

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
AT NEW DELHI**

**(APPELLATE JURISDICTION)**

**APPEAL NO.158 OF 2014**

**Dated: 7<sup>th</sup> January, 2015.**

**Present: Hon'ble Smt. Justice Ranjana P. Desai, Chairperson  
Hon'ble Mr. Rakesh Nath, Technical Member.**

**IN THE MATTER OF:**

M/s. Sponge Udyog Private Limited,  
K-12, Civil Township, Rourkella,  
District, Sundargarh, ... Appellant  
Odisha – 769004.

Versus

1. Odisha Electricity Regulatory  
Commission,  
Bidyut Niyamak Bhawan,  
Unit-VIII, Bhubneshwar-751012.
2. Western Electricity Supply  
Company of Odisha Limited,  
Plot No.N-1/22, IRC Village,  
Nayapati, Bhubneshwar-751015. ... Respondents

Counsel for the Appellant(s) ... Mr. M.G. Ramachandran  
Mr. Avinash Menon  
Ms. Anushree Bardhan

Counsel for the Respondent(s) ... Mr. Buddy A. Ranganadhan  
Mr. Hasan Murtaza for R-2.

Mr. Rutwik Panda  
Mrs. Anshu Malik for R-1

## **JUDGMENT**

### **PER HON'BLE (SMT.) JUSTICE RANJANA P. DESAI - CHAIRPERSON**

1. The Appellant is a company engaged in production of Sponge Iron. Respondent No.1 is Odisha Electricity Regulatory Commission (for short, "**the State Commission**"). Respondent No.2 – Western Electricity Supply Company of Odisha Limited (for short, "**WESCO**") is a company engaged in electric supply in western Odisha.

2. The Appellant is a consumer of Respondent No.2 with a contract demand of 600 KVA, since 2011. The Appellant falls under the category 'Large Industry' in terms of Chapter 8 of the Odisha Electricity Regulatory Commission Distribution (Conditions of Supply) Code, 2004 (for short, "**the Supply Code**").

This category relates to supply of power to industries with contract demand of 110 KVA and above but below 25000 KVA. WESCO issued a provisional assessment order dated 11/2/2014 to the Appellant, *inter alia*, stating that on inspection of the Appellant's past energy bills, it was found that the Appellant's maximum demand exceeded 120% of its contract demand of 600 KVA continuously in some months from September, 2012 to January, 2014. The order further stated that the overdrawal of electricity in excess of sanctioned contract demand amounts to breach of terms and conditions of the agreement entered into between the licensee and the consumer for supply of power and statutory conditions and such consumption in excess of the contract demand shall be an 'unauthorized use' of electricity in terms of Section 126 of the Electricity Act, 2003 (for short, "**the said Act**"). The order further conveyed to the Appellant that by reason of such unauthorized use of electricity in excess of the Appellant's approved contract demand, WESCO has provisionally assessed the Appellant's liability under Section 126(2) of the said Act. The Appellant was informed that it was

entitled to file objections against the provisional assessment order under Section 126(3) of the said Act within seven days from the date of receipt of the order and that the Appellant shall be entitled to appear before the Executive Engineer (Elect.), RED, WESCO, Rajgangpur for an opportunity of hearing on or before 24/2/2014 during working hours at 12.30 p.m. to 1.30 p.m. The order further stated that the Appellant was entitled under Section 126(4) of the said Act to deposit the assessment amount within 7 days from the date of receipt of the provisional assessment order and upon such deposit being made, the Appellant shall not be subjected to any further liability or any action by any authority whatsoever for the unauthorized use of power. The order further stated that if the Appellant fails to file objections within 7 days from the date of receipt of the said order, it shall be presumed that it has no objection to the provisional assessment and the final order of assessment of the electricity charges payable by the Appellant under Section 126(3) of the said Act shall be passed.

3. The Appellant filed objections on 3/3/2014. In the objections, the Appellant raised a preliminary issue as regards maintainability. It was, *inter alia*, stated that the Regulations and the Tariff Order together provided for a mechanism wherein High Tension consumer i.e. consumer having contract demand of 110 KVA or above can legally draw energy in excess of the demand and for the said purpose, the billing mechanism is also provided. In this connection, reference was made to Regulations 64 and 106 of the Supply Code. It was stated that from a conjoint reading of the said Regulations, it is manifest that excess drawal is prohibited. However, to protect the supply system, the consumer drawing excess power should get its contract demand enhanced by following the procedure laid down under Sections 72 to 74 of the said Act. Clause 483 of the Tariff Order of 2012-13 deals with overdrawal of energy in peak hours and off peak hours. Penalty is provided for overdrawal of power above contract demand in terms of Clause 484. Similar provision is contained in the Tariff Order for 2013-14. It was pointed out that when a mechanism is provided in the Tariff Order statutorily

framed under Sections 62 and 64 of the said Act and penalty has been levied for such excess drawal, duly accounted for, on the basis of meter reading, such excess cases cannot fall within the purview of Section 126 of the said Act. It was pointed out that from a bare perusal of Section 126 of the said Act, it is clear that a case of excess drawal of power, duly authorized by the provisions of Tariff Order, would not fall within the purview of Section 126 of the said Act as the five categories mentioned in clause (b) of the explanation to Section 126 do not cover such a case. It was further stated that the only procedure which can be followed is that the licensee can issue a notice to the consumer, who exceeds drawal of energy by 120%, to enhance its contract demand. If the licensee is satisfied that such excess drawal may result into system failure, it may issue notice for disconnecting the supply. However, it is not open to the licensee to initiate a case of unauthorized use of energy under Section 126 of the said Act for exceeding the contract demand particularly when the Tariff Order provides mechanism and stipulates penalty for the same. It was further stated that the initiation of proceedings

under Section 126 amounts to violation of the Tariff Order issued by the Regulatory Commission. The reply ended with a request to consider the application of the Appellant for enhancing of the contract demand.

4. Being aggrieved by the alleged inaction of WESCO, the Appellant filed a petition being Case No.30 of 2014 before the State Commission under Section 142 read with Section 146 of the said Act alleging that WESCO had failed to comply with the directions, Regulations and Orders passed by the State Commission and had wrongly proceeded to raise a provisional assessment order under Section 126 of the said Act. The Appellant prayed that proceedings be initiated against WESCO for violation of the provisions of the Tariff Orders for 2012-13 and 2013-14 issued by the State Commission under Section 64 of the said Act.

5. During the pendency of the said petition being Case No.30 of 2014, the Assessing Officer of WESCO rejected the objections

raised by the Appellant dated 3/3/2014 and by the final Assessment Order dated 11/3/2014, he levied a penalty of Rs.60,32,558.16 on the Appellant.

6. WESCO raised a preliminary objection to the petition filed by the Appellant under Section 142 read with Section 146 of the said Act that the Appellant had an alternative remedy under Section 127 of the said Act and the State Commission did not have jurisdiction to hear the matter. On 16/05/2014, WESCO issued a disconnection notice to the Appellant under Section 56(1) of the said Act. By order dated 10/6/2014, the State Commission refused to interfere in the matter, *inter alia*, on the ground that the parallel proceedings under Section 126 of the said Act had been initiated and, therefore, the Appellant should approach the appropriate Appellate Authority under Section 127 of the said Act. The said order is challenged in this appeal.

7. We have heard Mr. Ramachandran, learned counsel appearing for the Appellant. We have also perused the written

submissions filed by him. Counsel has drawn our attention to Section 50 of the said Act which deals with the Electricity Supply Code and the relevant provisions of the Supply Code notified by the State Commission under the said section. Counsel particularly referred to the preamble of the Supply Code, to the definitions of terms connected load, contract demand, maximum demand, clause 14 which deals with consequences of default on the part of the licensee, clauses 71 to 74 which deal with enhancement of contract demand, clause 80, which deals with classification of consumers, clause 85(1) which deals with demand charges and clauses 111 and 112 which deal with power to issue directions, remove difficulty, etc. Counsel also took us to the relevant parts of the Tariff Order dated 23/3/2012 (F.Y. 2012-13) and Tariff Order dated 20/3/2013 (F.Y. 2013-14). Counsel submitted that the distribution licensee has levied and collected the charges for overdrawal as per the Tariff Orders read with the provisions of the Supply Code. The Appellant has been thus subjected to payment of penal charges for such overdrawal. Counsel submitted that in addition to collecting overdrawal

penalty, WESCO claimed additional security deposit in terms of the Supply Code and demanded an additional amount of Rs.7,10,514.50 wherein, the average energy charge was calculated as also the average maximum demand of 721 KVA was taken into consideration for purposes of computation. Counsel pointed out that the Appellant has duly deposited the said sum on 29/5/2013. Counsel submitted that in the circumstances, the action of WESCO, in making assessment for unauthorized use under Section 126 of the said Act, amounts to double jeopardy. Counsel submitted that when Tariff Order itself specifies the manner of dealing with overdrawal and consequential charges to be paid, no other action can be taken against the Appellant. The classification of the Appellant remains as 'Large Industry' and, therefore, there is no issue of unauthorized use within the meaning of Section 126 of the said Act. Counsel submitted that the period of controversy before the Supreme Court in **Executive Engineer v. Sri Seetharam Rice Mills**<sup>1</sup> was June, 2008 to August 2009. The said decision was given on 20/10/2011. Tariff Orders relating to F.Y. 2012-2013

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<sup>1</sup> (2012) 2 SCC 108

and F.Y. 2013-14 comprehensively regulate and authorize overdrawal in excess of the contract demand. They recognize and allow consumers with contract demand in excess of 110 KVA to maintain loads in excess of their contract demand. In the facts before the Supreme Court, the consumer had a contract demand less than 110 KVA and was not entitled to such benefit. By virtue of excess demand, it had not only exceeded its contract demand but had changed its category from a Medium Industry to a Large Industry and had become liable to pay higher tariff. The Appellant has not changed its classification. It continues to be classified as a Large Industry. **Sri Seetharam Rice Mills**, therefore, cannot be made applicable to this case. He submitted that the Appellant approached the State Commission for direction to WESCO to act consistent with the Tariff Orders and the Supply Code because the State Commission has jurisdiction to pass such orders. In support of his submission, counsel relied on **Maharashtra Electricity Regulatory Commission v. Reliance Energy Ltd.**<sup>2</sup> and **Madhya Gujarat**

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<sup>2</sup> (2007) 8 SCC 381

**Vij Company Limited v. Yash Cooperative Housing Society Limited**<sup>3</sup>.

8. We have also heard Mr. Buddy Ranganadhan, learned counsel appearing for WESCO. We have perused the written submissions submitted by the counsel. Counsel submitted that the Appellant's basic contention, which it had raised in its objections filed before the Assessing Officer under Section 126 of the said Act, is that the action of the licensee in treating the overdrawal by the Appellant as an unauthorized use of energy is directly in conflict with the Tariff Order and Supply Code and, hence, there is a violation as contemplated under Section 142 of the said Act. By filing such a petition, the Appellant is clearly bypassing the procedures contemplated under Sections 126 and 127 of the said Act. Counsel submitted that Section 145 of the said Act prohibits 'any authority' created under the said Act from injuncting the exercise of powers under Sections 126 and 127 of the said Act. The Appellant is attempting to do that which is prohibited by Section 145 of the said Act.

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<sup>3</sup> Order dt. 27/5/2014 in APTEL Appeal No.311 of 2013

9. Referring to **Sri Seetharam Rice Mills**, counsel submitted that it is held by the Supreme Court in this case that the provisions of Sections 126 and 127 of the said Act are a complete code in themselves. It is not open to the Appellant therefore to bypass the procedures contemplated therein. Whether overdrawal tantamounts to an unauthorized use of electricity is completely within the jurisdiction of the assessing officer and the Appellate Authority under Sections 126 and 127 respectively of the said Act and it is not for the State Commission to interdict such a process by recourse to the general provisions under Section 142 of the said Act. Counsel laid stress on the fact that provisional assessment was subject matter of the petition before the State Commission, but pertinently a final assessment has already been made under Section 126 of the said Act and the assessed amount has been paid by the Appellant. The procedure mandated under Sections 126 and 127 of the said Act, therefore, cannot be bypassed. Counsel heavily relied on **Sri Seetharam Rice Mills** and submitted that in this case, the Supreme Court has clearly held that the electricity consumed in violation of the

said Act, Regulations or Conditions of Supply would amount to unauthorized use of electricity under Section 126 of the said Act and that blame under Section 126 relates to the excess load whereas the liability to pay on a different tariff is a consequence of the blame. The blame contemplated under Section 126 is not dependent on whether the overdrawal transgresses into another tariff category or not. The very fact that the licensee is empowered to levy higher charges as per the tariff applicable for overdrawal, is immaterial for the applicability of Section 126 of the said Act. Counsel submitted that in any case since an alternative remedy is available to the Appellant and the State Commission has rightly relegated the Appellant to the alternative remedy where all the questions raised in this Appeal could be agitated, no interference is necessary with the impugned order.

10. Since considerable arguments have been advanced on **Sri Seetharam Rice Mills** and the State Commission has also referred to the same, it is necessary to begin with it. We deem it appropriate to do so also because one of the questions which fell

for consideration before the Supreme Court was whether wherever the consumer consumes electricity in excess of the maximum contracted load, the provisions of Section 126 of the said Act would be attracted on its true scope and interpretation. The said question squarely arises in the instant case. We shall, therefore, examine what were the facts before the Supreme Court; consider the conclusions drawn by the Supreme Court and see whether the present case is covered by those conclusions.

11. The respondent in **Sri Seetharam Rice Mills** was a partnership firm engaged in the production of rice. For supply of electricity, it had entered into Agreement dated 9/12/1997 with the appellant therein. The respondent therein was classified as 'Medium industry' category, which dealt with contract demand of 99 KVA and above but below 110 KVA. On 10/6/2009, the Executive Engineer, Jeypore, inspected the respondent's business premises. Dump was conducted. On 25/7/2009, provisional assessment order was issued by the appellant therein

to the respondent therein. Intimation was issued to the respondent therein that there was unauthorized use of electricity falling squarely within the ambit of Section 126 of the said Act. In the dump report, it was stated that there was unauthorized use of electricity and maximum demand had been consumed upto 142 KVA. On this basis, the provisional assessment order was passed by taking the contracted demand as that applicable to large industry. The respondent therein did not file objections but challenged the provisional assessment order on the ground of lack of authority and jurisdiction on the part of the Executive Engineer to frame the provisional assessment by alleging unauthorized use of electricity since 4/6/2008. The respondent therein contended that since it was classified as medium scale industry, provisional assessment could not have been made on the basis of the dump charges relating to large industry. The High Court held that overdrawal of maximum demand would not fall within the scope of 'unauthorized use of electricity' as defined by sub-clause (b) to the Explanation to Section 126 of the said Act. The High Court set aside the provisional assessment order.

While dealing with the challenge to the High Court's order, the Supreme Court, *inter alia*, examined the scope of Sections 126, 127 and 135 of the said Act against the backdrop of the scheme of the said Act and summed up its conclusions as under:

*“1. Wherever the consumer commits the breach of the terms of the Agreement, Regulations and the provisions of the Act by consuming electricity in excess of the sanctioned and connected load, such consumer would be ‘in blame and under liability’ within the ambit and scope of Section 126 of the 2003 Act.*

*2. The expression ‘unauthorized use of electricity means’ as appearing in Section 126 of the 2003 Act is an expression of wider connotation and has to be construed purposively in contrast to contextual interpretation while keeping in mind the object and purpose of the Act. The cases of excess load consumption than the connected load inter alia would fall under Explanation (b)(iv) to Section 126 of the 2003 Act, besides it being in violation of Regulations 82 and 106 of the Regulations and terms of the Agreement.*

*3. In view of the language of Section 127 of the 2003 Act, only a final order of assessment passed under Section 126(3) is an order appealable under Section 127 and a notice-cum-provisional assessment made under Section 126(2) is not appealable.*

*4. Thus, the High Court should normally decline to interfere in a final order of assessment*

*passed by the assessing officer in terms of Section 126(3) of the 2003 Act in exercise of its jurisdiction under Article 226 of the Constitution of India.*

5. *The High Court did not commit any error of jurisdiction in entertaining the writ petition against the order raising a jurisdictional challenge to the notice/provisional assessment order dated 25th July, 2009. However, the High Court transgressed its jurisdictional limitations while travelling into the exclusive domain of the Assessing Officer relating to passing of an order of assessment and determining factual controversy of the case.*

6. *The High Court having dealt with the jurisdictional issue, the appropriate course of action would have been to remand the matter to the Assessing Authority by directing the consumer to file his objections, if any, as contemplated under Section 126(3) and require the Authority to pass a final order of assessment as contemplated under Section 126(5) of the 2003 Act in accordance with law.”*

12. In our opinion, the first two conclusions quoted hereinabove completely support the 2<sup>nd</sup> respondent. Learned counsel for the Appellant tried to distinguish **Sri Seetharam Rice Mills** from the present case on the ground that there was a change in the classification/category which is not so in this case inasmuch as here the Appellant remains a large industry and, therefore, there is no issue of unauthorized use within the meaning of Section

126 of the said Act. We see no force in this submission because it was argued before the Supreme Court that change of category would not attract Section 126 of the said Act. It was contended that only cases of change of user would be covered by Section 126 of the said Act. While rejecting this contention, the Supreme Court clarified that explanation to Section 126 is not exhaustive and any use of electricity which is not permissible and beyond the contract demand amounts to unauthorized use of electricity and the blame contemplated under Section 126 of the said Act is not dependent on whether the overdrawal transgresses into another tariff category or not. We may quote the relevant paragraphs from **Sri Seetharam Rice Mills:**

*“44. The unauthorized use of electricity in the manner as is undisputed on record clearly brings the respondent ‘under liability and in blame’ within the ambit and scope of Section 126 of the 2003 Act. The blame is in relation to excess load while the liability is to pay on a different tariff for the period prescribed in law and in terms of an order of assessment passed by the assessing officer by the powers vested in him under the provisions of Section 126 of the 2003 Act.*

*60. The expressions ‘means’, ‘means and includes’ and ‘does not include’ are expressions of different*

*connotation and significance. When the Legislature has used a particular expression out of these three, it must be given its plain meaning while even keeping in mind that the use of other two expressions has not been favoured by the Legislature. To put it simply, the Legislature has favoured non-use of such expression as opposed to other specific expression. In the present case, the Explanation to Section 126 has used the word 'means' in contradistinction to 'does not include' and/or 'means and includes'. This would lead to one obvious result that even the Legislature did not intend to completely restrict or limit the scope of this provision.*

*61. Unauthorised use of electricity cannot be restricted to the stated clauses under the explanation but has to be given a wider meaning so as to cover cases of violation of terms and conditions of supply and the regulations and provisions of the 2003 Act governing such supply. 'Unauthorised use of electricity' itself is an expression which would, on its plain reading, take within its scope all the misuse of the electricity or even malpractices adopted while using electricity. It is difficult to restrict this expression and limit its application by the categories stated in the explanation. It is indisputable that the electricity supply to a consumer is restricted and controlled by the terms and conditions of supply, the regulations framed and the provisions of the 2003 Act.*

*64. Minimum energy charges are to be levied with reference to 'contract demand' at the rate prescribed under the terms and conditions. These clauses of the Agreement clearly show that the charges for consumption of electricity are directly relatable to the sanctioned/connected load and also the load consumed at a given point of time if it is in excess of*

*the sanctioned/connected load. The respondent could consume electricity up to 110 KVA but if the connected load exceeded that higher limit, the category of the respondent itself could stand changed from 'medium industry' to 'large industry' which will be governed by a higher tariff.*

*65. Chapter VIII of the Conditions of Supply classifies the consumers into various categories and heads. The electricity could be provided for a domestic, LT Industrial, LT/HT Industrial, Large Industry, Heavy Industries and Power Intensive Industries, etc. In terms of Regulation 80, the industry would fall under LT/HT category, if it relates to supply for industrial production with a contract demand of 22 KVA and above but below 110 KVA. However, it will become a 'large industry' under Regulation 80(10) if it relates to supply of power to an industry with a contract demand of 110 KVA and above but below 25,000 KVA. Once the category stands changed because of excessive consumption of electricity, the tariff and other conditions would stand automatically changed. The licensee has a right to reclassify the consumer under Regulation 82 if it is found that a consumer has been classified in a particular category erroneously or the purpose of supply as mentioned in the agreement has changed or the consumption of power has exceeded the limit of that category etc. The Conditions of Supply even place a specific prohibition on consumption of excessive electricity by a consumer.*

*66. Regulation 106 of the Conditions of Supply reads as under:*

*“106. No consumer shall make use of power in excess of the approved contract demand or use power for a purpose other*

than the one for which agreement has been executed or shall dishonestly abstract power from the licensee's system."

67. On the cumulative reading of the terms and conditions of supply, the contract executed between the parties and the provisions of the 2003 Act, we have no hesitation in holding that consumption of electricity in excess of the sanctioned/connected load shall be an 'unauthorised use' of electricity in terms of Section 126 of the 2003 Act. This, we also say for the reason that overdrawal of electricity amounts to breach of the terms and conditions of the contract and the statutory conditions, besides such overdrawal being prejudicial to the public at large, as it is likely to throw out of gear the entire supply system, undermining its efficiency, efficacy and even increasing voltage fluctuations."

71. Consumption in excess of sanctioned load is violative of the terms and conditions of the agreement as well as of the statutory benefits. Under Explanation (b)(iv), 'unauthorised use of electricity' means if the electricity was used for a purpose other than for which the usage of electricity was authorised. Explanation (b) (iv), thus, would also cover the cases where electricity is being consumed in excess of sanctioned load, particularly when it amounts to change of category and tariff. As is clear from the agreement deed, the electric connection was given to the respondent on a contractual stipulation that he would consume the electricity in excess of 22 KVA but not more than 110 KVA. The use of the negative language in the condition itself declares the intent of the parties that there was an implied prohibition in consuming electricity in excess of the maximum load as it would per se be also prejudiced.

*Not only this, the language of Regulations 82 and 106 also prescribe that the consumer is not expected to make use of power in excess of approved contract demand otherwise it would be change of user falling within the ambit of 'unauthorised use of electricity'.*

*72. Again, there is no occasion for this Court to give a restricted meaning to the language of Explanation (b)(iv) of Section 126. According to the learned counsel appearing for the respondent, it is only the actual change in purpose of use of electricity and not change of category that would attract the provisions of Section 126 of the 2003 Act. The contention is that where the electricity was provided for a domestic purpose and is used for industrial purpose or commercial purpose, then alone it will amount to change of user or purpose. The cases of excess load would not fall in this category. This argument is again without any substance and, in fact, needs to be noticed only to be rejected."*

13. Needless to say that here we are concerned with the same Supply Code with which the Supreme Court was dealing with in **Sri Seetharam Rice Mills**. Upshot of the above discussion is that the contention that, if there is no change in category on account of overdrawal, Section 126 of the said Act is not applicable, cannot stand the scrutiny of the court. In view of the authoritative pronouncement of the Supreme Court in **Sri**

**Seetharam Rice Mills**, we have no hesitation in rejecting the said contention raised by the Appellant.

14. We, however, find that in **Sri Seetharam Rice Mills**, the period of controversy before the Supreme Court was June, 2008 to August, 2009. The Supreme Court gave its decision on 20/10/2011. In the present case, WESCO's allegation is that the Appellant's maximum demand exceeded 120% of its contract demand of 600 KVA continuously in some months from September, 2012 to January, 2014. The Tariff Orders relating to F.Y. 2012-2013 and F.Y. 2013-14 comprehensively regulate and authorize overdrawal in excess of the contract demand. The Tariff Orders for F.Y. 2012-2013 and F.Y. 2013-14 recognize and allow consumers with contract demand in excess of 110 KVA to maintain loads in excess of their contract demand. The Appellant has already paid the penalty for overdrawal levied on it as per the Tariff Order and Supply Code and the penalty levied by the Assessing Officer. It was, therefore, necessary for the State Commission to consider whether notwithstanding payment

of overdrawing penalty as per the Tariff Order, additional charges could have been levied on the Appellant by an assessment under Section 126 of the said Act.

15. It is urged that whenever a distribution licensee acts contrary to any direction issued by the State Commission i.e. contrary to the Supply Code or Tariff Order, the aggrieved party can approach the State Commission for a direction against the distribution licensee for enforcement and compliance. The State Commission has got general and supervisory jurisdiction to deal with and enforce compliance of its orders, regulations, etc. It was urged that this crucial point was overlooked by the State Commission. This submission is countered by counsel for WESCO by submitting that the Appellant is seeking to bypass the procedures contemplated under Sections 126 and 127 of the said Act to avoid the rigours of the same by approaching the State Commission under Section 142 of the said Act. It is submitted that Section 145 of the said Act prohibits any authority created under the said Act from injuncting the exercise

of powers under Sections 126 and 127 of the said Act which provisions have been described by the Supreme Court in **Sri Seetharam Rice Mills** as a complete Code in themselves.

16. Admittedly, the Appellant has raised the submission that the action of WESCO in treating the overdrawal by the Appellant as an unauthorized use of electricity is in conflict with the Tariff Orders and Supply Code and, therefore, is a violation within the meaning of Section 142 of the said Act, in the objections filed by it to the provisional assessment before the Assessing Officer under Section 126 of the said Act. Since final Assessment Order is in the field and against the final Assessment Order, an appeal is prescribed under Section 127 of the said Act before the Appellate Authority, in our opinion, the above submissions can be considered by the Appellate Authority in case the Appellant files an appeal under Section 127 of the said Act. Even the impugned order relegates the Appellant to the remedy of an appeal. We, therefore, leave the above submissions open. In case, an Appeal is filed by the Appellant under Section 127 of the

said Act, the Appellate Authority may consider and decide them on merits. We make it clear that we have not expressed any opinion on those submissions. We are mindful of the fact that there is possibility of a delay in filing the appeal before the Appellate Authority. In the peculiar facts of the case, the Appellate Authority may while considering the Appellant's application for condonation of delay, if any, take into consideration the fact that the Appellant was prosecuting Case No.30 of 2014 before the State Commission and also the present appeal in this Tribunal. In the view that we have taken, the appeal is dismissed.

17. Pronounced in the Open Court on this 7<sup>th</sup> day of January, 2015.

**(Rakesh Nath)**  
**Technical Member**

**(Justice Ranjana P. Desai)**  
**Chairperson**

✓ **REPORTABLE/NON-REPORTABLE**