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(2001) 04 MP CK 0056

In the Madhya Pradesh High Court

Case No : L.P.A. No. 292 of 2000

Brijbasi Lime Works APPELLANT

Vs

Assistant Provident Fund Commissioner and Another RESPONDENT

Date of Decision : 10-04-2001

Acts Referred:
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7

Citation : (2001) 90 FLR 1060 : (2001) 2 LLJ 1669 : (2001) 5 MPHT 98 : (2001) 3 MPLJ 81

Hon'ble Judges : Rajeev Gupta, J;A.K. Mishra, J

Bench : Division Bench

Advocate : M.L. Jaiswal, for the Appellant;

Final Decision : Dismissed

Judgement

Arun Mishra, J.

The appellant manufactures lime and is registered under the Small Scale Industry. The Assistant Provident Fund Commissioner issued a notice to the appellant u/s 7(a) of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the ''Act''). In reply thereto, the information was submitted by the appellant in Form 3-A and 6-A for the period 1983-1984 to 1989-1990.

It is not in dispute that the appellant industry was voluntarily extending the provident fund benefit to some of its employees under the provisions of the Act. The appellant in reply contended that the lime industry does not fall within the purview of the Act as the lime cannot be termed to be "heavy and fine chemical" as mentioned in Schedule I to the Act. Without deciding this objection, liability was saddled. An appeal was preferred u/s 7(d) of the Act before the Employees'' Provident Fund Tribunal. The appeal was partly allowed. The submission that the lime industry is not covered under Schedule I was rejected by the Tribunal. The matter was remanded by Tribunal for determining the liability afresh. The appeal was, thus, partly allowed.

Aggrieved by the order passed by the Tribunal that the lime industry is covered under Schedule I under the heading "heavy and fine chemicals", a writ petition came to be filed before the Single Bench of this Court. The learned single Judge by the impugned order dated August 1, 2000 has come to the conclusion that the lime industry comes within the heading "heavy and fine chemical" industry, which is specified in the Schedule I. The learned single Judge has held that the boundaries of chemical industry are somewhat confused. The scope of the chemical industry is in the past shaped by custom rather than by logic. As such, this expression has to be given the ordinary meaning and one has to see how this industry is treated in India as definitions adopted for statistical economic purposes vary from country to country. For manufacture of lime, what is required is to heat the limestone to temperature of 1650?-1800? centigrade which dissociate calcium carbonate and yield carbon- dioxide and lime for commercial use. In India, this industry has been treated as part of chemical industry since long. This being the position, the learned single Judge has taken the view that the lime industry comes within the expression "heavy and fine chemicals".

The above order passed by learned single Judge in W. P. No. 1252/2000 has been assailed in the present appeal. The singular submission raised by learned counsel for the appellant is that the lime industry cannot be defined to be one of the "heavy and fine chemical" industries falling under Schedule I. Thus, the orders passed by the Employees'' Provident Fund Commissioner, Employees'' Provident Fund Tribunal and learned single Judge are liable to be quashed. Learned counsel while elaborating the submission urges that when cement, iron and steel have been separately mentioned under the different entries in Schedule I of the Act, whereas the "heavy and fine Chemicals" has been mentioned in entry No. 18 of Schedule I. The lime is having the similar use like that of cement. The intention of the legislature is not to include the lime within "heavy and fine Chemicals", as no separate notification has been issued, hence, the intention of the legislature is not to include lime as "heavy and fine chemical" under entry No. 18. Hence, the lime industry has to be necessarily excluded from the scope of the entry and consequently from the purview of Schedule I and from the application of the Act.

The entry No. 18 in Schedule I of the Act is inclusive definition and is not exhaustive as apparent from the entry itself which reads thus:

"18. 1. Heavy and fine chemicals including:

(i) Fertilizers;

(ii) Turpentine;

(iii) Resin;

(iv) Medical and pharmaceutical preparations;

(v) Toilet preparations;

(vi) Soaps;

(vii) Inks;

(viii) Intermediates, dyes, colour lacs and toners;

(ix) Fatty acids; and

(x) Oxygen, Acetylene and carbon-di-oxide gases."

The definition is not exhaustive, but, inclusive of "heavy and fine Chemicals" mentioned specifically and has wider meaning. Thus, in order to make "heavy and fine chemicals" it is not necessary that an otherwise "heavy and fine chemicals" should be specifically mentioned under the entry. The entry includes the items specifically mentioned and there can be various other items also which can be termed to be "heavy and fine chemicals". The item so specifically mentioned gives a clue as to which of the chemicals can be treated as "heavy and fine Chemicals". The composition of lime as apparent from Annexure-A--11 ''Chemical analyst report'' filed by the appellant, that ingredients of lime consist of Silica (SiO_2), Calcium Oxide (CaO), Magensium Oxide (MgO), Iron Oxide (Fe_2O_3) and Alumina (Al_2O_3). The lime is commonly used to white-wash houses and also used as mortar. In a lime-kiln stones or shells which consist of calcium carbonate is burnt i. e. lime stone in combination with a gas known as carbon-di-oxide. The appellant has relied on extract from "Chemistry of Lighter Metals" to contend that Alkali metals like sodium, potassium etc. and alkaline earth metals (magensium, calcium etc.) which are distinctly metallic in nature. These metals are called as lighter metals as they have very low density. The question involved in the present matter is not that what type of metals are called as lighter metals, but, whether the lime can be termed to be "heavy and fine chemicals" or not.

Process of manufacture has been defined in Section 2(i-c) of the Act to mean any process for making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal. Thus, it cannot be disputed that when lime is heated under the kiln, it is definitely a process of manufacture and involves chemical process. Lime is obtained only after putting the lime stone in a kiln wherein it is heated at a very high temperature. The form of lime stone is changed only because of heating process and chemical reaction, the end product is lime which is no doubt a chemical. For obtaining lime, its stone is mixed with coal after sprinkling water on the mixture. The lime is obtained by the process which results in calcination of the raw material. CO_2 is also produced along with lime i.e. Calcium Oxide. As already mentioned the lime consists of Silica, Calcium Oxide, Magensium Oxide, Iron Oxide and Alumina. Thus particularly when legislature has mentioned carbon-di-oxide (CO_2) and oxygen gases to be falling within "heavy and fine chemicals", the composition of lime itself suggests that it has to be treated as "heavy and fine chemical".

The submission on behalf of appellant that the cement has been specified in a different entry of the Schedule and had it been the intention of the legislature to include lime industry in the Schedule same would have been separately mentioned/notified, is not acceptable for the reason that lime falls within "heavy and fine chemical" and included in entry No 18. Hence, there as no necessity to provide for it separately. In our opinion the lime industry is clearly covered in Schedule I, entry No. 18 of the Act.

It is a case of the appellant itself that it had applied the provision of the Act to some of its employees. Thus, we find ourselves in agreement with the finding of learned single Judge that this industry has been treated as part of the Chemical industry since long. Giving the ordinary meaning to the lime industry we have no hesitation to come to the conclusion that lime industry has been rightly classified as "heavy and fine chemical industry" and industry is thus amenable to the provisions of the Act which carves out the beneficial provisions for its employees.

Government has issued separate notification for Kattha (Catechu) making industry, Oxygen Acetylene and Carbon-dioxide Gases industry, Glue and Gelatine, Cement, Aerated water industries and Beer manufacturing industries, which have been specifically mentioned to be "heavy and fine chemical" industries. Merely that a separate notification has been issued does not and cannot mean that the lime industry is to be excluded out of the purview of entry No. 18 of Schedule I, when it is found to be "heavy and fine chemical".

High Court of Allahabad in 1991 Lab LR 232 has held that brick kiln is an industry within the purview of the Act. Thus, considering composition of lime we find ourselves in agreement that the lime industry has to be treated within the purview of "heavy and fine chemical" as mentioned in Schedule I.

Upshot of the aforesaid discussion is that the appeal has no merit and same is dismissed.