
(2018) 01 MP CK 0024
In the Madhya Pradesh High Court
Case No : 2474 of 2017

Sasan Power Limited

APPELLANT

Vs

State of Madhya Pradesh and others

RESPONDENT

Date of Decision : 17-01-2018

Acts Referred:

Constitution of India, Article 14, Article 226, Article 19(1) - Appointment of Commission to inquire into and report on the administration of autonomous districts and autono

Citation : (2018) 01 MP CK 0024

Hon'ble Judges : Hemant Gupta, Vijay Kumar Shukla

Bench : Division Bench

Advocate : Prashant Singh, S.K.Chaturvedi, Abhishek Singh, B.D.Singh

Final Decision : Dismissed

Judgement

1. In the present petition filed under Article 226 of the Constitution of India, the petitioner has challenged the validity of Section 2(a) of the Madhya

Pradesh Gramin Avsanrachna Tatha Sadak Vikas Adhiniyam, 2005 (hereinafter referred to as ""the Adhiniay"") and Rule 4 of Madhya Pradesh

Gramin Avsanrachna Tatha Sadak Vikas Rules,2005 (hereinafter referred to as ""the Rules"") as violative of Articles 14 and 19(1)(g) of the

Constitution of India and declare the same as ultra vires. In alternative prayer , it was also prayed to read down the aforesaid provision to hold that

in respect of the petitioner the cost of production of coal after excluding the deductions permitted under the Adhiniyam can only be used to

calculate annual value of mineral bearing land. The petitioner also challenged the validity of the orders of assessment and the calculation made by

the Collector/ District Magistrate, Singrauli in assessing the liability of the

petitioner towards tax under the Adhiniyam assessment orders dated 08-08-2016, 16-06-2015 and 14-07-2014 (Annexures P-1 to P-3) respectively and also challenged the appellate order dated 20-08-2015

(Annexure P-14). He also challenged the levy of the penalty towards non-payment of tax for financial year 2015-16 and financial year 2016-17.

2. At the outset, learned counsel for the petitioner submitted that he is not challenging the vires and validity of the provision of Section 2(a) of the

Adhiniyam, 2005 and Rule-4 of the Rules, as the validity of these provisions have already been upheld by this court in the case of M/s Neogy &

Sons Vs. State of Madhya Pradesh and another decided on 18-08-2006 along with bunch of petitions, where this court has held that the

Adhiniyam 2005 is not ultra vires. The challenge to the order passed by this court is pending before the Apex Court in Civil Appeal

No.4745/2016 (Jai Prakash Associates Ltd. Vs. State of M.P. and other).

3. The facts adumbrated in nutshell is that the petitioner Limited Company, has set up a 3960 MW Project at village Sasan in district Singrauli for

the purpose of generation of electricity, the Government of India has, inter-alia allocated Moher, Moher- Amlohri Extension coal blocks in district

Singrauli to the petitioner. The petitioner has started coal production from these coal blocks and the entire coal produced from the said coal blocks

is exclusively used for generation of the electricity by the petitioner at its power plant. The Collector/District Magistrate Singrauli has levied the tax

on the petitioner by the impugned assessment orders on the basis of price notified by the Coal India Limited in respect of coal for sale in market to

various end users while assessing the annual value of the land of the coal blocks of the petitioner. The assessment orders were challenged

unsuccessfully in appeal under the Act before the Commissioner, Rewa.

4. The main contention of the petitioner is that while assessing the liability of the petitioner, the authorities have completely ignored and disregarded

that the land of captive coal mines allocated to the petitioner is of a different class and the price notified by the Coal India Limited for sale of coal in

market cannot be the basis for determining the annual value of land pertaining to the captive coal mines of the petitioner. It is also contended that

the authorities have failed to consider the fact that the coal produced from the coal mines of the petitioner is meant for exclusive use by Sasan

UMPP for generation and sale of power to a pre-identified group of procurers at a predetermined ultra competitive levelized tariff.

5. The petitioner submitted that the respondents have mentioned wrong provision of the Adhiniyam, 2005 and the Rules and they were not clear

about the provisions to levy tax on the petitioner. It is also submitted by him that the procedure of calculation adopted by the authorities is contrary

to the provisions of the Adhiniyam, 2005 and the rules. It is also contended that Rule 4(5) of the Rules is not applicable to the present case, as it

contemplates a different factual situation. It is applicable only when the mineral is disposed of by combination of one or more processes, such as

sale, direct export and/or captive consumption. In the present case, the entire coal produced from the captive mines is being utilized for the captive

consumption on Sasan Ultra Mega Power Projects (in short UMPP).

6. Per contra, learned counsel for the State submitted that the orders of assessment and the appellate order are legal and valid. They are passed in

accordance with the provisions of Adhiniyam, 2005 and the rules. It is further submitted that mere mentioning of wrong provisions would not

render the action and the orders passed by the respondents illegal and void. He also submitted that the validity of the provisions has already been

upheld by this court in the case of M/s Neogy & Sons (supra) and so far the vires of the Adhiniyam 2005 and the rules are concerned, the issue is

pending before the Apex Court in the case of Jai Prakash Associates Ltd.(Supra).

7. Since the petitioner has not challenged the validity of the provisions of the Adhiniyam, 2005 and the rules and confined the petition to the other

reliefs, therefore, we need not to decide the said issue. Even otherwise, the said issue has already been adjudicated by this court in the case of M/s

Neogy & Sons(supra).

8. The Adhiniyam, 2005 has been enacted by the Legislature to provide for additional resources for development of infrastructure and roads in

rural areas with special emphasis to backward and mining areas of the State.

9. To appreciate the rival submissions of the counsel for the parties, it is apposite to refer the certain provisions of the Act and the rules. Section 2

of the Adhiniyam, 2005 provides definitions. Relevant definitions are reproduced as under :

2 (a) annual value of mineral bearing land"" in relation to a financial year, means

one-half of the value of mineral produced from mineral bearing land during the two years immediately preceding that financial year, the value of mineral being that as could have been fetched by the entire production of mineral during the said two immediately preceding years, has the owner of such mineral bearing land sold such mineral at the price or prices excluding the amount of tax, fee, duty, royalty, crushing charge, washing charge, transport charge or any other amount as may be prescribed, that prevailed on the date immediately preceding the first day of that financial year. Explanation-I.- Where different prices are prevailing on the date immediately preceding the first date of that financial year for different grades or qualities of mineral, the value of mineral of each grade or quality produced during the two years immediately preceding that financial year shall be determined accordingly. Explanation-II.- Where no prices of mineral are available on the date immediately preceding the first date of that financial year, the price or prices of mineral shall be determined by the State Government, in such manner as may be prescribed;

(d) coal bearing land"" means any land acquired or declared as such from time to time under any law for the purpose of obtaining coal;

(e) ""mineral bearing land"" means any land which bears minerals, as defined in clause (a) of Section 3 of the Mines and Mineral (Development and Regulation) Act, 1957 (67 of 1957), and held for carrying on mining operation and includes coal bearing land;

(g) ""tax"" means the rural infrastructure and roads development tax levied under Section 3;

10. Section 3 of the Act is charging section which reads as under:

3. Levy of tax. - (1) On and from commencement of this Act, there shall be levied and collected a rural infrastructure and roads development tax

on all mineral bearing land in the manner hereinafter provided.

(2) The rural infrastructure and roads development tax shall be levied annually on all mineral bearing land at such rate, not exceeding twenty

percentum of the annual value of such mineral bearing land, as the State Government may, by notification, fix in that behalf, and different rates may

be fixed for different mineral bearing land :

Provided that where in case of any mineral bearing land, there is no production of mineral for two consecutive years or more, such land shall be

liable for levy of tax at such rate, as may be prescribed.

Provided further that the State Government shall not enhance the rate of tax in respect of any such mineral bearing land more than once during any period of three years.

(3) The State Government, before fixing the rate of tax under sub-section (2), shall appoint a committee, In such manner as may be prescribed

who shall recommend to the State Government the rate at which the tax may be levied.

(4) Every notification issued under sub-section (2) shall be laid on the table of the Legislative Assembly.

11. Section 4 regarding payment and recovery of tax is reproduced as under:

4. Payment and recovery of tax.- (1) The tax payable under sub-section (2) of Section 3 in respect of mineral bearing land shall be paid by the

person, who holds such land, to the State Government in such manner, at such interval and by such date or dates as may be prescribed:

Provided that where any person holds mineral bearing land for more than one mineral, the tax shall be paid by him in such manner as may be

determined by rules made under this Act.

(2) Every holder of a mineral bearing land shall be liable to pay, by way of penalty in default of payment of tax payable by him under sub-section

(1) for any period by the prescribed date, an amount not exceeding three times of the tax so payable by him for that period: Provided that the

competent authority shall give the holder of mineral bearing land a reasonable opportunity of being heard before imposition of such penalty.

(3) The tax payable under sub-section (1) shall be assessed by the competent authority in the prescribed manner.

(4) Recovery of tax assessed under subsection (3) or refund of any amount of such tax found to have been paid in excess after assessment shall be

made in such manner, as may be prescribed.

(5) The amount of tax assessed under sub-section (3) and penalty, if any, imposed, if not paid, shall be recovered by the competent authority as an

arrear of land revenue.

12. Section 11 gives power to the State Government to make rules for carrying out the purpose of this Act. the procedure for calculation of annual

value of Mineral bearing land having prescribed and therefore, the Rule-4 of the Rules is relevant and it also reproduced as under:

4. Calculation of annual value of mineral bearing land.-(I) For the purpose of Explanation II of clause (a) of Section-2 of the Act, where no prices

are available on that date immediately preceding the first date of the financial year in relation to a mineral, the price of the mineral of the nearby

mineral the price or prices of the bearing land shall be taken into account for purpose of determination of price of that mineral or as the case may

be, the price derived from the national price by Indian Bureau of Mines for that particular mineral with reference to its grade, if any.

(2) The annual value of minerals bearing land held for carrying out mining operations of financial year, for an owner, who holds mineral bearing land

for more than one mineral, shall be the sum of sale prices of all minerals produced during the said period by the owner.

(3) In case of sale in the domestic market, the per ton sale value will be the price of the mineral actually realized, less the tax, fee, duty royalty and

other deductible costs as shown by the mineral bearing land holders in their sale vouchers of bills or invoices and shall be considered for computing

the annual value of mineral bearing land. To avoid payment of tax on tax, fee, duty and royalty, the mineral bearing land holders in their own interest

shall record the above taxes, fees, duties, royalty and other deductible costs, separately in the sale vouchers or bills or invoices instead of indicating

a composite amount. In case these are not shown separately, it shall be assumed that the composite amount is the sale price.

(4) In case of direct export by the mineral bearing land holders, the sale value for the purpose of annual value of mineral bearing land shall

ordinarily be the freight on board(FOB) price realized less fee, duty, royalty. taxes and other deductible costs. For such purposes, the mineral

bearing land holder may prepare invoices or bills indicating the freight on board price or insurance freight price as the case may be.

(5) Where mineral produce is disposed of by more than one process such as sale in domestic market direct export and captive consumption, the

sale price or prices of mineral shall be the weightage average of prices of mineral determined by adopting the procedure in sub13 rule(1), (3) and

(4) above.

13. In view of the Explanation-II of Section 2(a) "annual value of mineral bearing land" specifically provides that where no price available on the date immediately preceding the first date of financial year in relation to a mineral, the price or the prices of mineral of the nearby mineral, the price or prices of the bearing land shall be taken into account for the purposes of the determination of price of that mineral or as the case may, the price derived from the national price published, the first date of financial year, in relation to mineral, the price or prices of mineral shall be determined by the State Government, in such manner as may be prescribed. The Rule-4 of the Rules prescribe the procedure for calculation. Thus, even if the coal is being sold in open market or is being used by generating electricity or their own purpose then also determination factors as indicated in Rule-4 has to be followed.

14. Section-3 is charging provision which provides of levy of tax on all mineral bearing land in the manner provided in the Act. Section-4 deals with the payment of recovery of tax. Section-7 provides for separate head of account for tax proceeds. and section-8 provides for utilization of tax proceeds. It is clear from the aforesaid provisions of the Act that tax has been imposed for the purpose of development of rural infrastructure and for road development. It is clearly a tax on the land which bears mineral. It is not a tax on the mineral, only method of computation of tax is based on mineral produce but it is a tax on land .

15. In view of the aforesaid, we do not find any merit in the contention of the petitioner that he is not liable for the tax because the coal produce from the coal blocks of the petitioner is meant for exclusive use by Sasan Ultra Mega Power Project for generation and and sale of power to a pre- identified group of procurers.

16. Since the respondents have power to levy tax under the provisions of Adhiniyam, 2005 and "the rules", therefore, mere quoting of wrong provision does not take away jurisdiction of the authority under the relevant Act or the Rules as held by the Apex Court in the case s of *MIG Cricket Club Vs. Abhinav Sahakar Education Society and others* (2011)9 SCC 97, *Chandra Singh and others Vs. State of Rajasthan* and another, (2003) 6 SCC 545, *P.Radhakrishna Naidu and others Vs. Government of Andhara Pradesh and others*, AIR 1977 SC 854 and *State of*

Karnataka Vs. Krishnaji Srinivas Kulkarni and others (1994) 2 SCC 558.

17. Learned counsel for the petitioner also could not point out any illegality or arbitrariness in the order of assessment and order passed by the

Appellate Authority. Even otherwise, this court is not exercising appellate jurisdiction over the decision of the appellate authority under Article 226

of the Constitution of India. The scope of interference under Article 226 of the Constitution of India is confined only to examine the decisionmaking

process of the administrative authority.

18. In view of the aforesaid, we do not find any illegality in the order impugned. Accordingly, the petition is dismissed. No order as to costs.