

GAHC010145462017



2026:GAU-AS:3274

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/6512/2017

SANJIV TEA INDUSTRY PVT. LTD.
HAVING ITS REGD. OFFICE and PRINCIPAL PLACE OF BUSINESS AND
OFFICE AT DHULIAGAON, P.O. MORONGI-785621, DIST. GOLAGHAT,
ASSAM, REP. BY ITS MANAGING DIRECTOR, SRI SANJIV GOGOI, S/O. SRI
MUKUL GOGOI, R/O. DHULIAGAON, P.O. MORONGI, DIST. GOLAGHAT,
ASSAM.

VERSUS

THE ASSAM POWER DISTRIBUTION CO. LTD. and 2 ORS.
BIJULEE BHAWAN, PALTAN BAZAR, GHY.-781001 REP. BY ITS MANAGING
DIRECTOR.

2:THE APPELLATE AUTHORITY FOR A. P.D.C. LTD.

BIJULEE BHAWAN
PALTAN BAZAR
GHY.-781001.

3:THE AREA MANAGER/ASSESSING OFFICER

INDUSTRIAL REVENUE COLLECTION AREA
ASSAM POWER DISTRIBUTION CO. LTD.
JORHAT
DIST. JORHAT
ASSAM

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH

For the Petitioner(s) : Mr. P. Bhowmick, Advocate
For the Respondent(s) : Mr. K. P. Pathak, SC, APDCL
: Mr. B. Choudhury, SC, APDCL

- Date on which Judgment was reserved : N/A
- Date of Pronouncement of Judgment : **27.02.2026**
- Whether the pronouncement is of the Operative Part of the Judgment : No
- Whether the full Judgment has been Pronounced : Yes

JUDGMENT AND ORDER (ORAL)

Heard Mr. P. Bhowmick, the learned counsel appearing on behalf of the Petitioner and Mr. K. P. Pathak, the learned Standing counsel appearing on behalf of the Respondent Nos. 1, 2 and 3.

2. The Petitioner herein which is a company engaged in the business of plantation, manufacture and sale of black tea had assailed the order dated 19.09.2017 passed in Review Petition No.1/2017 as well as the Bill dated 03.10.2017. In addition to that the Petitioner has also sought for refund of an amount of Rs.32,78,365/- or to adjust the same against future dues.

3. The Petitioner Company who is engaged in the business of

plantation, manufacture and sale of black tea had taken a connection from the Respondent Authorities with a sanctioned load of 620 KW and in that regard, a meter bearing No.ASB26400 was installed. The Contract Demand as per the Agreement entered into by and between the Petitioner and the APDCL Authorities was 403 KW. It was also mentioned in the said Agreement that the Seasonal Contract Demand from April to November would be 474 KVA and during the period from December to March which is the off season, the contract demand would be 190 KVA.

4. The materials on record show that on 09.01.2016, an inspection was carried out by the Respondent No.3 and during the inspection, it was found that the meter cover seals and meter terminal cover seals were in tampered condition. The meter cabinet glass was also found in broken condition. It is the finding of fact arrived at by the Assessing Officer as well as also by the Appellate Authority that the meter data was downloaded and analyzed and found that the meter cover opened, tampered, logged on 28.07.2014 at 11:50 hours which is more than one year from the date of the inspection. The tampered meter was withdrawn for further testing/analysis and a new laboratory tested meter was installed in the Petitioner's premises. The withdrawn meter was properly sealed in the presence of the Petitioner's

representative and taken to the MTI Laboratory, Jorhat, for further action.

5. The materials on record further show that in terms with Section 126 of the Electricity Act, 2003 (for short 'the Act of 2003'), a Provisional Assessment Bill amounting to Rs.1,50,09,966/- (One crore fifty lakh nine thousand nine hundred sixty-six rupees) was served upon the Petitioner on 11.01.2016. The Petitioner submitted an objection and a hearing was conducted on 02.05.2016 and the Provisional Assessment Bill was made final vide an order dated 03.05.2016. Being aggrieved, the Petitioner preferred an Appeal under Section 127 of the Act of 2003 which was registered and numbered as Appeal No.3/2017.

6. The Petitioner paid 50% of the Final Assessment Bill on 06.04.2016 before finalization of the appeal proceedings. The learned Appellate Authority vide an order dated 26.07.2017 came to a finding that the Final Assessment Bill served upon the Petitioner on 20.05.2016 was justified. However, the Appellate Authority was further of the opinion that 20% of the penalty amount is required to be waived subject to outstanding assessment bill payment is paid within 30 days from the date of the issuance of the said order and accordingly there was a

direction for issuance of a revised assessment bill and the Petitioner was directed to deposit the same within 30 days or the Petitioner would be liable to pay full assessment amount.

7. On the basis of the above directions so passed by the learned Appellate Authority on 26.07.2017, a revised assessment bill was served upon the Petitioner on 01.08.2017 amounting to Rs.60,03,986/-. The Petitioner thereupon sought a review of the order dated 26.07.2017 passed by the learned Appellate Authority on the ground that while preparing the revised assessment bill, the APDCL Authorities cannot take resort to the Assam Electricity Regulatory Commission Supply Code for calculation of the assessment amount and they have to do so in terms with Section 126(5) of the Act of 2003. It was also mentioned that if the assessment was carried out in terms with Section 126(5) of the Act of 2003, the total amount to which the Petitioner would have been liable was Rs.84,53,236/- being the double the bill amount for the 12 months immediately preceding the date of inspection, i.e. 09.01.2016 and out of which, an amount of Rs.42,26,618/- being the bill amount from January, 2015 to December, 2015 having already been paid, the only amount payable by the Petitioner was Rs.42,26,618/- as per Section 126(5) of the Act of 2003.

8. It is also very pertinent to take note of that in addition to the review application so filed, the Petitioner also filed an additional affidavit in the said proceeding drawing the attention of the learned Appellate Authority that tea is a seasonal industry and the consumption is low during the off season period ought to have been considered and more particularly, when the off season contract demand was 190 KVA instead of the connected load of 620 KW.

9. The latter of the grounds i.e. about the off season demand which was taken by the Petitioner in the additional affidavit found favour with the learned Appellate Authority in the said review proceedings inasmuch as the learned Appellate Authority taking into account that the tea industry is seasonal in nature and the consumption pattern is very low during off season, directed that their monthly assessed consumption during the off season period may be considered as 40% of the season period. However, the learned Appellate Authority observed that as the payment was not made within a period of 30 days as directed in the order dated 26.07.2017, the waiver of 20% of the penalty amount for payment within 30 days was withdrawn.

10. Subsequent to the order dated 19.09.2017, another revised

assessment bill was served upon the Petitioner on 03.10.2017 wherein it was held that the Petitioner was liable to pay an amount of Rs.34,14,729/- after taking into consideration the amount already paid by the Petitioner. The Petitioner thereupon approached this Court by filing the present writ petition on 27.10.2017.

11. The record reveals that the learned Coordinate Bench of this Court vide an order dated 02.11.2017 issued notice but stayed the realization of the amount of Rs.34,14,729/- subject to deposit of Rs.9,48,253/-. It is the case of the Petitioner that the said amount of Rs.9,48,253/- have already been deposited.

12. The record reveals that the Respondents herein have filed their affidavit-in-opposition whereby the order passed in the review application by the learned Appellate Authority was supported. It was further mentioned that the case of the Petitioner would strictly come within the ambit of meter tampering and as such, the Petitioner was not entitled to any relief in the instant proceedings more particularly taking into consideration that Act of 2003 was enacted with a clear revenue focus.

13. It was further mentioned in the said affidavit-in-opposition

that the findings of facts arrived at by the learned Appellate Authority to the effect that there was tampering of the meter is based upon materials inasmuch as, a foreign circuit was found inside the meter and the meter seals were broken. There was no explanation by the Petitioner to explain as to how such unauthorized use had taken place within its premises. The Respondents have also referred to Clause 4.2.125 of the Electricity Supply Code and Related Matters Regulations, 2004 which imposes the sole responsibility upon the consumer for unauthorized use. It is also mentioned that the Petitioner herein had only assailed the review order but there is no challenge to the findings of the learned Appellate Authority in the order dated 26.07.2017.

14. An affidavit-in-reply thereagainst have been filed by the Petitioner wherein it was mentioned that the best judgment assessment which is made under Section 126(1) of the Act of 2003 has to be a fair assessment and more particularly taking into account the relative considerations. It was further mentioned that while making the assessment, the lean period of 4 (four) months should have been taken into consideration. It was also mentioned that during the seasonal period, the contract demand was 474 KVA, which, when converted to kilowatts, is 403 KW and the off-seasonal load would be 190 KVA, which, when converted to

kilowatts, is 162 KW and these aspects should have been considered by the learned Appellate Authority as well as the Assessing Officer while making the Assessment.

15. An additional affidavit was also filed by the Petitioner bringing on record the Notification dated 16.10.2020 whereby the Assam Electricity Regulatory Commission (Electricity Supply Code) (Third Amendment) Regulations, 2020 was notified. The said notification was brought on record to show that as per Clause 5.3.1(a)(ii), a consumer shall have to pay an initial Security Deposit based on estimated consumption as specified in Appendix-I of the Principal Regulations and calculated as per Clause (i) above on the contract demand. It is therefore the contention of the Petitioner in the said additional affidavit that the assessment has to be made on the basis of the contract demand and not on the sanctioned load.

16. I have heard the learned counsels appearing on behalf of the parties and have perused the materials on record.

17. The submissions so made by the learned counsels are in line with the respective pleadings and as such, for the sake of brevity, this Court is not repeating the same.

18. From the materials on record, it is apparent that an inspection

was carried out on 09.01.2016 and the meter which was in the premises of the Petitioner was found in a tampered condition. It is also apparent from the findings which is based upon analysis that the meter cover was open, tampered and was logged on 28.07.2014 at 11:50 hours which is more than one year prior to the date of the inspection. The findings of facts so arrived at by both the Assessing Officer as well as the learned Appellate Authority in respect to the tampering of the meter do not call for any interference in a proceedings under Article 226 of the Constitution taking into account that there is no perversity found. The question therefore arises as to whether the assessment which was carried out was done as per the prevailing norms.

19. It is relevant to take note of that at that relevant time, when the inspection was carried out, i.e. on 09.01.2016, the Electricity Supply Code and Related Matters Regulations, 2004 which was amended by the Electricity Supply Code and Related Matters Regulations, 2004 (First Amendment 2007) (for short 'the Regulations of 2004') and notified on 13.06.2007 was holding the field. Chapter V.A.0 of the Regulations of 2004 is with the heading "Interference with Supply Mains and Apparatus". Clause 5.A.4 of the Regulations of 2004 stipulated the method of assessment of electricity charge payable in case of theft pending adjudication by

the appropriate Court.

20. A further perusal of Clause 5.A.4 of the Regulations of 2004 shows that the said provision is under various sub-headings inasmuch as, Clause 5.A.4.1 is in respect to use of unauthorized electricity/load exceeding authorized/ connected load; 5.A.4.2 is in respect to resale of electricity; 5.A.4.3 is in respect to interference with metering system; 5.A.4.4 is in relation with unmetered use of electricity (theft of electricity) and 5.A.4.5 is in respect to use of electricity for any purpose other than that for which supply is connected.

21. A perusal of the assessment order would show that the Respondent Authorities have assessed the case of the Petitioner in terms with Clause 5.A.4.4 of the Regulations of 2004 i.e. unmetered use of electricity (theft of electricity). It is relevant to take note of that in terms with the various Sub-Clauses of Clause 5.A.4 of the Regulations of 2004, the period for which the assessment had to be carried out have been mentioned in the various Sub-Clauses and the rate at which the billing is to be carried out in the assessments is also mentioned.

22. Be that as it may, it is also very pertinent to take note of

Section 126(5) of the Act of 2003 which stipulates that if the Assessing Officer reaches to the conclusion that the unauthorized use of electricity have taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity have taken place and if, however, the period during which such unauthorized use of electricity have taken place cannot be ascertained, such period shall be limited to a period of 12 months immediately preceding the date of inspection. Taking into account Section 126(5) of the Act of 2003, it appears that a further amendment was carried out to Clause 5.A.4 wherein the 3 months and 6 months which were being mentioned in the various Sub-Clauses of Clause 5.A.4 was substituted by 12 months and the rate of billing at 1.5 times of the existing tariff was substituted by 2 times of the existing tariff.

23. In the backdrop of the above, this Court now finds it pertinent to take note of the Final Assessment Bill dated 27.01.2016 issued by the Assessing Officer wherein an amount of Rs.1,50,09,966/- was the amount to which the Petitioner was held to be liable. It is seen that the Final Assessment Bill has been made in terms with the then existing Clause 5.A.4 by assessing the period for a period of 12 months immediately preceding the date of the inspection and then applying the rate of 2 times of the existing tariff. It is also

seen that for the 12 months for which the Petitioner had already paid, the same was set off. The appeal filed thereagainst was not interfered with by the learned Appellate Authority. However 20% penalty was waived subject to deposit of the same within 30 days.

24. This Court further finds it relevant to take note of that the agreement which was entered into by and between the Petitioner as well as the Respondent Authorities wherein the Petitioner though had a sanctioned load of 620 KW but the seasonal contract demand for the period from April to November was 474 KVA which is 403 KW and from the month of December to March, the seasonal contract demand was 190 KVA which comes to 162 KW.

25. This Court has also taken note that in the review application so filed, the learned Appellate Authority had observed that during the lean period, i.e., from the month of December to March, the use of electricity in the tea industry is too less as compared to the peak seasonal period, i.e. from April to November and accordingly was of the opinion that there should have been a 40% discount during the off season period in the bill instead of 100% of the connected load.

26. At this stage, this Court also takes note of the submission of

Mr. P. Bhowmick, the learned counsel appearing on behalf of the Petitioner that the assessment should not have been done on the basis of the sanctioned load but should have been on the basis of the contract demand taking into account that the Petitioner under no circumstances could have surpassed the contract demand. In the opinion of this Court, the said submission appears to be misconceived in the facts of the instant case inasmuch as the present case relates to tampering of the meter and under such circumstances, the question of making the assessment on the basis of contract demand does not arise.

27. It is the further opinion of this Court that as the meter in question as is apparent from the findings of facts was tampered with, the assessment has to be made in terms with the connected load which the learned Appellate Authority in the review order dated 19.09.2017 had held.

28. Accordingly, this Court does not find any merit in the challenge to the order dated 19.07.2017. This Court however also finds it very pertinent to take note of another aspect of the matter in the impugned order dated 19.09.2017 whereby the waiver of the 20% penalty amount was withdrawn. It is the opinion of this Court that the learned Appellate Authority having reviewed its earlier order

dated 26.07.2017 vide the order dated 19.09.2017 ought not to have withdrawn the waiver of the 20% penalty but ought to have granted an extension. Be that as it may, in the impugned assessment bill dated 03.10.2017, the penalty is not imposed.

29. Accordingly, this Court does not find any ground to interfere with the impugned order dated 19.09.2017 save and except the withdrawal of the waiver of 20% of the penalty. This Court is also of the opinion that the assessment bill dated 03.10.2017 in accordance with law and therefore do not call for any interference.

30. Accordingly, the writ petition stands disposed off with the following observations and directions:

(i) The impugned order dated 19.09.2017 do not call for interference except the part of the said order whereby the waiver of the penalty was withdrawn.

(ii) The impugned assessment bill dated 03.10.2017 is not interfered with.

(iii) The Respondent Authorities would be at liberty to initiate recovery proceedings against the remaining amount payable by the Petitioner in terms with the Assessment Bill dated 03.10.2017 after

deducting the amount, the Petitioner had already paid.

(iv) The interim order passed earlier stands vacated.

**Bijoy
Saha**



Digitally signed
by Bijoy Saha
Date: 2026.03.06
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Comparing Assistant

JUDGE