

State of West Bengal

Vs

M/S Ghusick and Muslia Collieries Ltd.

Civil Appeal No. 2265 of 1970

(O. Chinnappa Reddy, R. B. Misra JJ)

15.03.1985

JUDGMENT

R. B. MISRA, J. -

1. The present appeal by special leave directed against the judgment of the Calcutta High Court dated October 10, 1969 involves the interpretation of Section 6 and 72 of the Bengal Cess Act, 1880 and arises in the following circumstances.
2. The respondent company is the owner of a colliery situated at Ghusick, Kalapahari within the district of Burdwan. As is usual with the coal-mines the percolated water which accumulates in the colliery has to be pumped out and discharged at the surface to prevent inundation of the colliery and for proper working of the mine. The percolated water of the mine of the respondent company was pumped out and sold by the company to a neighbouring glass factory, the Hindustan Pilkington Glass Works Limited, which required such water for cooling and other purposes. The respondent company by such sale of water received for the year 1958-59 a sum of Rs. 42,073 which amount was entered in their profit and loss account as miscellaneous income, besides the sum of Rs. 5,82,000 shown as the sale price of coal of the said colliery. The respondent company had been selling such percolated water in the earlier years also and paying cess thereon. When the cess authorities assessed cess on this income under the Bengal Cess Act, 1880 for the year 1958-59 the respondent for the first time claimed exemption from the assessment of cess in respect of the sale price of water amounting to Rs. 42,073, although the respondent never claimed such exemption in respect of such sale proceeds of water in the previous years.
3. The Cess Deputy Collector of Burdwan by his order dated November 26, 1959 disallowed the claim of exemption treating the said sum of Rs. 42,073, as one of the items constituting the annuals net profit derived from the mine in the process of extracting coal and by using the company's instruments and staff.
4. The respondent company took up the matter in appeal before the Collector of Burdwan, who found that the cess levied was not contrary to the provisions of the Act and the rules framed thereunder, as the income was derived by the employment of machinery and staff of the coal-mine.
5. The respondent feeling aggrieved went up in revision before the Commissioner of Burdwan Division but that also met the same fate. The Commissioner took the view that the water which is pumped out to save the colliery from drowning is then sold at vast profit and, therefore, it comes within the ambit of the term 'gross earnings' and as such was liable to cess. The respondent went up in further revision before the Board of Revenue but the second revision was also dismissed.

Undaunted by these failures the respondent took up the matter before the High Court under Article 226 of the Constitution which was eventually allowed by the High Court. It took great pains to come to a conclusion that the water discharged from the mine was not a mineral. It was also not land within the meaning of Section 6 of the Bengal Cess Act. On these findings the High Court observed :

The tenant of a mineral, particularly of a coal-mine, is normally under the vanishing expenses of sinking new pits, diving galleries, pumping out water and the like and some of the expenses representing capital might be disallowed as working expenses of the colliery but that does not justify the authorities, as in this case, to impose cess on the sale price of water ... and the sale price of such commodity does not form part of the annual profit from the mine.

The High Court referred to a large number of cases, English and American, and the history of the Cess Act to arrive at the above conclusion.

6. We are of the opinion that the High Court has gone off the track. It was not at all necessary to enter into the complicated question whether the water oozing out of the mine was a mineral. In the present case we are concerned only with the interpretation of Section 6 and 72 of the Bengal Cess Act. Section 6 at the material time, that is, for the year 1958-59, insofar as relevant, ran as follows :

6. The road cess and the public works cess shall be assessed on the annual value of lands and until provision to the contrary is made by Parliament, on the annual net profits from mines, quarries, tramways, railways and other immovable property ascertained respectively in this Act prescribed;

Section 72 reads :

On the commencement of this Act in any district thereafter before the close of each year, the Collector of the district shall cause a notice to be served upon the owner, chief agent, manager or occupier of every mine, quarry, tramway, railway and other immovable property not included within the provisions of Chapter II; such notice shall be in the form in Schedule E contained, and shall require such owner, chief agent, manager or occupier to lodge in the office of such Collector within two months return of the net profits of such property, calculated on the average of the annual net profits thereof for the last three years for which accounts have been made up.

Such Collector may in his discretion extend the time allowed for lodging such returns.

The key words in these two sections on which the fate of this case hinges, are "on the annual net profits from the mines". The precise question for consideration is whether the sale price of the water pumped out and discharged from the mine could be included in the annual net profits from the mine. If so, the cess levied on the respondent company was fully justified by Section 6.

7. The contention on behalf of the respondent company is that the sale price of the water discharged from the mine cannot be taken to be a profit from the mine. We find it difficult to accept the contention. There is no doubt that water comes out of the mine and that water has got to be pumped out from the mine to save it from being inundated or to enable the working of the mine. But if that water is sold away at a price and an income derived in that way, why can it not be said to be a profit

from the mine ? The exercise by the High Court in referring to a large number of cases of England and America are not of much relevance on the problem before us. A bare perusal of the section makes it evident that the income derived by the sale of water pumped out from the mine is a profit from the mine.

8. Reliance was placed on *Tata Iron and Steel Co. Ltd. v. State of Bihar* (1963 Supp 1 SCR 199 : AIR 1963 SC 577 : (1963) 48 ITR 123). In that case the appellant company was the owner of certain mines in Bihar from where it extracted iron ore which it utilised in its factory at Jamshedpur for making iron and steel. Under Section 5 and 6 of the Bengal Cess Act, 1880, as amended in Bihar, all immovable property situated in any part of the State of Bihar was liable to payment of local cess, which in the case of the mines was to be assessed on the annual net profits from them. For the assessment year 1954-56 the company was assessed by the Cess Deputy Collector on the basis that it had made profit of Rs. 4-7-0 per ton of iron ore extracted. The appellant claimed that it was not liable to the levy of cess under the Act because it did not sell any ore as such and could not, therefore, be treated as having made 'any profit' from the mines within the meaning of Section 6 of the Act.

9. The question for consideration was whether a person could in law be said to have derived profit from a mine when the ore extracted is not sold by him as such but is utilised by him for the purpose of manufacturing a finished product which he sells. The contention of the appellant company that the ore extracted was not sold as such but was used by the owner in the production of other finished products and, there was no question of the owner of the ore realising profit from the mine, was repelled by this Court and it observes :

In our opinion therefore, the principle of apportionment resting on the disintegration of the ultimate profits realised by the assessee is implicit in a provision like that in Section 6 of the Act under which net profits derived from an initial activity is brought to charge where further activities are undertaken by an assessee with reference to the ore won and a profit is realised by the sale of the end product.

The principle laid down in this case fully supports the contention of the appellant in the instant case. The facts of the present case go a step further inasmuch as the water pumped out from the mine was separately sold for a price and, therefore, obviously it is covered by the provision of Section 6, read with Section 72 of the Act. The contention of behalf of the State has considerable force and must be accepted.

10. The counsel for the respondent on the other hand contended that the income by sale of water was only a casual income and not a regular permanent income and, therefore, it could not be assessed to cess. We see no force in this contention. Section 6 does not make any distinction as to whether the income is casual or a regular one. All that we are concerned with is whether the income derived by the sale of water pumped out from the mine is included in the profit from the mine or not. We have not the slightest doubt that the income derived by sale of water pumped out from the coal-mine constituted a profit derived from the mine.

11. For the foregoing discussion the appeal must succeed. It is accordingly allowed and the judgment of the High Court is set aside. There shall, however, be no order as to costs.

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