(2019) 03 MP CK 0179

In the Madhya Pradesh High Court

Case No : Writ Appeal No.202, 237, 247, 249, 250, 252, 257, 259, 259, 260, 261, 278, 313, 321, 344, 345, 346, 347, 348, 349, 477, 587, 832 Of 2012, 260, 261, 262 Of 2013, 51 Of 2014, 79 Of 2016

M/s Balaji Stone Crusher, Satna & Ors — APPELLANT

Vs

State Of Madhya Pradesh & Others — RESPONDENT

Date of Decision : 04-03-2019

Acts Referred:

Constitution Of India, 1950 — Article 226
Madhya Pradesh Uchha Nyayalaya (Khand Nyayapith Ko Appeal) Adhiniyam, 2005 — Section 2(1)
Mines Act, 1952 — Section 2(1)(j), 2(1)(j)(ii), 2(1)(j)(vi), 2(1)(j)(vii), 2(1)(j)(viii), 2(1)(j)(x), 2(1)(j)(x), 2(1)(j)(xi)Madhya Pradesh Electricity Duty Act, 1949 — Section 3(1), 3(kh)

Citation : (2019) 03 MP CK 0179

Hon'ble Judges : Ajay Kumar Mittal, CJ;Vijay Kumar Shukla, J

Bench : Division Bench

Advocate : Sanjay Agrawal, Ashok Agrawal, Anuj Agrawal, Shekhar Sharma, Mukesh Kumar Agrawal, A.P. Shroti

Final Decision : Allowed

Judgement

Ajay Kumar Mittal, CJ

1. This order shall dispose of bunch of intra-court appeals preferred by the appellants-petitioners under Section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyay Peeth Ko Appeal) Adhiniyam, 2005 being W.A. Nos.202/2012, 237/2012, 247/2012, 249/2012, 250/2012, 252/2012, 257/2012, 258/2012, 259/2012, 260/2012, 261/2012, 278/2012, 313/2012, 321/2012, 344/2012, 345/2012, 346/2012, 347/2012, 348/2012, 349/2012, 477/2012, 587/2012, 832/2012, 260/2013, 261/2013, 262/2013, WA No.79/2016 and Writ Petition No.51/2014, as common questions of fact and law are involved therein. Except W.P. No.51/2014, all the writ appeals, as mentioned above, have arisen from a common order dated 09.01.2012 passed by the

learned single Bench in respective writ petitions connected to main case being W.P. No.5070/2011 (M/s Jai Hanuman Stone Crusher vs. M.P. Poorva Kshetra Vidyut Vitaran Co. Ltd. and others). However, for brevity, the facts are being extracted from W.A. No.257/2012 (Shraddha Stone Crusher vs. M.P. Poorva Kshetra Vidyut Vitaran Co. Ltd. and others).

2. In W.A. No.257/2012 (supra), challenge is to an order dated 09.01.2012 passed by the learned single Judge in W.P. No.7279/2010 (Shraddha Stone Crusher vs. M.P. Poorva Kshetra Vidyut Vitaran Co. Ltd. and others).

3. The appellant-petitioner by filing the said writ petition under Article 226 of the Constitution of India assailed the notice dated 04.05.2010 (Annexure P-5) issued by respondent No.3 - Junior Engineer, Distribution Centre Nadan, District Maihar whereby the appellant was called upon to pay electricity duty @40% of the Electricity Tariff from 2007 to the tune of Rs.93,190/-. The appellant also prayed for quashing of the circular dated 30.03.2010 (Annexure P-6) and 15.04.2010 (Annexure P-7) issued by respondent Nos.4 and 5 in pursuance of which the said notice of recovery was issued. It was asserted that the appellant is the owner of land situate over Khasra No.1023, area 1.707 Hectare, village Bhatiya, Tehsil & District Maihar where a stone crusher has been installed. The appellant Unit is registered as Small Scale Industry by the District Industries Centre, Satna after taking NOC (Annexure P-2) from concerned Gram Panchayat. The appellant is carrying out the activity of stone crushing in which the boulders are purchased from the mine owners and after converting them into Gitti, the same is sold in the open market. For the said purposes, low tension (commercial) electricity connection was obtained from the respondents at sanctioned load of 48 HP in 2004 which was thereafter, enhanced to 98 HP in March, 2009 by paying necessary charges under the agreement dated 13.04.2009 (Annexure P-3). The appellant's stone crusher is neither a mine to which the Mines Act, 1952 (for short "the 1952 Act") applies nor is the same situated in or adjacent to a mine. As per Entry 5 in Part B of Section 3(1) of the M.P. Electricity Duty Act, 1949 (hereinafter referred to as "the 1949 Act") as amended by the M.P. Electricity Duty (Amendment) Act, 1995 pertaining to industries receiving electricity at low tension tariff, the appellant had been paying the electricity duty @3.5% of the electricity duty tariff from 2007.

4. It was also asserted that by the circular dated 30.03.2010 and 15.04.2010, the definition of "mines" as given in the 1952 Act has been misinterpreted and enlarged by the respondents for the purposes of charging duty at the rate of 40% by treating the stone crushing units as "mines" under Entry No.3 of Part B of the Table appended to Sub-section (1) of Section 3 of the 1949 Act, which relates to rate of duty on mines (other than captive mines of cement industry). The appellant does not have any mining licence nor is it involved in the activities of extracting minerals. In this background, it was urged that raising demand for recovery of electricity duty @40% is arbitrary and illegal.

5. The respondents-Company filed return and submitted that prior to amendment

in Section 2(1)(j)(x) and (xi) of the 1952 Act and in Section 3(Kh) of the 1949 Act, the electricity duty on crushing was 3.5% but after the amendment in the definition, the electricity duty on crushing is 40%, therefore, the petitioner is liable to pay the electricity duty @40% instead of 3.5% from June, 2009. It was further stated that the electricity duty is imposed by the State Government as per the amendment in the definition clause which was challenged by M/s Ashish Enterprises in W.P. No.1640/2007 (M/s Ashish Enterprises vs. State of M.P. and others) before Indore Bench of this Court wherein vide order dated 06.07.2009 the said amendment was affirmed and therefore, no interference was called for.

6. The respondents-State in W.P. No.8593/2010 (M/s Pali Stone and others vs. State of M.P. and others) filed its return and the same was adopted in other connected matters. It was contended that the issue of levy of higher electricity duty and the applicability of extended definition of "mines" whether it applies to the crushers industry or not has already been determined by a Division Bench of this Court in M.P. No.673/1993 (The Stone Crusher Owners Association and others vs. M.P. Electricity Board and others) decided on 19.10.1994 wherein the Division Bench rejected the contention of the petitioners therein that stone crushing activities do not fall within the extended definition of mine.

7. The learned single Judge while deciding the bunch of writ petitions vide order dated 09.01.2012 found that an identical question was involved: as to whether the stone crusher units, not operated by the mine owners and not located in the premises or adjacent to mine, can be charged the electricity duty under Entry 3 of Part B of Table appended to sub-section (1) of Section 3 of the 1949 Act and whether the arrears of duty could be recovered from a retrospective date. The learned single Judge apart from the relevant provisions of the 1952 Act, 1949 Act and M.P. Electricity Duty (Amendment) Act, 2011 also took note of single Bench decision of Indore Bench of this Court in M/s Ashish Enterprises (supra), and other decisions of this Court by single Bench in W.P. No.3153/2004 (Shri Krishan Mehrotra vs. Madhya Pradesh State Electricity Board and others) decided on 29.08.2008, Division Bench in Stone Crusher Owners Association (supra), Division Bench of Indore Bench of this Court in LPA No.247/1998 (M/s Vastu vs. MPEB and 3 others) decided on 17.12.2002 (hereinafter referred to as "M/s Vastu-1"), M.P. No.2821/1988 (Hindustan Copper Limited vs. State of M.P. and others) decided on 9.2.2005 and 01.12.2011, the Supreme Court decision in (2009) 17 SCC 266 (Hindustan Copper Limited vs. State of Madhya Pradesh and others) and various other decisions of the Supreme Court and came to hold that the question involved in the present case is covered by the decisions in Stone Crusher Owners Association (supra) and Hindustan Copper Limited (supra) i.e. the petitioners though not the mine owners, having the crushing unit established at place not adjacent or in the premises where the mine is situated are covered by the definition of 'mine' as contained in Explanation (b) of Part B of Section 3(1) of 1949 Act and are liable to pay electricity duty as applicable to the "mines (other than captive mines of a cement industry)" and accordingly dismissed the writ petition. The relevant extract of the single Bench decision reads as under:-

"26. The Division Bench was thus very much alive of the issue and the expanse of applicability of the definition 'mines' contained in Explanation (b) of Section 3 of 1949 Act. It appears that the Division Bench in M/s Vastu (supra) overlooked the above facts while observing that "the point projected as to whether a crushing unit situated outside the mining area or to be more precise not situated in or adjacent to a mine will also be covered by the said definition of 'mine' was not in issue nor decided in M.P. No.673/1993.

27. The issue as to whether a crushing unit situated outside the mining area or to be more precise not situated in or adjacent to a mine being covered by decisions in the Crusher Owners Association and others (supra) and Hindustan Copper Limited (supra) i.e., the petitioners though not the mine owners, having the crushing unit established at place not adjacent or in the premises where the mine is situated being covered by the definition of 'mine' as contained in Explanation (b) to Section 3 of 1949 Act are liable to pay electricity duty as applicable to the "mines (other than captive mines of a cement industry)".

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32. Thus, once the validity of the expression 'mines' as per Explanation 3(b) of 1949 Act having been upheld in the Stone Crusher Owners Association and others (supra) decided on 17.10.1994, the contention that the petitioners are charged from a retrospective date on the basis of the explanation tendered by the Secretary, Department of Energy, State of Madhya Pradesh, does not stand to reason. The petitioners' unit having been held to be covered by the definition of mine, the petitioners ought to have volunteered to pay the duty."

8. The present appeal along with connected cases came up for hearing before a Division Bench of this Court on 12.09.2019. The Bench found conflicting observations made by two Division Bench judgments of Indore Bench of this Court rendered in W.A. No.140/2011 (State of Madhya Pradesh vs. M/s Stuti and others) decided on 15.12.2016 (in short "M/s Stuti-1") and M/s Vastu-1's case (supra) and accordingly, referred the same for opinion of the Larger Bench for determination of the following questions:-

"(i) Whether the rate of electricity duty, applicable to mines, can be applied and enforced upon stone crushing units that are not situated in and adjacent to a mine?"

(ii) Whether the electricity duty applicable to mines can be imposed upon only those stone crushing units that are also indulging in mining activities?

(iii) Whether the observations made by the Division Bench of this Court in the case of L.P.A. No.247/1998 (M/s Vastu Vs. M.P. Electricity Board and others) or the decision rendered in the case of State of Madhya Pradesh Vs. M/s Stuti and others, (W.A. No.140/2011) lays down the correct law?

(iv) Any other issue arising out of the dispute relating to determination of the rate of electricity duty to be imposed upon the stone crushing units?"

9. A Full Bench of this Court has decided the aforesaid issues vide order dated 28.02.2020 passed in Writ Appeal No.202/2012 (M/s Vandey Matram Gitti Nirman vs. M.P. Poorva Kshetra Vidyut Vitran Co. Ltd. and others) and found that in Division Bench judgment of this Court in Stone Crusher Owners Association's case (supra), only the validity of Section 3(1) of the 1949 Act was upheld. The question: as to whether the stone crushing units would be covered by the definition of 'mine' in terms of Explanation (b) of Part B of Section 3(1) of the 1949 Act and Section 2(1)(j) of the 1952 Act was not decided in the said decision, therefore, it did not lay down any law relating to the present controversy and thus, it could not be relied upon to hold that all stone crushing units would be chargeable to rate of duty as per Entry 3 of Part B of Table appended to Section 3(1) of the 1949 Act. Accordingly, the subsequent decision rendered by a Division Bench of Indore Bench of this Court in M/s Stuti-1's case (supra) wherein the same view was upheld, has been overruled. Analysing the definition of "mine" as provided under Explanation (b) of Part B of Section 3(1) of the 1949 Act and Section 2(1)(j) of the 1952 Act, the Bench opined that nowhere in Section 2(1)(j) of the 1952 Act the stone crusher unit or stone crushing activity is included to mean a "mine". For the purposes of the said provisions, "mine" would mean only the excavation and where any operation for the purposes of searching for or obtaining or winning the mineral has been or is being carried and further, if at all the stone crushing unit or its premises or machinery or such activity could be related to mining activity, still the exception is carved out in sub-clauses (x) and (xi) of Section 2(1)(j) of the 1952 Act to mean only those premises which are exclusively occupied by the owner of the mine or any premises in or adjacent to and belonging to mine on which any process ancillary to the getting, dressing or operation for sale of mineral or of coke is being carried out. The Bench also took note of the definition of "minerals" as provided under Section 2(1)(jj) of the 1952 Act and considering the same vis a vis the definition of "mine" as contained in Section 2(1)(j) of the 1952 Act, held that if a person carrying on the business of stone crushing, is purchasing the said mineral from other source and is not directly obtaining the mineral through mining, digging and quarrying etc., which is used in the stone crusher for converting into Gitti then the said activity would not be treated to be mining activity. However, if the person has a mining license and carrying out the mining activity being covered under the provisions of the 1952 Act and his stone crushing unit is situated in or adjacent to the mine, he will be liable to pay the rate of electricity duty as applicable to mines as per Entry 3 of Part B of Table appended to Section 3(1) of the 1949 Act. Further, whether a stone crushing unit is situated in or adjacent to a mine, shall depend upon the facts of each case. As regards the circular dated 30.03.2010 is concerned, the Bench held that the same is not the correct interpretation of Explanation (b) of Part B of Section 3(1) of the 1949 Act and Section 2(1)(j) of the 1952 Act. The relevant extract of the Full Bench judgment is reproduced as under:-

"16. For the purposes of definition of "mine" as envisaged under Section 2(1)(j) of the 1952 Act, the "mine" means any excavation where any operation for the purposes of searching for or obtaining minerals has been or is being carried on and includes the items provided from sub-clause (i) to (xi) of Section 2(1)(j) of the said Act, as reproduced above. The words "in or adjacent to a mine" or "in or adjacent to and belonging to a mine" have also been used in sub-clauses (ii), (vi), (vii) and (xi) of Section 2(1)(j) of the 1952 Act. Sub-clause (viii) has used the words "all workshops and stores situated within the precincts of a mine and under the same management and used primarily for the purposes connected with that mine or a number of mines under the same management". Similarly, sub-clause (x) of Section 2(1)(j) of the Act has used the words "being premises exclusively occupied by the owner of the mine". The intent of the Legislature being that rate of duty payable in terms of Entry 3 of Part-B of the Table appended to Section 3(1) of the 1949 Act in respect of mines (other than captive mines of cement industry) would include the mine itself, the premises or machinery situated in or adjacent to a mine wherein crushing, processing, treatment or transportation of the minerals as mined is undertaken. If the intent of the Legislature had been to include all the mining operations or mining activities involving crushing, processing, treating or transporting the mineral, it would not have put the words "premises or machinery situated in or adjacent to a mine" in the definition of "mine" envisaged under explanation (b) of Part B of Section 3(1) of the 1949 Act. Obviously, for the purposes of "mine" under explanation (b) of Part B of Section 3(1) of the 1949 Act, the intent of the Legislature was not to include the mining activities which are not in or adjacent to a mine. The definition contained in explanation (b) of Part B of Section 3(1) of the 1949 Act is, thus, clear and unambiguous.

17. The first part of the definition of "mine" as contained in explanation (b) of Part B of Section 3(1) of the 1949 Act reads that "'mine' means a mine to which the Mines Act, 1952 applies". Although a perusal of the definition of "mine" as contained in Explanation (b) shows that it cannot be understood in its narrow sense but it has a wider connotation since it includes the definition of "mine" as contained in Section 2(1)(j) of the 1952 Act but the later part of the provision contained in Explanation (b) reads that "and includes the premises or machinery situated in or adjacent to a mine and used for crushing, processing, treating or transporting the mineral". It is a trite law that the provision has to be read as a whole and not in isolation. The words "includes the premises or machinery situated in or adjacent to a mine" make the legislative intent very clear that for the purposes of 1949 Act, though the definition of "mine" as contained in Section 2(1)(j) of the 1952 Act shall apply but it shall also include the premises or machinery situated in or adjacent to a mine and used for crushing, processing, treating or transporting the mineral.

18. The mining license to carry out mining activity is issued under the Mines Act, 1952 and then only the person is allowed to carry out the mining business. Where the person has purchased the boulders from mine owners and converts

the same into Gitti through the stone crusher, he cannot be said to be directly involved in the mining activity. Though the definition of "mine" as provided under explanation (b) of Part B of Section 3(1) of the 1949 Act includes the premises or machinery situated in or adjacent to a mine and used for "crushing" the mineral but it also says that the "mine" to which the 1952 Act applies whereas definition of "mine" provided under Section 2(1)(j) of the 1952 Act leads to an inference that the "mine" would mean only the excavation and where any operation for the purpose of searching for or obtaining or winning the mineral has been or is being carried out and includes all other activities provided from sub-clause (i) to (xi) of Section 2(1)(j) of the 1952 Act. Nowhere the stone crusher unit or stone crushing activity is included in the said provision to mean a "mine". If at all the stone crushing unit or its premises or machinery or such activity could be related to mining activity, still the exception is carved out from perusal of sub-clauses (x) and (xi) of Section 2(1)(j) of the 1952 Act to mean that only those premises which are exclusively occupied by the owner of the mine or any premises in or adjacent to and belonging to a mine on which any process ancillary to the getting, dressing or operation for sale of minerals or of coke is being carried on.

19. Apart from the aforesaid, a perusal of definition of "minerals" provided under Section 2(1)(jj) of the 1952 Act shows that the mineral means all substances which can be obtained from the earth by mining, digging, drilling, dredging, hydraulicing, quarrying or by any other operation and includes mineral oils (which in turn include natural gas and petroleum). If a person running a stone crusher unit whether in or adjacent to mine or outside the mining area, is not obtaining the said mineral for crushing through the process defined under Section 2(1)(jj) of the 1952 Act i.e. by mining, digging, drilling, dredging, hydraulicing, quarrying or by any other operation then such stone crusher unit also cannot be said to be directly involved in mining activity. In these circumstances, if a person carrying on the business of stone crushing, is purchasing the said mineral from other source and is not directly obtaining the mineral through mining, digging and quarrying etc. which is used in the stone crusher for converting into Gitti then he cannot be said to be involved in the mining activity.

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28. In view of the careful analysis of aforesaid provisions of the 1949 Act and 1952 Act, we find that if a stone crusher unit is not exclusively occupied by the owner of the mine and is not belonging to a mine, then such stone crusher unit would not fall within the ambit and scope of explanation (b) of Part B of Section 3(1) of the 1949 Act so as to attract the rate of duty as provided at Entry 3 Part B of Table appended to Section 3 of the 1949 Act. In this view of the matter, the following conclusions are drawn in respect of question Nos.(i) and (ii):-

(i) Question No. (i) is answered in the negative by holding that rate of duty provided under Entry 3 of Part-B of the Table under Section 3(1) of the 1949 Act as applicable to mines, cannot be applied and enforced upon those stone crushing units which are only carrying on stone crushing activity whether or not situated in or adjacent to a mine. To put it differently, if a stone crushing unit is not exclusively occupied by the owner of the mine and it is not belonging to a mine, then such stone crushing unit would not fall within the ambit and scope of explanation (b) of Part B of Section 3(1) of the 1949 Act so as to attract the rate of duty as provided at Entry 3 Part B of Table under Section 3(1) of the 1949 Act;

(ii) Question No.(ii) is answered in the affirmative and it is held that if the appellant has a mining license and carrying out the mining activity being covered under the provisions of the 1952 Act and his stone crushing unit is situated in or adjacent to the mine, he will be liable to pay the rate of electricity duty as applicable to mines as envisaged in Entry 3 of Part B of Table appended to Section 3(1) of the 1949 Act. However, whether such stone crushing unit is situated in or adjacent to a mine, shall depend upon the facts of each case.

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44. From the above discussion and in view of the answer to question Nos.

(i) and (ii) above, it is concluded that:-

(i) the Division Bench judgment in M/s Stuti-1's case (supra) wherein it was held that the petitioners though not the mine owners, having the crushing unit established at place not adjacent or in the premises where the mine is situated being covered by definition of 'mine' as contained in explanation (b) of Part B of Section 3(1) of 1949 Act are liable to pay electricity duty as applicable to "mines" (other than captive mines of a cement industry) does not lay down the correct law and is thus, overruled;

(ii) the Division Bench in Vastu-1's case (supra) correctly observed that as to whether a crushing unit situated outside the mining area or to be more precise not situated in or adjacent to a mine will also be covered by the said definition of 'mine' was not in issue nor decided in Stone Crusher Association's case (supra);

(iii) in Division Bench judgment of this Court in Stone Crusher Association's case (supra) though the argument was raised on behalf of the respondent-Company that the definition of 'mine' is extended for the purposes of charging electricity duty which includes crushing, processing, etc. as activity in relation to minerals but the question as such was not decided and it was only held that the State is allowed wide choice in selection of objects and persons and such an exercise has never been said to be arbitrary or without any legislative competence and therefore, the legislature cannot be said to have erred in defining "mine" in Explanation (b) of Part B of Section 3(1) of the Act for the purpose of imposition of electricity duty. Only the validity of Section 3(1) of the 1949 Act was upheld in Stone Crusher Association's case (supra) which was later affirmed by the Supreme Court in Manganese Ore India Limited vs. State of M.P. and others,

(2017) 1 SCC 81 but since the question as to whether the stone crushing unit would be covered by the definition of 'mine' in terms of explanation (b) of Part B of Section 3(1) of the 1949 Act and Section 2(1)(j) of the 1952 Act was not decided in Stone Crusher Association's case (supra), therefore, the said decision does not lay down any law relating to the present controversy and it was not open to be relied upon to hold that all stone crushing unit would be chargeable to rate of duty as per Entry 3 of Part B of Table appended to Section 3(1) of the 1949 Act;

(iv) In view of the above, the decisions of this Court wherever it is held that the stone crushing units even though not occupied by the mine owners and/or not belonging to mine, situated in or adjacent to mine and even if situated outside the mining area are chargeable to rate of duty as per Entry 3 of Part B of Table appended to Section 3(1) of the 1949 Act, are not the correct enunciation of law and are, thus, overruled and such decisions where the rate of duty as per Entry 3 was held to be applicable to stone crushing units which were occupied by the mine owner and belonging to mine and situated in or adjacent to mine are upheld;"

10. In the light of the view expressed by the Full Bench in W.A. No.202/2012 and connected matters (supra), the impugned order dated 09.01.2012 (Annexure A-1) passed by the learned single Judge is set aside and the present appeal is allowed. Accordingly, the writ petition filed by the appellant-petitioner succeeds and the order/notice of recovery dated 04.05.2010 (Annexure P-5) and circulars dated 30.03.2010 (Annexure P-6) and 15.04.2010 (Annexure P-7) stand quashed.

11. In W.P. No. 51/2014 (M/s Balaji Stone Crusher vs. State of M.P. and others), the petitioner has challenged the orders dated 15.06.2012 (Annexure P-5), 18.01.2013 (Annexure P-7) and 10.04.2013 (Annexure P-8) whereby demand for Rs.1,54,509/- has been raised towards electricity duty @40%. The petitioner has stated that its stone crusher is not in mining area nor in the vicinity of mining area adjacent to mine and that no mining activity is being carried out. The respondent-State by filing the return has relied upon the single Bench decision of this Court in W.P. No.5070/2011 (M/s Jai Hanuman Stone Crusher vs. M.P. Poorva Kshetra Vidyut Vitaran Co. Ltd. and others) decided on 09.01.2012, which view has not been approved by this Court hereinabove. For the same reasons, the present writ petition also succeeds and is allowed. The impugned orders dated 15.06.2012 (Annexure P-5), 18.01.2013 (Annexure P-7) and 10.04.2013 (Annexure P-8) are hereby quashed.

12. Let a signed order be placed in the file of W.A. No.257/2012 and copy whereof be placed in the file of the connected writ appeals and writ petition.