
(2011) 12 MP CK 0069
In the Madhya Pradesh High Court
Case No : M.P. No. 2821 of 1988

Hindustan Copper Limited

APPELLANT

Vs

The State of M.P. and Others

RESPONDENT

Date of Decision : 01-12-2011

Acts Referred:

Madhya Pradesh Electricity Duty Act, 1949 — Section 3
Mines Act, 1952 — Section 2

Citation : AIR 2012 MP 49 : (2012) 2 EFLT 728 : (2012) 2 MPJR 10

Hon'ble Judges : Sushil Harkauli, J;Alok Aradhe, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. In order to appreciate the controversy involved in this writ petition few facts need mention. The petitioner is a Government company. Its "Malajkhand Copper Mining & Ore Concentration Project" is situate in district Balaghat (M.P.), where the petitioner is engaged in extraction of copper ore by open cast mining process. It is averred in the writ petition that after drilling and blasting the ore in the open pit mine, the ore in the form of boulders is transported to the Primary Crusher (situated at a distance of 2.53 km from the mine), where it is crushed into pebbles/pieces. Such crushed ore is then carried on a conveyor to a Secondary Crusher (situated at about 5 km from the mine) for further crushing into smaller pebbles. The small pieces/pebbles are then carried by a conveyer to the Concentrator Plant (situated at 5.5 km from the mine). In the Concentrator Plant, the ore is milled into powder in the Ball Mills. Such powder mixed with water is carried in the form of slurry to floatation cells. In the floatation cells, the slurry is subjected to froth Floatation Process and the copper concentrate is removed and dried in vacuum dried and stored in Concentrate Storage Sheds. The waste paste known as "tailing" is pumped into a Tailing Dam through tailing pumps. The tailing pumps are at a distance of 8 km from the mine. Large quantity of water is required for Concentrator Plant for being used in milling. Water is also required for the factory township. The required water is pumped

from the mines through pumps located at an Intake Well (situated at a distance of 10 km from the mine).

2. The petitioner submits that as per the facts set forth in the petition, the manufacture of copper concentrate consists of two distinct parts/activities. First is mining, that is drilling, blasting and collecting of ore. This activity is carried on at mine pit. This activity is carried on in the mine area registered under the Mines Act. The second part/activity comprises processing of the ore so mined. This second part/activity is carried on at the Primary Crusher, Secondary Crusher and Concentrator Plant. The processing (manufacturing) part must be treated to be an activity separate and distinct from mining as such processing is carried out in the factory area. The Primary Crusher, the Secondary Crusher, the Ball Mill, the Concentrator Plant, the Tailing Pumps, the Intake Well and the Water Treatment Plant are situated away from the mine, at distances varying 2.5 KM to 10 KM and are registered separately as a "Factory" under the provisions of Factories Act, 1948. Admittedly, the open pit mine (mining area) and the processing plants/machineries (Factory area) are all situated in a large tract of land taken on mining lease from the State Government.

3. Section 3 of the M.P. Electricity Duty Act, 1949 (hereinafter referred to as "the Act") which provides for levy of electricity duty on sale or consumption of electrical energy, was amended by M.P. Act No.21 of 1986. Explanation (b) to Part B of Section 3 of the Act defines the term "mine" to mean a mine to which the Mines Act 1952 applies and includes the premises or machinery situated in or "adjacent" to a mine and used for crushing, processing, treating and transporting the mineral.

4. The petitioner being aggrieved by the extended definition of mine, the effect of which is to include the processing apart from mining and prescription of higher rate of duty for mine i.e. for composite activities of mine and processing, filed a writ petition, namely, M.P. 2821/1988. The challenge to the extended definition of mine in explanation (b) to Part B of Section 3 was made on the ground that it results in dissimilar treatment to similar (processing) activity by prescribing different rates for different factories and the definition has the effect of categorising the factories registered under the Factory Act, and carrying on the same activity of processing, treating and transport the minerals, into two categories, namely, one those which are adjacent to mine, and others which are not adjacent. The challenge to the definition was also made on the ground that it is unreasonable and irrational to classify the factories into two categories based on their proximity with the mines. This Court vide order dated 9.2.2005 passed in MP No.2821/1988 dismissed the writ petition as well as other connected writ petitions. The petitioner challenged the order passed by this Court before the Supreme Court. The Supreme Court vide order dated 19.11.2008 passed in Civil Appeal No.6725/2008 set aside the order passed by this Court and remanded the matter to decide the question formulated by it, which reads as under:

Whether copper concentrate is a mineral and whether Explanation to Part B of

the Act applies even though manufacturing process is involved to bring it into existence?

5. We have heard the learned counsel for the parties. Learned senior counsel for the petitioner submitted that mineral is something which grows in the mine and is capable of being won or extracted so as to be subjected to the better or precious use. It was further submitted that copper ore is extracted at the mine pit and then it is subjected to processing where after copper ore becomes copper concentrate which is a different commodity which is an excisable product. Therefore, it is urged that copper concentrate is not a "mineral". Consequently, explanation (b) to part B of Section 3 of the Act should not apply to the activity of processing copper ore. In support of his submissions, learned senior counsel has placed reliance on the decisions of the Supreme Court in *The State of West Bengal Vs. Kesoram Industries Ltd. and Others*, *Novel Granites Ltd. and Others Vs. The Government of Andhra Pradesh and Others*, and 1985 ECR 232

6. On the other hand, learned Additional Advocate General for the respondents 1 and 2 submitted that copper concentrate is a "mineral". In support of his submissions he has invited our attention to the definition contained in Section 2(jj) of the Mines Act, 1952 as well as Schedules I and II appended to the Mines and Minerals (Development and Regulation) Act, 1957. Learned Additional Advocate General in support of his submissions has placed reliance on the decision of the Supreme Court in *V.P. Pithupitchal and Another Vs. The Special Secretary to the Govt. of Tamil Nadu*, and the Division Bench decision of this Court dated 19.10.1994 in the *Stone Crusher Owners/ Association and Other v. M.P. Electricity Board and Others* (MP No.673/1993).

7. Learned counsel for the respondent No. 3, while adopting the submissions made by learned Additional Advocate General, submitted that copper ore does not cease to be a "mineral" merely because it is subjected to the stated processing, and therefore the copper concentrate does not lose its identity as a mineral. It was further submitted that even though the copper ore is subjected to processing yet its chemical structure does not change. In support of his submissions learned counsel for the respondent No.3 has placed reliance on the decision in *Minerals and Metals Trading Corporation of India, Ltd. Vs. Union of India (UOI) and Others*,

8. We have considered the submissions made by learned counsel for the parties. The principles of interpretation of taxing statutes are well defined by a catena of decisions of the Supreme Court. The State has wide discretion in selecting persons or objects it will tax, and a statute is not open to attack on the ground that it taxes some persons or objects and not others. The State is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably. [See: *East India Tobacco Co. Vs. State of Andhra Pradesh*, It is equally well settled legal proposition that very wide latitude is available to the legislature in the matter of classification of objects, persons and things for purposes of taxation. It must need to be so, having regard to the complexities

involved in the formulation of taxation policy. [See: Elel Hotels and Investments Limited and Others Vs. Union of India, See also: Government of Andhra Pradesh and Others Vs. Smt. P. Laxmi Devi,

9. It is an equally well settled rule of interpretation that to find out the meaning of a word or expression not defined in an enactment, the Courts apply the "subject-and-object rule" which means - ascertain carefully the subject of the enactment where the word or expression occurs and have regard to the object which the legislature has in view. Forego the strict grammatical or etymological propriety of language, even its popular use; let the subject or the context in which they are used and the object which the legislature seeks to attain be your lenses through which look for the meaning to be ascribed. In selecting one out of the various meanings of a word, regard must always be had to the context as it is a fundamental rule that the meanings of words and expressions used in an Act must take their colour from the context in which they appear. Therefore when the context makes the meaning of a word quite clear, it becomes unnecessary to search for and select a particular meaning out of the diverse meanings a word is capable of according to lexicographers..... Judge Learned Hand cautioned "not to make a fortress out of the dictionary" but to pay more attention to "the sympathetic and imaginative discovery" of the purpose or object of the statute as a guide to its meaning" [See: Principles of Statutory Interpretation, Justice G.P. Singh, 12th Edn., page 349-350, Tarlochan Dev Sharma Vs. State of Punjab and Others, 0 and Union of India and Others Vs. Harjeet Singh Sandhu etc.,

10. Keeping in view the aforesaid well settled principles with regard to statutory interpretation, we may proceed to deal with the question referred for our consideration. The M.P. Electricity Duty Act, 1949 is an Act to provide for the levy of a duty on sale or consumption of electrical energy. The Act has been enacted in exercise of power under Item 48 (b) List II of the Government of India Act, 1935 which corresponds to Entry 53 of List II of the VIIth Schedule of the Constitution of India, namely, tax on consumption or sale of electricity. In the statement of objects and reasons it is mentioned that it is enacted as an anti-inflationary measure; and in order to augment the revenues for meeting essential expenditure it is considered advisable to levy a duty on sale of electric energy. Section 3 of the Act provides that 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 rate specified in the table on the units of electrical energy sold or supplied to a consumer by himself for his own purposes or for the purposes of his township or colony during the preceding month. Part -B of the Table prescribes the rate of electricity duty on the electrical energy sold/supplied for consumption for different specified purposes, namely, domestic, non-domestic and commercial, industrial and non-industrial. Industrial purpose is further divided into four categories. Entry 3 deals with the category "for mines other than captive mines of a cement industry". The term "mine" as defined in explanation (b) to Section 3 of the Act reads as under:

a mine to which the Mines Act, 1952 applies and includes the premises or machinery situated in or adjacent to a mine and used for crushing, processing, treating and transporting the mineral.

(Emphasis supplied)

Thus, electricity duty under the Act is tax which levied on sale or consumption of electricity. If the table appended to Section 3 of the Act is seen, the classification for the purpose of levy of electricity duty is based on the purpose for which the electrical energy is sold or consumed. The classification in the table for the purpose of levy of duty is mining industry, cement industry, industry charged with low tariff and residuary industry. The effect of classification is that duty on industries receiving electricity in low tension tariff is lowest. The duty on other industries other than mines and cement is more. The duty on cement industry is higher. The duty on mines is the highest. The classification made u/s 3 of the Act has a clear nexus with the object sought to be achieved, namely, raising revenue by grouping different types of industries and prescribing different rates of duty depending upon the nature of the industry. The highest rate of electricity duty is prescribed by the legislature in its wisdom for the mining industry. The object of prescribing the highest rate of electricity duty appears to tax the person/industry exploiting the natural wealth which is non-renewable. The exploiter has been required to contribute more, so that such contribution is, hopefully, utilized for the welfare of the people to whom such natural wealth belongs.

11. The expression "mine" used in explanation (b) to Part B of Section 3 creates a legal fiction. In interpreting the provision creating a legal fiction, the Court is required to ascertain for what purpose the fiction is created. [See: The State of Bombay Vs. Pandurang Vinayak Chaphalkar and Others, In explanation (b) while defining "mine" the expression "means and includes" has been used which has to be considered as exhaustive. In other words, the definition will embrace only what is comprised within the ordinary meaning of "mine" part, together with what is mentioned in the inclusive part of the definition. The expression "mineral" which is used in explanation (b) to Part B of Section 3 has not been defined in the Act and, therefore, as per well settled rules of statutory interpretation referred to supra it has to be read with regard to subject and object of the Act. The object of the Act is to raise revenue by prescribing rate of duty. As stated above, the highest rate of duty is prescribed for mining industries as it is exploiting the natural wealth which is non-renewable therefore, it must pay higher rate of duty which can be utilized for meeting the essential expenditures by the State Government. Taking into account the fact that the expression "mine" creates a legal fiction and if the word "mineral" is read subject to the context and object of the Act, it is graphically clear that wide meaning has to be given expression "mineral". If the copper ore is converted to copper concentrate by processing, it only enriches content of copper in the copper concentrate and it does not cease to be "mineral", merely on its" conversion from copper ore to copper concentrate.

12. In view of the preceding analysis, in our considered opinion, copper concentrate is a mineral as defined in explanation (b) to Part B of Section 3 of the Act and, therefore, the explanation (b) to Part B of Section 3 of the Act applies to it.

13. Besides "copper concentrate" is the end product.

What is "crushed, processed, treated or transported" is not "copper concentrate" but the ore. The electricity in question is being consumed for such "crushing, processing, treating or transportation.

14. Another line of argument advanced was alleged discrimination between industries located in close proximity of the mine and other industries carrying on the same activity namely "crushing, processing, treating or transportation", which are not located in such close proximity of the mine. The word "adjacent" does not mean "adjoining" or "abutting", but has a wider connotation, and would include close proximity such being in the same locality. This proposition is not disputed, and therefore it is not necessary to refer to the case law cited for the meaning of the word "adjacent". In reply the learned Additional Advocate General submits that this differentiation is justified because the increased overheads such as transportation costs have been considered for not subjecting the far away industries to higher tax. Considering the case law cited above permitting wide discretion to the State in respect of taxation, we are inclined to agree with the submission of the learned Additional Advocate General.

15. In the result the writ petition fails and is hereby dismissed.