(2004) 08 AHC CK 0112

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 9634 of 1989

Indian Telephone Industry Ltd. APPELLANT

Vs

Cess Appellate Committee, Uttar Pradesh Pollution Control Board and Cess Officer (Assessing Authority), Uttar Pradesh Water Pollution Prevention and Control Board RESPONDENT

Date of Decision : 03-08-2004

Acts Referred:
Water (Prevention and Control of Pollution) Cess Act, 1977 — Section 13, 2, 3(2)

Citation : (2004) 5 AWC 4881

Hon'ble Judges : Umeshwar Pandey, J;M. Katju, J

Bench : Division Bench

Advocate : Ashok sic, for the Appellant; H.N. Tripathi, for the Respondent

Judgement

M. Katju, J.—This writ petition has been filed against the impugned order of the Appellate Committee dated 18.2.1989, Annexure 10 to the writ petition u/s 13 of the Water (Prevention and Control Pollution) Cess Act, 1977 wherein the petitioner''s appeal has been rejected and it has been held that the petitioner is an industry covered by item Nos. 1 and 2 of Schedule 1 of the aforesaid Act.

2. Heard learned Counsel for the parties.

3. The petitioner, Indian Telephone Industry, Allahabad is a Government of India undertaking with a factory at Naini, Allahabad. This factory is engaged in the manufacture of telephony and telecommunication instruments. The petitioner contended that the said factory does not come within the Scheduled Industries mentioned in the Schedule of the aforesaid Act.

4. Parliament has enacted the aforesaid Act to provide for the levy and collection of cess on water consumed by persons carrying on a scheduled industry. Schedule 1 refers to various industries Item No. 1 in Schedule 1 is "Ferrous metallurgical industry" and Item No. 2 is "Non-ferrous metallurgical industry." The Cess Officer under the aforesaid Act made assessments vide different orders

for the periods between April 1982 to September 88 which were received by the petitioner. Photocopy of one of such assessment order is Annexures 3 and 4 to the writ petition Aggrieved the petitioner filed an appeal u/s 13 which has been rejected by the impugned order. Hence this petition.

Under Section 3(2) of the Act cess is payable by :

(a) every person carrying on any specified industry;

(b) every local authority.

5. The words "specified industry" mean any industry specified in Schedule 1 vide Section 2(c) of the Act. The question is therefore whether the petitioner industry is an industry specified under Schedule 1. The assessing officer as well as the appellate authority has held that the petitioner industry is a non-ferrous metallurgical industry. The petitioner''s contention is that its industry is telephone industry .and is not non-ferrous metallurgical industry. True copy of one of the petitioner''s appeal is Annexure 5 to the writ petition. The petitioner''s contention is that the Act does not apply to the petitioner factory as it is not a specified industry under Schedule 1 of the Act and it is not a non-ferrous metallurgical industry. The petitioner has urged that it is not the use of raw material in the manufacturing process which determines the nature of the trade but the finished product produced by the company which determines the nature of the trade. The petitioner has relied on the decision of this Court in Imperial Electric Trading Co., Aligarh Vs. Industrial Tribunal (II), U.P., Allahabad and Others, The petitioner submitted that it manufactures telephone equipments and does not extract metals from their ore and hence it cannot be called a metallurgical industry.

6. A counter affidavit has been filed and we have perused the same. It is alleged in paragraph 3 of the same that the petitioner comes under the purview of the 1977 Act and hence is liable to pay cess. The respondents have relied on the Division Bench decision of this Court in Agra-Engineering Industries v. Union of India Civil Misc. Writ Petition No. 2289 of 1980 decided on 16.5.1996

7. Webster''s Third International Dictionary defines Metallurgy as follows:

Metallurgy - A science and technology that deals with the extraction of metals from their ores, refining them and preparing them for use and includes processes (as allowing rolling and heat treating) and also the study of the structure and properties of metal.

8. Similarly Oxford English Dictionary defines Metallurgy as follows

Metallurgy - The art of working metals comprising the separation of them from other matters in the ore, smelting and refining, often in a narrower sense the process of extracting metals from their ores.

9. The New Encyclopaedia Britanica 15th Edition Vol. II defines Metallurgy as follows:

Metallurgy - Metallurgy is the science of extracting metals from their ores, refining, purifying and working them, mechanically or otherwise to adapt them to use It is also concerned with the chemical and physical properties of metals, their atomic and crystalline structure, the principles of combining them to form alloys, the means for improving or enhancing their properties for particular applications, and the relations between the properties, structures, and uses. Further, it includes the thermal and mechanical processing of metals as materials of manufacture

10. A perusal of the above definition indicates that it is really extracting metals from their ores and refining them which is called metallurgy. Making of telephone equipment by no stretch of imagination can be called metallurgy. The petitioner does not extract metal from ores, and merely because it uses metal in its manufacture of telephone and equipments this does not mean that the petitioner is engaged in metallurgy.

11. In Imperial Electric Trading Company v. Industrial Tribunal (Supra) the learned Single Judge held:

It is not the raw- material used in the manufacturing process which determines the nature of the trade, but the finished goods produced by the Company that are determinative of the nature of the trade carried on by the company. To quote an instance, it is well known that sand is the raw -material used in the manufacture of glass and glass-wares. But a concern engaged in quarrying sand, cannot be said to be carrying on the. same trade as a concern engaged in the manufacture of glass and glass-wares. Aluminium is a metal which is used for the manufacture of utensils and is also used in the manufacture of aeroplanes and other aeronautical parts. It would be absurd to say that the manufacture and sale of aluminium-ware is the same as the manufacture of aeroplanes and aeronautical parts.

12. We are in respectful agreement with the aforesaid observation of the learned Single Judge. However, a Division Bench of this Court in Agra Engineering Industries v. Union of India (Supra) has taken a view that an industry which is engaged in the manufacture of fan blades from aluminium sheet has to be treated as a non-ferrous metallurgical industry. With respect we disagree with this view In our opinion it can not be said that the production of fan blades from aluminium is metallurgical industry. Our view gets support from the decisions of the Supreme Court in Member-secretary, Andhra Pradesh State Board for Prevention and Control of Water Pollution Vs. Andhra Pradesh Rayons Ltd. and Others, , and M/s. Saraswati Sugar Mills Vs. Haryana State Board and others, and the decision of Patna High Court in Tata Engineering and Locomotive Co. Ltd., Jamshedpur Vs. State of Bihar and Others, , etc.

13. Since we are in respectful disagreement with the view of the division bench in the decision of Agra Engineering Industries v. Union of India (Supra) we are of the opinion that the matter should be referred to a larger Bench.

14. Let the papers of this case be laid before Hon''ble the Chief Justice for constituting a larger Bench to decide whether the petitioner''s industry can be said to a metallurgical industry or comes otherwise within the purview of the Water (Prevention and Control of Pollution) Cess Act, 1977.