(1972) 07 MP CK 0008

In the Madhya Pradesh High Court

Case No : M.P. No. 230 of 1968

Associated Cement Co. Ltd. Bombay — APPELLANT

Vs

State of Madhya Pradesh and another — RESPONDENT

Date of Decision : 04-07-1972

Acts Referred:
Employees State Insurance Act, 1948 — Section 2(g)
Factories Act, 1948 — Section 2(12)
Madhya Pradesh Electricity Duty Act, 1949 — Section 3, 3(1), 3(i), 3(ii), 3A

Citation : (1972) MPLJ 848

Hon'ble Judges : G.P. Singh, J;A.P. Sen, J

Bench : Division Bench

Advocate : A.R. Choubey, for the Appellant; M.V. Tamaskar, Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Sen, J.

The Associated Cement Company Limited, a company incorporated under the Companies Act, 1956 hereinafter referred to as "the petitioner", questions the validity of a demand by the Chief Electrical Inspector and Electric advisor, Madhya Pradesh, for payment of electricity duty on electric energy consumed in lighting its two coal mines at Nowrozabad and Kotma, at the higher rate, i.e., 6 Np. per unit of energy supplied, u/s 3(1) of the Madhya Pradesh Electricity Duty Act, 1949.

The petitioner is the largest cement producing concern in the country and owns several cement factories at Kymore and other places. It also owns two collieries at Nowrozabad and Kotma in Madhya Pradesh. Apart from the collieries, it has a power house from which it generates electricity. The electricity generated is used in its cement factories, for lighting the offices of the two collieries, including structures and buildings, canteens, cr?ches and compounds thereof on the surface, as also for lighting of the coal mines inside the earth. There is no controversy at the rate at which the duty is payable on electric energy utilised for lighting the cement factories and the various departments of the collieries and, admittedly duty is charged at 1 Np. per unit of energy. The dispute is with respect to the rate at which the duty is payable on the electricity consumed inside the coal mines, i. e., on the lighting of the mines.

The charging provision contained in section 3 of the Madhya Pradesh Electricity Duty Act, 1949, reads as follows :-

Levy of duty on sales of electrical energy for domestic consumption.- Subject to the exceptions specified in section 3-A every distributor of electrical energy and every producer shall pay every month to the State Government at the prescribed time and in the prescribed manner a duty calculated at the rates specified in the Table below on the units of electrical energy sold or supplied to a consumer or consumed by himself or his employees daring the preceding month.

TABLE

Bates of Duty, (i) Electrical energy supplied for consumption for light, fans or any other appliances normally connected to a lighting circuit excluding electrical energy supplied within the premises of a factory- Six Naye paisa

(a) for lighting in all departments of the factory including per unit canteen, cr? ches and compounds thereof ; of energy,

(b) (ii) Electrical energy supplied for purposes other than those One paisa per specified in item (i) above. unit of energy.

The submission is that a coal mine is a "factory" within the meaning of section 3(i) of the Act and, therefore, the duty is chargeable 1 Np. per unit. The contention rests on the basis that coal is "manufactured" in the mines and, therefore, it follows that the collieries are "factories" within the meaning of the section. A number of decisions have been referred to us under the different Sales Tax Laws dealing with the expression "manufacture for sale" with advertence to the definition of a "dealer" for purpose of sales taxation. We are of the view that these decisions are not really for our purposes. No doubt, the word "manufacture" has in its ordinary acceptance a wide connotation. It means making of articles, or materials commercially different from the basic components, by physical labour or mechanical process.] And, a "manufacturer" is a person by whom or under whose direction and control the articles or materials are made. See Commissioner of Sales Tax, U.P. Vs. Dr. Sukh Deo,

We are really not concerned to ascertain whether the petitioner is a "manufacturer" of coal or not. Suffice it to say, that in our view "coal" cannot be said to be manufactured in a colliery as "coke" is. Goal is only "produced" from the mine - by "winning" it from the bowels of the earth by coal mining. In Aluminium Corporation of India Ltd. v. Coal Board AIR 1957 CM. 326 Sinha J., had occasion to observe:

...One speaks of ''production of Coal'', because to acquire coal which can be used for any human purpose, it is necessary to employ human labour and ingenuity. Coal exists in the bowels of the earth, but to procure it requires a great deal of labour, organisation and skill. A modern colliery uses various complicated machineries- Coal is not only to be dug out of the bowels of the earth, but has to be conditioned in many ways. It has to be broken, graded, sifted, moved and so forth.

The word ''"factory" used in section 3(i) has not been defined in the Act. We must, therefore, interpret it in the ordinary sense. In common parlance, a coal mine is not a "factory." There is nothing in the context for us to hold that the word has that meaning in the section. The general sense in which the word is understood is given in the various dictionaries. We may refer to three :-

In Webster''s New Twentieth Century Dictionary, 2nd Edn. p. 656, the following meaning appears :

Factory.- an establishment for the manufacture of goods, including the necessary buildings and machinery; a manufacturing plant.

In shorter Oxford English Dictionary, Vol. I, p. 667, the meaning given is as follows:

Factory.-A building, or buildings, with plant for the manufacture of goods. That is also the meaning given to the word in the Random House Dictionary of the English Language at p. 510:

Factory.-A building or group of buildings with :Facilities for the manufacture of goods.

Even in the legal sense, a coal mine cannot be regarded as a ''''factory". A factory is a building or assembly of buildings or a place devoted to the manufacture of goods. In its modern use, the word ''''factory" is a shortened form of "manufactory", and the primary meaning is "a building or place" in which goods are manufactured or made. In Halsbury''s Laws of England, 3rd Edn., Vol. 17, at p. 15, "factory''" is described thus:

A factory must occupy a fixed site but a place is not excluded from the definition of factory only by reason of the fact that it is in the open air. Subject to the exceptions mentioned hereafter, the area of the factory is the whole space contained within its walls.

In our opinion, the word "factory" used in section 3(i) of the Act must be used in the same sense in which it is defined in the Factories Act, 1948. u/s 2(m) of that Act, "factory" is defined thus :-

(m) ''factory'' means any premises including the precincts thereof-

(i) Whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act, 1952, or a railway running shed.;

[The definition of "factory" contained in the Factories Act, 1934 was similar except that the use of power was necessary to bring a premises within the Act.]

When the State Legislature enacted the measure, the word "factory" had a definite legal connotation, and there is nothing for us in the context to give to the word any different meaning. The definition of a "factory" in the Factories Act, 1948, clearly excludes a mine subject to the operation of the Mines Act, 1952.

In Nagpur Electric Lights and Power Co. Ltd. Vs. Regional Director Employees State Insurance Corporation, etc., the Supreme Court had to consider whether certain employees of the Nagpur Electric Light and Power Company were employees within the meaning of section 2(g) of the Employees'' State Insurance Act, 1948. After referring to the requirements for a premises to constitute a factory under the Act, Bachwat J., delivering the judgment of the Court, observed ;-

...The premises constituting in factory may be a building of open land or both see, Ardeshir H. Bhiwandiwala Vs. The State of Bombay, . Inside the same compound wall, there may he two or more premises; the premises used in connection with manufacturing processes may constitution fairly, and the premier within the same compound wall may be used for purposes unconnected with any manufacturing process and may form no part of the factory.

Dealing with the reasoning of the High Court that the whole area over which the process of remission was carried on including the sub-station where electricity was stored and supplied to the consumers by further transmission lines would be a factory, it was said : -

We cannot accept this line of reasoning. It seems to us a startling proposition that every inch of the wide area over which the transmission lines are spread is a factory within the meaning of section 2(12). ''A factory must occupy a fixed side....

In Kent v. Astley L. R. (1869) 6 Q.B. 19, the question was whether a slate quarry was a "factory" within the purview of the Factory Act (7 Vict c. 15). There, a large open space extending over about 400 acres (in which there were also covered sheds or huts where the splitters worked), over which hundreds of men were employed in getting large blocks of slate, which blocks or raw material were drawn when got to other parts of the quarry, and split with hammers and chisels, used as, wedges, in laminae or slates. These laminae or slates were then edged square with an iron knife, by hand, into separate slates or articles and divided into quantities for sale. In dealing with the question, Cockburn C. J. observed as follows :-

I think the business in which the boy was employed was a manufacturing process" the soil gained from the quarry was converted into slates by manual labour for the purposes of trade. The slates, when finished, are manufactured articles. I quite agree that if the proprietor of a quarry converts its soil into some manufactured article, it must be taken that he is a manufacturer quota that article; it is as if a farmer grew flax, and having a ropewalk on his farm, converted into rope. Therefore, if this work had been carried On within a building I think that it would have fallen within the scope of the statute.

By degrees the legislature has extended the operation of the Act to manufactures not originally within their scope. But, except in cases which have been specially provided for, it has not as yet included works carried on in the open air, because they are less exposed to "the evils incident to manufactures carried on in buildings. Where the miachief is the same the remedy ought to be applied, but we ought not to outstrip the legislature, and apply these statutes to circumstances to which the legislature appears to have considered that they could not be properly applied. I cannot think it was intended that where a process like this is carried on in the immediate proximity to a quarry, it is to be included in statutes meant to apply to manufactures carried on in buildings....

A quarry is, therefore not a "factory".

A mine is not a building or place in which any goods are manufactured. A colliery is, therefore, not a "factory" within the exception clause of section 3(1) of the Act. The electric energy supplied by the petitioner for lighting of the mines cannot, in any sense, be regarded as having been "supplied for purposes other than those specified in item (i)" within the meaning of section 3(ii). Such electric energy was, accordingly, chargeable to duty at the rate of 6 Np. per unit of energy.

In the result, the petition fails and is dismissed with costs. Hearing fee Rs. 100/-. The outstanding amount of security, if any, shall be refunded to the petitioner.

