

(1974) 03 CAL CK 0001
In the Calcutta High Court
Case No : C.R. No. 2674 (W) of 1970

Aluminium Corporation of India Ltd.

APPELLANT

Vs

Commissioner, Burdwan Division

RESPONDENT

Date of Decision : 01-03-1974

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : 78 CWN 626

Hon'ble Judges : Salil Kumar Datta, J

Bench : Single Bench

Advocate : Bhaskar Gupta, B. Sen and P.L. Khaitan, for the Appellant; Sibapada Mukherjee for the D.P. Nos. 1-4, for the Respondent

Judgement

Salil Kumar Datta, J.—this Rule the Aluminium Corporation of India Limited has challenged the orders of the Cess Deputy Collector, Burdwan affirmed on appeal by the Collector of Burdwan and in revision by the Commissioner of Burdwan, whereby the company was assessed to pay cess in respect of the despatches of coal raised from its colliery. The facts in short are as follows : the company is a large manufacturing concern manufacturing aluminium metal and fabricated products at its factory at Jaykaynagar Asansol. The factory is driven by electricity, the supply of which is made by the power house belonging to the company within its area. The power house is fed by coal which is raised by the petitioner from its own colliery and the factory power house and the colliery are situate within the same compound and it is claimed that these are all parts of a single industrial unit. Further the distance of the pithead of the colliery and its power house is very short and the coal consumed in the power house is carried to the power house from the pit-head by means of trolley belonging to the petitioner. While the bulk of the coal is utilised for generation of electricity, a small quantity of coal is consumed by the boiler in the colliery and the excess quantity is sold by the petitioner. Under the Cess Act, the petitioner was assessed earlier on profits for coal sold to other parties as indicated above, but since 1964 it has been assessed in respect of the coal despatched from the said colliery even

to the power house of the factory. The petitioner contended that the Cess Deputy Collector was wrong in holding that the coal used by the company for generation of its electricity should be assessed, as, according to it, the word "despatch" carries with it the idea of sending to a different person and to a separate place which has no connection with the place from which the goods are sent. It was further contended that movement from one part to another of the same establishment situated within the same compound is not "despatch" and reliance was placed in the decision of this Court in (1) Aluminium Corporation of India Ltd. Vs. Coal Board, . On these allegations the petitioner challenged by an application under Article 226 of the Constitution the assessment order of the Cess Deputy Collector which, as already stated, has been affirmed in appeal and also in revision by the appropriate authorities. On this application a Rule Nisi was issued and notices were served on the respondents to show cause why appropriate Writs should not issue quashing the impugned assessment. The respondents have appeared and opposed the rule at the hearing but have not filed any affidavit-in-opposition. By West Bengal Cess (Amendment) Act XXIII of 1964 following amendment was made to the Cess Act 1880. A new word "despatch" was inserted in section 4 of the Cess Act, 1880 in the following manner:

Despatch" in relation to coal mine means the quantity of coke and coal despatched from the coal mine.

Then by section 3 an amendment of section 6 was made, whereby the following provisions in place of the existing provisions were substituted, reading as under:

The word cess and public work cess shall be assessed--

(a) in respect of lands, on the annual value thereof,

(b) in respect of coal mines, on the annual despatches therefrom...

In the objects and reasons it was stated as follows:

Under Section 6 read with section 72 of the Cess Act, 1880, cess is levied on coal and coke in the State of West Bengal on the basis of the annual net profits from the collieries. The working of the present system of levy has disclosed some defects and the system seems to have given scope for evasion of payment. It has, therefore, been considered advisable to levy cess on the basis of despatch of coal and coke from collieries as is being done in the State of Bihar. The Act has been passed with this object in view.

2. By this amendment the despatch has been defined as to mean coal despatched from the coal mine. That includes removal or movement of coal from the mine to any other place. That being the position it appears that it would make no difference if the coal or coke is despatched from the colliery to any other place or industrial unit, whether it is owned by the same person or it is within the same boundary wall or compound even with a very short distance between them. In view of the clear and unequivocal meaning of the word

"despatch" as given in section 6 there is no escape from holding that the quantity of coke and coal despatched from any coal mine would mean such despatch as contemplated under the relevant provisions of the Cess Act as amended. In regard to the decision cited in the above case., the Court was considering the coal Mines (conservation and Safety) Act, 1952, and in interpreting the section was of opinion that inclusion of the words "to any person" to whom coal is despatched would mean and imply obviously any person other than the person to whom the colliery belonged as otherwise the words would be unnecessary. In that view of the matter, it was held that the despatch means despatch to some person other than the owner. In the statute with which we are concerned the definition is completely different and it includes any despatch or removal of coke or coal from the pit-head, the only exemption being the coal which is utilised for the colliery's own purpose which does not involve despatch and has been rightly allowed by the Cess Deputy Collector.

3. For these reasons, I am unable to accept the contention of Mr. Gupta to the contrary and I hold that the Cess Deputy Collector was acting in accordance with law in holding that all despatches of coal to the petitioner's other industrial unit though within the same compound must be held to be despatch as contemplated under the Cess Act, 1880 and assessable as such. For these reason, the application must fail.

The Rule is accordingly discharged, but without any order as to costs.

As prayed for my Mr. Gupta, the operation of this order shall remain stayed for a period of four weeks from date.