.
- 2 MR RAGHAVENDRA JOSHI  
SHAREHOLDER  
M/S KIRLOSKAR FERROUS  
INDUSTRIES LTD.,  
BEVINAHALLI VILLAGE  
HITNAL - 583234 ... APPELLANTS

(By SRI S N MURTHY ASSOCIATES, ADVS.)

AND :  
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- 1 THE STATE OF KARNATAKA  
DEPT. OF PARLIAMENTARY AFFAIRS  
AND LEGISLATION,  
VIDHANA SOUDHA,  
BANGALORE - 560 001.  
REP. BY ITS CHIEF SECRETARY.
- 2 THE DEPUTY ELELCTRICAL INSPECTOR  
KOPPAL, MYSORE.  
... RESPONDENTS

(By SRI ASHOK HARANAHALLI, AG. &  
SRI K KRISHNA, AGA FOR R1 & R2)

THIS WRIT APPEAL IS FILED U/S 4 OF THE  
KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE  
THE ORDER PASSED IN THE WRIT PETITION  
NO.48766/2003 DATED 22/12/2006.

WA No. 1457 OF 2007

BETWEEN:  
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RAJASHREE CEMENT  
A UNIT OF GRASIM INDUSTRIES LIMITED  
ADITYA NAGAR, MALKHED ROAD  
TALUK SEDAM,  
DIST GULBARGA  
BY ITS DEPUTY GENERAL MANAGER  
(FINANCE & ACCOUTNS)  
PRESENTLY SHRI. RAJENDRA VIJAY.

... APPELLANT

(By SRI K.G. RAGHAVAN, SR. ADV. FOR  
M/S DUA ASSOCIATES, ADV. &  
SRI PRAMOD N KATHAVI, ADV. FOR  
M/S KATARI & MUNDARAGI ASSOCIATES, ADV.)

AND :  
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- 1 STATE OF KARNATAKA  
VIDHANA SOUDHA  
DR. AMBEDKAR VEEDHI  
BANGALORE-560 001  
BY ITS CHIEF SECRETARY.
- 2 STATE OF KARNATAKA  
DEPARTMENT OF PARLIAMENTARY  
AFFAIRS AND LEGISLATION  
VIDHANA SOUDHA  
DE AMBEDKAR VEEDHI

BANGALORE - 01  
BY ITS SECRETARY

- 3 STATE OF KARNATAKA  
DEPARTMENT OF ENERGY,  
VIDHANA SOUDHA  
DR. AMBEDKAR VEDHI  
BANGALORE - 01  
BY ITS SECRETARY.S
- 4 THE CHIEF ELECTRICAL INSPECTOR  
GOVERNMENT OF KARNATAKA  
BANGALORE - 560 001.
- 5 THE DEPUTY ELECTRICAL INSPECTOR  
GOVERNMENT OF KARNATAKA  
PLOT NO.25, GURUNATHRAO  
SAJJAN BUILDING  
JEEVARGI ROAD COLONY  
GULBARGA.

... RESPONDENTS

(By SRI ASHOK HARANAHALLI, AG. &  
SRI K KRISHNA, AGA)

THIS WRIT APPEAL IS FILED U/S 4 OF THE  
KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE  
THE ORDER PASSED IN THE WRIT PETITION  
NO.50822/2003 DATED 22/12/2006.

THESE APPEALS HAVING BEEN HEARD AND  
RESERVED FOR ORDERS AND COMING ON FOR  
PRONOUNCEMENT OF JUDGEMENT THIS DAY SABHAHIT  
J, DELIVERED THE FOLLOWING:

J U D G M E N T

These appeals are filed by the respective petitioners in W.P.No.17369/2004 and connected matters which have been disposed of by a common order dated 22-12-2006 wherein the learned Single Judge of this Court has upheld the validity of sub-section (2) of Section 3 of the Karnataka Electricity (Taxation on Consumption) Act, 1959 (hereinafter called the 'Act') as amended vide Karnataka Act No.5/2004 by Karnataka Electricity (Taxation on Consumption) (Amendment) Act, 2004 (hereinafter referred to as 'Amending Act'), to grant complete relief as sought for in the writ petitions.

2. Since all these appeals are filed against the said common order and the grievance of the appellants is only against the finding of the learned Single Judge upholding the constitutional validity of sub-section (2) of Section 3 of the Act as referred to above, all these appeals are disposed of by this order.

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3. For the purpose of convenience, the facts referred to in W.P.No.17369/2004 are narrated.

The writ petition was filed being aggrieved by the demand notice issued by respondent No.3 in accordance with the Karnataka Electricity (Taxation on Consumption) (Amendment) Ordinance, 2003 (hereinafter called the 'Ordinance') imposing electricity tax at the rate of 50 paise per unit on the petitioner who is generator/manufacturer and consumer of electricity and receiving the electricity free of cost, the same would amount to imposing tax on generation and therefore the State lacks legislative competence to pass an enactment imposing electricity tax linked to the production/generation of electricity. The said Ordinance was promulgated on 16-10-2003. Before the Ordinance could expire, the Karnataka Amendment Act No.5/2004 was enacted giving retrospective effect from the date of Ordinance i.e., 16-10-2003 levying electricity tax on the persons producing electricity but the consumption made by them out of electricity produced and the action taken under the Ordinance had saved. However, the Act was made

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retrospective from 16-10-2003 and thereafter demand notices were issued. The constitutional validity of the said Amending Act was challenged contending that when the Ordinance was without the legislative competence of the State, the Amending Act would be void and the action taken thereon cannot be saved and Amendment Act is nothing but imposition of electricity tax on production only though there is change in the wording of the Act as compared to the Ordinance . As the petitioner is the purchaser and consumer of electricity, electricity cannot be stored and therefore process of manufacturing and consuming is simultaneous. In substance, the levy of tax is linked to consumption. It relates to the production of electricity in respect of which only the Central Government can pass an enactment and under Entry 53 of List II to the Seventh Schedule to the Constitution of India, the State Government can levy tax only on the consumption of electricity and therefore Amending Act is a colourable legislation. It is also contended that the petitioner is exempted from payment of electricity tax; they were promised at the time of making

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investment in the State that they would be exempted from paying electricity tax for the consumption made by them out of the electricity produced and therefore, they have not acted upon the said promise and therefore the Government is estopped from withdrawing the exemption. It was further contended that when there is no liability on the petitioner to pay electricity tax as he was exempted from paying electricity tax either as per tenure of time or permanently by notification, the question of imposing electricity tax by withdrawing the exemption would not arise and the same would create a classification which is not valid and does not achieve the object sought to be achieved as the object of the parent Act i.e., the Electricity Act, 1959 is to distribute electricity to all consumers at uniform rates and under the Act only the persons who are producing electricity and consuming the same or receiving electricity freely are made liable to pay electricity tax .

4. The petition was resisted by the State contending that the Amending Act can always be made retrospective and in the present case, Amendment Act No.5/2004 is made

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retrospective from 16-10-2003 i.e., the date of promulgation of the Ordinance and under the Amending Act, electricity tax is levied on consumption of electricity and the mere fact that the petitioner also happens to be the producer of electricity would not absolve from payment of electricity tax and the mere fact that they were exempted from payment of electricity tax would show that they are liable to pay what has been exempted by the Government. In view of continuous drought situation in Karnataka and the demand for more electricity to the rural areas, it was necessary to raise additional revenue and purchase additional electricity from other States and therefore, they levy was made and classification is justified as the tax is levied for a limited period from 16-10-2003 to 1-7-2004 only on the persons who manufacture and consume electricity, the persons who are consuming electricity by manufacturing the same or persons who consume electricity free of cost and therefore there is valid classification and there is rationale classification and the same is made to achieve the object of the Government as referred to above and therefore the

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provisions of the Act as challenged in the Act is constitutional and since Ordinance has been repealed by the Amendment Act, it is unnecessary to deal with the validity of the Ordinance.

5. The learned Single Judge after hearing the learned counsel appearing for the parties, by his order dated 22-12-2006 held that it was necessary to consider the validity of the Ordinance promulgated on 16-10-2003 as the action taken under the Ordinance have been saved under the Amending Act and if the Ordinance was unconstitutional, any tax levied unauthorisedly cannot be validated by the Amending Act and accordingly considered and held that the Ordinance was beyond the legislative competence of the State as the imposition of electricity tax is linked to production of electricity and not to consumption and it is the Central Government who has got power to impose tax on production of electricity and generators of electricity and State can impose electricity tax only on consumers of electricity and Entry 53 of List II to the Seventh Schedule of the Constitution and therefore, the Ordinance is

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unconstitutional. When the Ordinance is unconstitutional, the question of saving the action taken under the unconstitutional Ordinance cannot be sustained and therefore the provisions of Amending Act insofar as it saves the action taken under the Ordinance cannot be sustained. However, the learned Single Judge held that levy of electricity tax under the Amending Act No.5/2004 at 25 paise per unit, though it was levied at 50 paise per unit under the Ordinance, is justified and the State has legislative competence to impose electricity tax on consumption and substance of the Act is to impose electricity tax on the consumption of electricity and not on production and the mere fact that petitioner is the producer of electricity also would not in any way affect the constitutional validity of the Act and the legislative competence of the State Government to pass an enactment to levy electricity tax on consumption. The learned Single Judge further held that classification between the persons upon whom the tax was imposed in the Amending Act and the persons against whom tax has not been imposed in the

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Amending Act is a valid classification and it is made to achieve the object enumerated in the object and reasons of the Amending Act No.5 of 2004 and therefore, the provisions of sub-section (2) of Section 3 of the Karnataka Electricity (Taxation on Consumption) Act, 1959 amended vide Karnataka Electricity (Taxation on Consumption) (Amendment) Act, 2004 is constitutional and further, the learned Single Judge directed that the tariff shall be calculated at the rate of 25 paise per unit as per the Amending Act and not at 50 paise per unit as per the Ordinance and passed consequential orders.

6. Being aggrieved by the said order of the learned Single Judge dated 22-12-2006 insofar as upholding the constitutional validity of the Karnataka Electricity (Taxation on Consumption) (Amendment) Act, 2004 , these writ appeals are filed reiterating the averment made in the writ petitions. The State has not filed any appeal against the finding of the learned Single Judge that the Ordinance was unconstitutional as the State has no legislative competence to promulgate the ordinance and therefore the demand for

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payment of electricity tax linked on an Ordinance which is unconstitutional cannot be saved and therefore, saving clause of Amending Act saving the action taken under the Ordinance cannot be sustained and therefore, the said finding has become final.

7. The only point that is required to be decided in these appeals is as to 'whether the finding of the learned Single Judge upholding the validity of sub-section (2) of Section 3 of the Karnataka Electricity (Taxation on Consumption) Act, 1959 amended vide Karnataka Act No.5/2004 by the Karnataka Electricity (Taxation on Consumption) (Amendment) Act, 2004 is justified or calls for interference in these appeals?'

8. We have heard the learned Sr.counsel, learned counsel appearing for the appellants and the learned Advocate General appearing for the respondent-State in all these appeals.

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9. The learned Sr.counsel and learned counsel appearing for the appellants reiterated the contentions raised in the writ petitions alleging that the Amending Act is unconstitutional as it is nothing but imposition of electricity tax linked to production though it is camouflaged as tax payable on consumption and the said Amending Act is also contrary to Article 14 of the Constitution of India as there is no valid classification among the appellants who are imposed with electricity tax and other persons against whom electricity tax is not levied, having regard to the object of the parent Act that electricity should be distributed uniformly and uniform tariff should be collected from all consumers and the said classification has no nexus to the object sought to be achieved. It was also contended that the State had made promise to the appellants herein that they would be exempted from payment of electricity tax and accordingly exemption orders have also been passed. However, imposition of electricity tax would be contrary to the promise made by the State to the petitioners and therefore, the State is estopped from going behind the promise that was made to

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the appellants and therefore, they have pleaded the principle of promissory estoppel contending that State could not have levied electricity tax on the appellants. It was also contended by the learned counsel appearing for the appellants that tax is levied on the persons who produce electricity and consume the same and on the persons who consume electricity by receiving the electricity free of charge and it is well settled that electricity cannot be stored and production and consumption is simultaneous and therefore, levy of electricity tax in the Amending Act is also linked to production of electricity in respect of which State has no legislative competence to pass the enactment. The State can pass an enactment levying the electricity tax only on consumption of electricity under Entry 53 of List II to the Seventh Schedule of the Constitution.

10. It was further submitted by Sri K G Raghavan, learned Sr.counsel that the Amending act is a favourable legislation and its wordings are camouflaged to exercise legislative competence which the State does not have, to impose tax on production and since the production and

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consumption is simultaneous and there is no measure for calculating the consumption of electricity, imposition of electricity tax cannot be sustained. He also submitted that the learned Single Judge having held that Ordinance was unconstitutional and the demand made under the Ordinance cannot be sustained, was not justified in holding that Amending Act which has come into force from the date of Ordinance i.e., 16-10-2003 is constitutionally valid and the finding of the learned Single Judge that there is valid classification and there is nexus between the classification and the object sought to be achieved by the classification is erroneous and the learned Single Judge ought to have held that the impugned Amending Act is a colourable legislation without legislative competence and therefore prayed to hold sub-section 2 of Section 3 of the Amending Act as unconstitutional as sought for in the writ petitions.

11. The learned counsel appearing for the appellants in other writ appeals have reiterated the same arguments and they have relied upon the decision of the Supreme Court in *M.P.CEMENT MANUFACTURERS' ASSOCIATION vs*

leg.s.

STATE OF M.P. & OTHERS ((2004) 2 SCC 249) wherein the Hon'ble Supreme Court has observed that levy of electricity tax cannot be linked to production and the State Government has no jurisdiction to levy electricity tax linked to production as electricity cannot be stored and production and consumption would be simultaneous. The learned counsel have also relied upon para 11 in the said decision wherein the Hon'ble Supreme Court was considering the Madhya Pradesh Electricity Duty Act, 1949 providing for levy of duty on the consumption and sale of electricity energy under Section 3 of the said Act subject to certain statutory exceptions.

12. The learned Advocate General appearing for the State submitted that the finding of the learned Single Judge impugned in these writ appeals holding that the provisions of sub-section (2) of Section 3 of the Karnataka Electricity Amendment Act, 2003 as constitutional, is justified. The learned Advocate General submitted that though the Ordinance might have sought to levy tax on production, the said Ordinance has lapsed and has been repealed as

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Amending Act was enacted even before the period of Ordinance was over and therefore the constitutional validity of the Ordinance was considered only for the purpose of finding as to whether action taken under the Ordinance can be saved under the Amending Act and so far as upholding of the provisions of sub-section(2) of Section 3 of the Karnataka Amendment Act impugned in these writ petitions is concerned, it is clear that levy is on consumption for which the State has legislative competence to impose tax on consumption under Entry 53 of List II to the Seventh Schedule to the Constitution of India and the appellants were liable for payment of electricity tax. However, they were exempted from payment of electricity tax and when the State had to raise additional revenue to meet the drought situation and the additional demand for electricity as stated in the objects and reasons of the Amending Act, it was thought fit by the legislature who had competence to legislate, for levy of tax on consumption and instead of levying additional tax on the consumers who are already paying electricity tax, the persons who are exempted from payment of electricity tax

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can be imposed with the electricity tax for a limited period and even in the Amending Act, the period for which the levy of electricity tax has been imposed upon the appellants was from 16-10-2003 to 1-7-2004 only and thereafter no demand has been made to the appellants. The learned Advocate General further submitted that levy is valid classification and classification has nexus to the object sought to be achieved and the mere fact that the petitioners are also purchasers of electricity would not in any way affect the power of the State to impose tax on consumption as the appellants would be liable to pay electricity tax on consumption.

13. In support of these contentions, he has relied upon the decision of the Hon'ble Supreme Court in KUNNATHAT THATHUNNI MOOPIL NAIR vs STATE OF KERALA & ANOTHER (AIR 1961 SC 552) wherein it has been observed that the act of the State under Article 265 of the Constitution read with Articles 13(2) & 14 of the Constitution, the scope of interference regarding taxing statute is limited for violation of Article 14 of the Constitution and the mere fact that the

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appellants against whom demand for payment of electricity tax is made on consumption who may also happen to be the producers, would not mean that they are not consumers of electricity and only producers of electricity and therefore, such levy is justified.

14. He has also relied upon the the decision of the Hon'ble Supreme Court in J C MILLS vs STATE OF MADHYA PRASDESH (AIR 1963 SC 414) wherein the Hon'ble Supreme Court has held that mere fact that a consumer happens to be a producer would not make him exempted from paying electricity tax.

15. He has also relied upon the decision of the Hon'ble Supreme Court in KERALA HOTEL AND RESTAURANT ASSOCIATION & OTHERS vs STATE OF KERALA & OTHERS (AIR 1990 SC 913) wherein the Hon'ble Supreme Court has laid down the principles relating to classification and nexus which are necessary to achieve the objects of the Act.

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16. The learned Advocate General submitted that there cannot be estoppel against the statute. In support of his contention, he has also relied upon the decision of the Hon'ble Supreme Court in M/S.SHARMA TRANSPORT, REPRESENTED BY D.P.SHARMA vs GOVERNMENT OF A.P. & OTHERS (AIR 2002 SC 322) wherein it has been observed as follows:

22. It is equally settled law that the promissory estoppel cannot be used compelling the Government or a public authority to carry out a representation or promise which is prohibited by law or which was devoid of the authority or power of the officer of the Government or the public authority to make. Doctrine of promissory estoppel being an equitable doctrine, it must yield place to the equity, if larger public interest so requires, and if it can be shown by the Government or public authority for having regard to the facts as they have transpired that it would be inequitable to hold the Government or public authority to the promise or representation made by it. The Court on satisfaction would not, in those circumstances raise the equity in favour of the persons to whom a promise or representation is made and enforce the promise or representation against Government or the public authority. These aspects were highlighted by this court in Vasanthkumar Radhakishan Vora v. The Board of Trustees of the Port of Bombay

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(AIR 1991 SC 14), Sales-tax Officer and another v. M/s Shree Durga Oil Mills and another (supra) and Dr. Ashok Kumar Maheshwari v. State of U.P and another (1998 (2) SCC 502). Above being the position, the plea relating to promissory estoppel has no substance.

17. The learned Advocate General has also relied upon the decision of the Hon'ble Supreme Court in STATE OF A.P. vs NATIONAL THERMAL POWER CORPORATION LTD (AIR 2002 SC 1895) wherein the Hon'ble Supreme Court has held that the State is competent to levy tax on consumption of electricity and mere fact that consumers are also the producers would not make any difference so far as tax is on consumers.

18. We have given careful consideration to the contentions of learned counsel appearing for the parties and scrutinized the material on record in the light of the principles laid down by the Hon'ble Supreme Court in the decisions relied upon by the learned counsel appearing for the parties.

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19. The material on record would clearly show that the petitioners are aggrieved by the order of the learned Single Judge only insofar as it upheld the constitutional validity of sub-section (2) of Section 3 of the Karnataka Electricity (Taxation on Consumption) Act, 1959 amended vide Karnataka Act No.5/2004 by Karnataka Electricity (Taxation on Consumption) (Amendment) Act, 2004. The objects and reasons for enacting the said Act has been stated as follows:

**“Amending Act 5 of 2004.-** During the review of power sector by the Chief minister on 4<sup>th</sup> September, 2003, it was decided to increase the hours of 3 phase power supply in rural areas to 6 hours a day along with 10 hours of single phase supply. This would require additional purchase of power and would impose additional financial burden on KPTCL and the State Government. Hence, it was decided to levy electricity tax on energy consumed through captive power generation at the rate of 25 paise per unit of energy.

As the matter was urgent and both the Houses of the Karnataka State Legislature were not in Session the Karnataka Electricity (Taxation on Consumption) (Amendment) Ordinance, 2003 was promulgated.

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20. The provisions of Section 3(2) of the Karnataka Electricity (Taxation on Consumption) (Amendment) Act, 2004 reads as follows:

**“3. Levy of tax on electricity charges etc.-** [(1)] subject to the provisions of this Act, there shall be levied and paid to the State Government, advalorem tax (hereinafter referred to as “electricity tax”) at five percent on the electricity charges payable (excluding arrears) by all the consumers except consumers under agricultural (irrigation pump sets upto and inclusive of Ten Horse Power), Bhagya jyoti and Kutira jyothi Categories]

[(2) Subject to the provision of this Act, there shall be levied and paid to the state Government, with effect from the date of commencement of Karnataka Electricity (Taxation on Consumption) (Amendment) Act, 2004 and till the first day of July, 2004, an electricity tax at the rate of twenty five paise per unit on all the units of energy consumed by any person,-

- (i) not being a licensee who has generated such energy; or
- (ii) to whom it is supplied free of charge by a person not being a licensee who has generated such energy.]

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21. It is clear that what is challenged is constitutional validity of sub-section (2) of Section 3 and the same has been upheld by the learned Single Judge and it is clear from the perusal of Section 3(2) of the Amending Act that electricity tax at the rate of 25 paise per unit on all the units of energy consumed by any person is levied till the first date of July 2004, which are the units of electricity consumed by any person not being a licensee who has generated such energy or to whom it is supplied free of charge by a person not being a licensee who has generated such energy.

22. The perusal of the provisions of sub-section (2) of Section 3 of the Amending Act would show that what is sought to be levied under the Amending Act impugned in the writ petitions and in these appeals is, in substance, electricity tax which is levied on consumption and not on production. The mere fact that some of the appellants are also producers of electricity and the fact that electricity cannot be stored and production and consumption of electricity is simultaneous, would not exempt the appellants from payment of consumption tax in view of the decision of

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the Hon'ble Supreme Court in JC MILLS's case referred to in the arguments of learned Advocate General. In the said case, the Hon'ble Supreme Court was considering the provisions of Central Provinces and Berar Electricity Duty Act, 1949 as amended by Madhya Pradesh Taxation Laws Amendment Act, 1958 (Act No.7/1956) , sub-sections 2(a), d(I) and 3 of the said Act wherein tax has been levied was linked to consumption and it was argued that since the petitioners who were also the producers of energy, they cannot be consumers. The Supreme Court has repealed the said contention and has held as follows:

'Producer' as defined S. 2 (d-1) of the Act means a person who generates electrical energy at a voltage exceeding hundred volts for his own consumption or for supplying to others". If we read the two definitions together, omitting the non-essentials, 'consumer' would include any person who consumes electrical energy supplied by a person who generates electrical energy for his own consumption". Under S.3 a person who generates electrical energy over hundred volts for his own consumption is liable to pay duty on the units of electrical energy consumed by himself. A producer consuming the electrical energy generated by him is also a consumer, that is to say, he is a person who consumes electrical energy supplied by himself. The

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Table prescribes rates of duty payable with respect to electrical energy supplied for consumption and, therefore, the levy on the appellant falls squarely within the Table under S.3 of the Act and Mr. Viswantha Sastri's argument is devoid of substance.

(6) It is difficult to see how the levy of duty upon consumption of electrical energy can be regarded as duty of excise falling within Entry 84 of List I. Under that Entry what is permitted to Parliament is levy of duty of excise on manufacture or production of goods (other than those excepted expressly by that entry). The taxable event with respect to a duty of excise is "manufacture" or "production. Here the taxable event is not production or generation of electrical energy but its consumption. If a producer generates electrical energy and stores it up, he would not be required to pay any duty under the Act. It is only when he sells it or consumes it that he would be rendered liable to pay the duty prescribed by the Act. The Central Provinces and Berar Electricity Act was enacted under Entry 48-B of List II of the Government of India Act 1935. The relevant portion of that Entry read thus:

"Taxes on the consumption or sale of electricity....."

Entry 53 of List II of the Constitution is to the same effect. The argument of Mr. Sastri is that the word "consumption" should be accorded the meaning which it had under the various electricity Acts, including the Indian Electricity Act, 1910. Under that Act and under the various Provincial and State Acts, consumption of electricity means

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according to him, consumption by persons other than producers and that both in the Government of India Act and under the Constitution the word 'consumption' must be deemed to have been used in the same sense. The Acts in question deal only with a certain aspect of the topic "electricity", and not with all of them. Therefore, in those Acts the word "consumption" may have a limited meaning, as pointed out by learned counsel. But the word "consumption" has a wider meaning. It means also "use-up", "spend" etc. The mere fact that a series of laws were concerned only with a certain kind of use of electricity, that is consumption of electricity by persons other than the producer cannot justify the conclusion that the British Parliament in using the word "consumption" in Entry 48-B and the Constituent Assembly in Entry 53 of List II wanted to limit the meaning of "consumption" in the same way. The language used in the legislative entries in the Constitution must be interpreted in a broad way so as to give the widest amplitude of power to the Legislature to legislate and not in a narrow and pedantic sense. We cannot, therefore, accept either of the two grounds urged by Mr. Viswanatha Sastri challenging the vires of the Act.

23. The same principles have been reiterated in the case of STATE OF A.P. vs NATIONAL THERMAL POWER CORPORATION LTD cited supra, wherein the Three Judges Bench of the Hon'ble Supreme Court has held as follows:

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22. We now come to the question on the interpretation of Entry 53 in List II of Seventh Schedule. It provides for taxes on the consumption or sale of electricity. The word 'sale' as occurring in Entry 52 came up for the consideration of this Court in *Burmah Shell Oil Storage & Distributing Co. India Ltd. v. The Belgaum Borough Municipality* 1963 Supp. (2) SCR 216. It was held that the act of sale is merely the means for putting the goods in the way of use or consumption. It is an earlier stage, the ultimate destination of the goods being "use or consumption". We feel that the same meaning should be assigned to the word 'sale' in Entry 53. This is for a fortiorari reason in the context of electricity as there can be no sale of electricity excepting by its consumption, for it can neither be preserved nor stored. It is this property of electricity which persuaded this Court in *Indian Aluminium Co. Ltd. etc's case* (supra) to hold that in the context of electricity, the word 'supply' should be interpreted to include sale or consumption of electricity. Entry 53 should therefore be read as 'taxes on the consumption or sale for consumption of electricity'.

23. With these two things in mind, namely, that electricity is goods, and that sale of electricity has to be construed and read as sale for consumption within the meaning of Entry 53, the conflict, if any, between Entry 53 and Entry 54 ceases to exist and the two can be harmonized and read together. Because electricity is goods it is covered in Entry 54 also. It is not disputed that duty on electricity is tax. Tax

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on the sale or purchase of goods including electricity but excluding newspapers shall fall within Entry 54 and shall be subject to provisions of Entry 92A of List I. Taxes on the consumption or sale for consumption of electricity within the meaning of Entry 53 must be consumption within the State and not beyond the territory of the State. Any other sale or electricity shall continue to be subject to the limits provided by Entry 54. Even purchase of electricity would be available for taxation which it would not be if electricity was not includible in the meaning of term "goods". A piece of legislation need not necessarily fall within the scope of one entry alone: more than one entry may overlap to cover the subject matter of a single piece of legislation. A bare consumption of electric energy even by one who generates the same may be liable to be taxed by reference to Entry 53 and if the State Legislature may choose to impose tax on consumption of electricity by the one who generates it such, tax would not be deemed to be a tax necessarily on manufacture or production or a duty of excise.

Therefore, there is no merit in the contention of learned Sr.counsel and the learned counsel appearing for the appellants that since the appellants are also producers of electricity and consumers and since electricity cannot be stored, production and consumption is simultaneous and

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tax levied is in fact on production only and not on consumption, cannot be accepted.

24. The contention of promissory estoppel argued by learned Sr.counsel and learned counsel appearing for the appellants cannot be accepted in view of the principle laid down by the Hon'ble Supreme Court in M/S SHARMA TRANSPORT's case already referred above.

25. The only other contention of the learned Sr.counsel and learned counsel appearing for the appellant is that there is violation of Article 14 of the Constitution. In view of the decision of the Hon'ble Supreme Court in KERALA HOTEL & RESTAURANT ASSOCIATION's case cited supra, it has been held as follows:

"It is well settled that in order to tax some thing it is not necessary to tax everything. So long as those within tax net can be legitimately classified together indicating an intelligible differentia vis-à-vis those left out and the classification so made bears a rational nexus with the object sought to be achieved, the classification is clearly permissible and it does not violate Art. 14 of the Constitution".

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26. When the contentions raised by learned Sr.counsel and learned counsel appearing for the appellants is considered in the light of the principles laid down by the Hon'ble Supreme Court in the above said cases, it is clear that in the present case, that there is no merit in their contention that the State could not have chosen the appellants who were exempted from payment of electricity tax alone for payment of electricity tax and when the object of the parent Act is to collect tariff uniformly from all consumers of electricity, in view of the provisions of sub-section (2) of Section 3 and the object sought to be achieved, it is clear that there is valid classification between the appellants and other persons i.e., (1) person not being a licensee who has generated energy (2) to whom it is supplied free of charge by a person not being licensee who has generated such energy, fall in a separate group of persons who are excluded from payment of electricity tax and all persons falling between the above said two groups are liable to pay electricity tax at the rate of 25 paise per unit in the

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limited period from 16-10-2003 to 1-7-2004 and the object sought to be achieved by the State is to raise additional revenue in view of the continuous drought situation and has chosen the appellants who have been validly classified as the appellants were not paying any tax, though they were not liable to pay the same and were exempted from paying tax, the State having taken into account all the facts prevalent to the situation and the facts prevailing in the case, decided that levy of electricity tax should be imposed upon the persons who have been exempted from paying electricity tax as the said persons are not paying any electricity tax and it would be unreasonable to burden the consumers who are already paying electricity tax on consumption to impose additional tax and the said object sought to be achieved has nexus to the classification and can never be said to be arbitrary or violative of Article 14 of the Constitution considering the principles laid down by the Hon'ble Supreme Court referred to above.

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27. The learned Single Judge in his detailed consideration of the above said material on record, has rightly upheld the constitutional validity of sub-section (2) of Section 3 of the Amending Act. On consideration of the material on record and the detailed consideration of the contentions of learned Sr.counsel and learned counsel appearing for the appellants and the learned Advocate General appearing for the State, we hold that provisions of sub-section (2) of Section 3 of the Karnataka Electricity (Taxation on Consumption) (Amendment) Act, 2004 is constitutional and the finding of the learned Single Judge is justified and does not call for interference in these appeals.

Accordingly all the appeals are dismissed.

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