

SUPREME COURT OF INDIA

Pacific Minerals (P) Ltd.

Vs.

State of M.P.

C.A.No.291 of 1963

(K. Subba Rao, J. R. Mudholkar and R. S. Bachawat, JJ.)

19.08.1965

JUDGEMENT

BACHAWAT, J.:

1. The question in this appeal turns entirely on the meaning to be given to the words "the cost of carriage and freight and such other charges as are usually incurred in conveying and causing the same (the manganese ore) to be delivered to the purchasers in terms of the sales", as used in two mining leases.

2. The appellant is the lessee of the Laughher and Netra manganese mines in Balaghat district under lease deeds, dated August 17, 1938 and December 5, 1938 by the State Government of Central Provinces and Berar. Both the leases provided for payment of royalty at the rate of 5 per cent of the sale value at the pit's mouth of dressed ore raised from or out of and carried away or exported from the demised lands. Clause 2 of Part VI of the lease provided for the computation of royalty thus:

"2. In order to arrive at the sale value of the manganese ore at the pit's mouth for the purpose of assessing the royalty as herein before provided the lessee shall at the request of Lessor submit either yearly or half-yearly a statement showing the selling price of all or (at the option of the Lessor) a part of the ore carried away or exported from the said lands during the period asked for and giving a full and true account of the cost of carriage and freight and such other charges as are usually incurred in conveying and causing the same to be delivered to the purchasers in terms of the sales. The lessee shall at the same time submit audited books of accounts showing the percentage in units of the metal contained in every consignment of ore carried away or exported from the said lands or at the option of the Lessor signed copies of the analysis of the ore made by some firm of analytical chemists approved by the Lessor. And it is agreed that the value at the pit's mouth of all ore so carried away or exported by the lessee/lessees upon which the aforesaid royalty is to be paid shall be taken to be the difference between the said selling price of the ore and the said charges incurred by the lessee up to the date of the delivery of the same as aforesaid the calculation being made upon the basis of the statements and figures contained in the accounts and other documents to be submitted by the lessee as above provided. The said royalty shall be calculated upon the said ore as and when the same shall be carried away or exported from the said lands or previous to its use for the extraction or preparation of manganese therefrom".

3. The leases were granted under the Mining Manual of the Central Provinces and Berar then in force, and the appellant was required to submit to the Deputy Commissioner, Balaghat, half-yearly returns in Forms Nos. 7 and 7-A of Appendix B of Part A of the Mining Manual showing separately the selling price and the expenses incurred by him. The appellant submitted half-yearly returns ending June 30, 1951 and December 31, 1951. For the F. O. B. sales, the appellant claimed deduction of export duty levied by the Central Government under S. 28 of the Sea Customs Act, 1878 read with S. 2 and Second Schedule, item No. 7 of the Indian Tariff Act, 1934. For the F. O. R. sales, the appellant claimed deduction of sales tax chargeable under S. 4 of the Central Provinces and Berar Sales Tax Act, 1947. The Deputy Commissioner, Balaghat, assessed the royalty after disallowing the appellant's claim for deduction of the export duty and sales tax. This assessment was confirmed by the State Government. The appellant paid the royalty and thereafter, filed a writ petition in the High Court of Madhya Pradesh challenging the assessment. The High Court dismissed the petition. The appellant now appeals to this Court by special leave.

4. In computing the sale value of the manganese ore at the pit's mouth, Cl. 2 of the mining lease allows deductions from the selling price of "the cost of carriage and freight and such other charges as are usually incurred in conveying and causing the same to be delivered to the purchasers in terms of the sales". We think, that this clause allows deduction of the charges incurred in conveying and delivering the manganese ore to the buyers in terms of the sales, such as the cost of carriage and freight and like charges. The other charges contemplated by the clause are of the same kind as cost of carriage and freight. This conclusion is reinforced if we refer to the standard Forms Nos. 7 and 7-A of Appendix B and Rule 50 (1) of Chap I of Part A of the Mining Manual, under which the leases were granted. Form No. 7 in respect of F. O. B. sales contemplates deduction of commission, port charges, railway freight, handling charges at rail head and in Bombay and transport to rail head. Form No. 7-A in respect of F. O. R. sales contemplates deduction of commission, handling charges at rail head and transport to rail head. The allowable deductions from the selling price less commission are thus the cost of carriage and freight and other like charges such as handling charges

and port charges. Export duty on the F. O. B. sales and sales tax on the F. O. R. sales are not allowable deductions.

5. In F. O. B. sales, the price is inclusive of the export duty. The appellant was required to pay the duty before the shipment under S. 137 of the Sea Customs Act, 1878. In terms of the sales, the appellant was required to place the goods on board the ship, and it could do this only on payment of the export duty. In other words, the delivery to the buyer in terms of the F. O. B. sale could not be made without paying the export duty. Nevertheless, the export duty is not, like transport and freight charges, an expense incurred in conveying and causing delivery of the ore to the buyer.

6. Under the sale contracts, the appellant was bound to pay and bear the sales tax on its own account. As a dealer, the appellant was chargeable with sales tax on its turnover. The sales tax is not an expense incidental to conveyance and delivery of the ore to the buyer, and is not an allowable deduction.

7. No valid ground is shown for quashing the assessment and the High Court rightly dismissed the petition. In the circumstances, it is not necessary to consider the further question whether recourse to Art. 226 of the Constitution was misconceived and the appellant's proper remedy was to sue for refund of the royalty.

8. The appeal fails, and is dismissed with costs.

Appeal dismissed.