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GOVERNMENT OF KARNATAKA  
(Electrical Inspectorate)

Office of the  
Chief Electrical Inspector to Govt.  
Nirman Bhavan , 2nd Floor,  
P.B. No 5148 , Dr. Rajkumar Road,  
Rajajinagar, Bangalore-560010

PROCEEDINGS BEFORE THE CHIEF ELECTRICAL INSPECTOR TO  
GOVERNMENT, BANGALORE IN RESPECT OF PAYMENT OF ELECTRICITY  
TAX FOR THE UNITS GENERATED AND SUPPLIED TO THE CONSUMERS OF  
M/S PRESTIGE TOWER, NO. 99 & 100, RESIDENCY ROAD, BANGALORE - BY  
M/S. PRESTIGE PROPERTY MANAGEMENT & SERVICES, BANGALORE.

As per the directions of the Hon'ble High Court dated 11.12.2017 M/s. Prestige Property management & Services , Bangalore (hereinafter referred to as "firm") was suppose to appear before the undersigned on 19.12.2017 at 11 A.M. But the firm nor his advocate appeared on 19.12.2017 but later on 22.12.2017 advocate for the firm appeared and again sought for the time to file the written arguments/objections. Accordingly time was granted and hearing was adjourned to 26.12.2017. On 26.12.2017 again the advocate for the firm appeared and again prayed for time on the ground that the authorised signatory of the company is travelling on avocation of the work and hence the statement of objections could not be executed and filed on 26.12.2017 and again prayed for time to file the statement of objections on 2.1.2018. Hence the case was adjourned to 2.1.2018 as per their request.

On 2.1.2018 at 4.00 PM the advocate for the petition appeared and filed the statement of objections and argued the case.

BRIEF FACTS OF THE CASE:

1. The firm was issued an approval to commission electrical installation of 4x750 KVA & 2x500 KVA, 415 Volts DG sets as required under Rule No.47-A of IE Rules 1956, vide O.M.NO:CEIG/D2/T2/4422-24/01-02 dt. 1.6.2001 of the O/o. The Chief Electrical Inspector to Govt. with the conditions No. 1 to 9 .Condition No. 6 and 8 clearly stipulates that the Firm has to file the monthly tax returns in Form "B" & "D" and also subject to conditions of compliance of Indian Electricity Rules 1956, Indian Electricity Act 1910, Indian Electricity Supply Act 1949 and The Karnataka Electricity (Taxation on Consumption) Act 1959.

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2. The Firm after obtaining safety approval, has generated electricity and was not filing the tax returns in Form B and D as in the conditions stipulated in the approval letter. Hence, an inspection was conducted by a team of officers on 10.9.2003 and it was found that the firm generating electricity through diesel generator sets and selling to different consumers of the building at the rate of Rs. 8/- per unit as per the bill No. DG.PT.0203/16 Dated 1.2.2003 & at the rate of Rs. 15/- per unit as per the statement dated 16.9.2008 submitted by the Senior Facility Manager of the firm in violation of Section 28 of the Indian Electricity Act 1910, law that was in existence, without remitting necessary electricity tax to the Government of Karnataka violating the provisions of the Karnataka Electricity (Taxation on Consumption) Act 1959.
3. The Firm was called upon to show cause as why an action should not be initiated against them for violating the above said conditions and provisions of the Act and causing loss to the state exchequer & calling upon to pay the assessed amount of electricity tax of Rs. 41,68,922/-.
4. The firm were called upon to pay the tax assessed on the basis of energy meter reading from the date of commission to 10/9/2003.
5. The firm in response to the above said show cause notice gave a reply on 6.10.2003 denying to pay the tax. However requested to give an opportunity to substantiate his claim on the matter & the date was fixed on 3.11.2003, on which date the firm did not appear.
6. In the mean time, the Government of Karnataka issued an ordinance vide No. 8/16-10-2003 to amend section 3 of the Karnataka Electricity (Taxation on Consumption) Act 1959, which came in to force on 16.10.2003 propose to levy tax on captive consumption for the period from 16.10.2003 to 1.7.2004 on captive consumers. Against the said ordinance, several writ petitions No. 50822/2003 & connected matters were filed before the Hon'ble High Court of Karnataka challenging the above said ordinance.
7. When such being the case the firm co-relating this proposed levy of electricity tax on captive consumption with the notice dated 10.10.2003 calling upon the firm to pay the electricity tax sold by them to consumers of the building from 1.6.2001 till 10.9.2003 the firm filed writ petition No. 48147/2003 before the Hon'ble High Court of Karnataka. The Hon'ble High Court of Karnataka was pleased to grant interim-order as prayed for, subject to condition that the firm deposits a sum of Rs. 10,00,000/- with the second Respondent within four weeks. The firm deposited Rs.

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10,00,000/- vide Cheque bearing No. 261844/13.11.2003. This petition was clubbed along with batch of writ petitions filed in W.P. Nos. 50822/2003 and connected matters before the Hon'ble High Court of Karnataka. The challenge made in these batch of writ petitions were to declare the Karnataka Electricity (Taxation on Consumption) (Amendment) Ordinance, 2003 Dated 16.10.2003 promulgated by the Governor of Karnataka as ultra vires to the constitution of India, illegal, invalid, unenforceable in so far as the firms are concerned for consequential reliefs.

8. The firm admitting that it is a non-licensee, as per the ordinance he has paid the total electricity tax of Rs. 13,53,690/- (Rs. 3,59,038/- vide DD. Nos. (186063/3.8.2004, Rs. 4,78,827/- vide DD. No. 183695/10.8.2004, Rs. 5,15,824/- vide DD. No. 187035/23.8.2004.) and subsequently for the delay in payment of the principle electricity tax amount, an interest of Rs. 1,23,996/- was also paid vide DD. No. 187306/27.8.2004.
9. Mean while Karnataka Act No.5/2004, was enacted and received the assent of his excellency, the Governor of Karnataka on 29.1.2004 and was brought in to force. Accordingly, Karnataka Ordinance No.8/2003 was repealed. This was challenged by way of amendment in W.P. Nos. 50822/2003 and connected matters. The Hon'ble Court after hearing the parties was pleased to allow the above said writ petitions in part quashing the demands raised and the payments made on the strength of the Karnataka Ordinance 8/2003 & uphold the constitutional validity of Section 3(2) of Karnataka Electricity (Taxation on Consumption) Act 1959 as amended by Act 5/2004, reserving liberty to the Respondent to retain such amounts the state is entitle to, in the light of the amending Act.No.5/2004. And further held that amending the parent act to the extent that it is not disturbed by the order and to the extent that the provisions are not declared to be unconstitutional.
10. The firm was again issued a demand letter Dated 24.8.2010 demanding payment of applicable electricity tax on sale of energy as on August 2010 amounting to Rs. 79,20,343/- for the period as per Annexure-I to the demand letter i.e. from 1.7.2001 to 3/2003 Rs. 5,77,370/-, As per Annexure – II i.e. from 4/2003 to 8/2003 Rs. 64,82,699/- & As per Annexure – III i.e. from 4/2007 to 8/2008 Rs. 8,60,274/-. Since the firm did not respond to the above said demand, reminder letters Dated 22.2.2011 & 18.4.2011 were issued. The firm in spite of complying the demand notices, vide letter Dated 7.5.2011 replied contending that the said demand notices are without jurisdiction, illegal and requested for hearing. As per his request this office gave an opportunity of hearing, and to appear on 15.6.2011 at 12.00 noon vide letter Dated 9.6.2011. However the firm vide letter Dated 15.6.2011 requested for rescheduling the hearing date either to 22/23.6.2011. On 22.06.2011 the firm filed written submission. The representatives of the firm was directed to

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furnish the records of generation and supply for the period from August 2003 till date with substantiating records and B and D returns within 2 days. As per the available data the outstanding electricity tax required to be remitted was about Rs. 85 lakhs and the same was brought to the notice of the firm. As per the request of the firm final date of hearing was fixed on 30.6.2011 at 3.00 PM.

11. Since the firm has not turned up for hearing on the said date, and until August 2011, this office as per Section 7 of the Karnataka Electricity (Taxation on Consumption) Act 1959 initiated action to recover the arrears of electricity tax amount payable to Government as an arrear of land revenue vide letter Dated 4.8.2011 addressing to the Deputy Commissioner, Bangalore and a reminder request for the Deputy Commissioner, Bangalore vide letter Dt. 19.11.2011.
12. The firm filed the present writ petition No. 33507-33510/2011 & 35171/2011 challenging the letter Dated 4.8.2011 addressed to the Deputy Commissioner, Bangalore.

#### CONTENTION OF THE FIRM

13. The firm in his written submission Dated 2.1.2018 contended that the notices dated 10.9.2003, 22.9.2003, 29.10.2003 issued under the Karnataka (Electricity Taxation on Consumption) Act, 1959 demanding Rs. 41,68,922/- including the short term levy of tax (for the period 16.10.2003 to 1.7.2004) under ordinance order Dated 16.10.2003 were illegal and misplaced and the said notices were challenged by the firm before the Hon'ble High Court of Karnataka in WP No. 48417/2003 as being illegal and issued in excess of and/without jurisdiction for reasons/grounds stated therein. The Hon'ble High Court of Karnataka, in its order Dated 22.12.2006 rejected the Government contention that it was mandatory on the firm part to obtain license and having not done so cannot take advantage of their own wrong and evade the payment of electricity tax. The said order has become final and binding on the Government & ought to be obeyed.
14. The Firm contended that it is not a licensee as it doesnot fall within any of the category (a) to (c) of section 2(3) of the Act. Likewise, occupants of the building Prestige Towers are not consumers as defined in section 2(1) of the Act as much as they are not supplied energy by a licensee. It is also ex-facie clear that though Firm is not a licensee for the purpose of the Act, it is not non-licensee as defined in Rule 2(c) in the said Act. Therefore, no requirement or obligation is cast upon the firm to collect tax from the persons to whom firm supplies electricity at cost in their building Prestige towers.

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15. The firm further contend that the short term levy of tax under the ordinance No. 8, Dated 16.10.2003 was imposed, an electricity tax on units of energy generated, only on non-licensees namely, (i) those person who generate & use electricity themselves & (ii) to those person who donot pay for buying power from their supplier, a non-licensee. Therefore, even the ordinance was not applicable to the firm.
16. The firm also contended, that he is neither a Licensee nor Non-licensee nor does it consume energy nor supply energy free of charge. Hence firm cannot be called upon to pay any tax, under the Act or Rules and the invoking of the Act or the Rules is in excess & without jurisdiction, which is clear as per Section 3 of the Act, and Rules 3 and 4, but also reading section 4 of the act.
17. The firm further contented that since the year 2001, he has been generating power/electricity from the generator and providing it to occupants in the building, as aforesaid, and has not collected any tax in that behalf ever since. The reason for not collecting tax on the consumption of electricity are that:
- i. was not liable to collect tax as in the year 1996 the tax on captive power was withdrawn to provide a boost to industrial development as evidenced by the news report, Dated 7.10.2003
  - ii. is NOT a consumer as defined in Section 2(1) of the Act;
  - iii. is NOT a Licensee as defined in Section 2(3) of the Act;
  - iv. is NOT a NON-Licensee as defined Rule 2(c) of the Act;
  - v. is NOT required to collect Tax from the occupants of Prestige Towers;
  - vi. is NOT a Licensee as defined in Section 2(6) of the Electricity Supply Act, 1948 (the "1948 Supply Act");
  - vii. is NOT a Licensee as defined in Section 2(h) read with Section 3 of The Indian Electricity Act, 1910 (the "IE Act") and read with Rules 11 to 19 and 47-A of the Rules framed there under;
  - viii. is NOT a Bulk Licensee as defined in Section 2(3) of the 1948 Supply Act;
  - ix. is NOT operating a Controlled Station as defined in Section 2(3) of the 1948 Supply Act;
  - x. is NOT operating a Generating Company as defined in Section 2(4-A) of the 1948 Supply Act;
  - xi. is NOT providing electricity to Consumers. The occupants of Prestige Towers are NOT Consumers as defined in Section .2(1) of the Act.

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- xii. is charging the occupants for the electricity consumed by them. In other words, firm is not providing electricity free nor the petitioner consuming electricity;

Hence, no demand was raised or claimed upon the firm nor objected firm generating power/electricity for the building & providing it to occupants in the building & have raised similar contentions.

18. Hence the demand notices Dated 24.8.2010, 22.2.2011, 18.4.2011, 9.6.2011 demanding tax on the power generated from the generators, which are installed, maintained at the cost of firms, after obtaining the approval are all ex-facie illegal, misplaced, irrational, arbitrary and contrary to the purpose of the Act and other contentions.

### ORDER

19. On perusal of the documents submitted by the firm and after hearing following points fell into consideration.

20. The consumption of Electricity in the State of Karnataka is governed by the Karnataka Electricity (Taxation on Consumption) Act, 1959.

As per the Section 2(1) of Karnataka Electricity (Taxation on Consumption) Act, 1959, "consumer" reads as-

*2(1) "Consumer" includes a local Authority, company or other person to whom energy is supplied by a licensee on payment of charges or otherwise, and a licensee or other person who consumes energy generated by himself, but does not include a licensee to whom energy is supplied by the State Electricity Board for supply to others; and the word "consume" with its grammatical variations shall be construed accordingly.*

21. The plain reading of the definition "consumer" defines that the word "consume" with its grammatical variations are termed as consumers. The contention of the firm that it is supplying electricity to the occupants of the building at cost are not consumers is incorrect. Every person who has been connected with the supply of electricity by the supplier or any other person, for consumption of electricity is a "consumer".

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Section 2(3) of Karnataka Electricity (Taxation on Consumption ) Act, 1959, "Licensee" reads as-

*"Section" 2(3) Licensee means;*

- (a) the State Electricity Board constituted under Section 5 of the Electricity (Supply) Act, 1948 (Central Act LIV of 1948);*
- (b) any person licensed under Part II of the Indian Electricity Act, 1910 (Central Act IX of 1910), to supply energy and includes any person who has obtained the sanction of the State Government under section 28 of the said Act; and*
- (c) the State Government when it is engaged in the business of supplying energy;*

Further, Section 28 of the Indian Electricity Act 1910 Reads as-

*28. Sanction required by non-licensees in certain cases: (1) No person, other than a licensee, shall engage in the business of supplying energy to the public except with the previous sanction of the State Government and in accordance with such conditions as the State Government may fix in this behalf, and any agreement to the contrary shall be void.*

*(1-A) The State Government shall not give any sanction under sub-section (1) –*

- (a) except after consulting the State Electricity Board ; and*
- (b) except with the consent-*
  - i. in any case where energy is to be supplied in any area for which a local authority is constituted, of that local authority;*
  - ii. in any case where energy is to be supplied in any area forming part of any cantonment, aerodrome, fortress, arsenal, dockyard or camp or of any building or any place in the occupation of the Government for defence purposes, of the Central Government;*
  - iii. in any area falling within the area of supply of licensee, of that licensee:*

*Provided that except in a case falling under sub-clause (ii) no such consent shall be necessary if the State Government is satisfied that such consent has been unreasonably withheld.*

22. As per the above provision it is very clear that the persons falling in the above said category are licensee's and other persons who are in conducting such activities are unauthorised licensees. No

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other person, other than licensee shall engage in the business of supplying energy to public except with the previous sanction of the government. Accordingly, in the case on hand, the firm has not obtained the sanction of the Government to supply energy to the consumers of the Prestige Towers and the contention of the firm that it has not obtained any licence under any of the Act and Supplying energy to the consumers of the building is not covered under any of Act and Rules. Collecting and remitting electricity tax does not comes under its purview is not correct. The said activity amounts to unauthorised supply of electricity violating above Acts and Rules. Hence the firm is liable to pay the applicable demanded electricity tax.

23. Another ground urged by the firm is that he is not a non- licensee. Rule 2(c) of The Karnataka Electricity (Taxation on consumption) Rules 1956, reads as-

*2(c) "Non-licensee" means A person not being a licensee, who generates energy for his own consumption or supplies the same to any other person free of charge.*

The firm's contention that it is not a Non-licensee, since it is generating power and not consuming the same but supplying generated energy at cost to the consumers of the building is correct. But the firm should have obtained license under Section 28 of the Indian Electricity Act 1910 and engage in this business. The firm has not obtained such license hence, it comes under unauthorized supply of Electricity.

24. It is evident that while issuing the approval Dated 1.6.2001 the condition Nos. 1 to 9 were imposed.

*Condition No. 6 reads as:*

*Monthly tax returns shall be filed in form B & D and the same shall be sent to this office under intimation to DEI (North) Bangalore.*

*Condition No. 8 reads as:*

*This approval shall be issued subject to conditions of compliance of IE Rules 1956, IE Act 1910, IE Supply Act 1948 and the Karnataka Electricity (Taxation on Consumption) Act 1959.*

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25. As per the above conditions, it is bounded duty of the firm to comply the terms of the above said conditions but the firm has violated the above conditions. Hence the firm is liable to pay the applicable demanded electricity tax as per the above conditions.
26. The firm is generating electricity and selling the same to the consumers at the rate of Rs. 8/- per unit as per the bill No. DG.PT.0203/16 Dated 1.2.2003 & at the rate of Rs. 15/- per unit as per the statement dated 16.9.2008 submitted by the Senior Facility Manager of the firm, which amounts to business, hence the firm is unauthorised licensee & the firm cannot escape from such liability which amounts to loss of exchequer of the State.
27. Further the Government have brought amendments to the Karnataka Electricity (Taxation on Consumption) Act.1959 for section 3; from 1.4.2003 as:-

*3. Levy of tax on consumption of energy.- 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 under agricultural (irrigation pump sets upto and inclusive of ten horse powers), Bhagya Jyothi and Kutira Jyothi categories.*

Further again amendment was brought to section. 3 from 16.10.2003 as:-

*3. Levy of tax on consumption of energy.*

*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 consumer under agricultural (irrigation pump sets upto and inclusive ten horse power) Bhagya jyothi and kutira jyothi categories.*

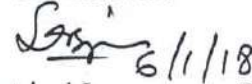
*2) Subject to the provisions of this Act, there shall be levied and paid to the State Government with effect from the date of commencement of the Karnataka Electricity (Taxation on consumption) (Amendment) Act.2004 and till the first day of July 2004, an electricity tax at the rate twenty five paise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

- i. not being a licence 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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28. The Karnataka Electricity (Taxation on Consumption) Act 1959 was amended as The Karnataka Electricity (Taxation on Consumption or Sale) Act, 1959 and with consequential amendments by an Act 31/2013.
29. It is also not in dispute, as per the ordinance the firm has paid the total electricity tax of Rs. 13,53,690/- (Rs. 3,59,038/- vide DD. Nos. (186063/3.8.2004, Rs. 4,78,827/- vide DD. No. 183695/10.8.2004, Rs. 5,15,824/- vide DD. No. 187035/23.8.2004) and subsequently for the delay in payment of the principle electricity tax amount, an interest of Rs. 1,23,996/- was also paid vide DD.No.187306/27.8.2004. By which it is very much admitted that it is liable to pay the tax, and now the contention of the firm that it is not liable to pay the tax demanded is incorrect.
30. In view of the above said reasons, electricity generated and sold by the firm is liable to be taxed & the firm is liable to pay the electricity consumption tax on the units of electricity generated and supplied by it to the consumers as per the demand notices Dated 24.8.2010, 22.2.2011, 18.4.2011 & 9.6.2011 along with the applicable interest.

BY ORDER

 6/1/18

Chief Electrical Inspector to Govt.

Bengaluru

Order No. CEIG/ACEI/AO(Tax)/2017-18/01-02 Dt. 6.1.2018

To,

M/s. Prestige Property Management and Services  
No. 303, Copper Arch, III Floor, Infantry Road,  
Bengaluru-560001

Copy Submitted to

1. The Additional Chief Secretary, Department of Energy, Vikasa Soudha, Dr. Ambedkar Veeddi, Bengaluru for kind information