

State of Orissa and Others

Vs

Steel Authority of India Ltd.

Civil Appeals Nos. 3693-94 of 1998

(CJI M. M. Punchhi, K. Venkataswami JJ)

10.08.1998

JUDGMENT

K. VENKATASWAMI, J. –

1. Special leave granted.

2. These appeals raise a common question of law and the parties are same in both the appeals. As a matter of fact, in civil appeal arising out of SLP (C) No. 16665 of 1992 the High Court has simply followed its earlier judgment against which the civil appeal arising out of SLP (C) No. 16718 of 1991 has been filed. In the circumstances, both the appeals are disposed of by this common judgment.

3. The respondent, a manufacturer of iron, steel and allied products, entered into an agreement of lease in respect of land measuring 569.6 acres with the State Government in order to meet its own requirements of raw material, namely limestone and dolomite. Under the agreement, it was agreed that the respondent was liable to pay royalty on the minerals extracted. However, the dispute that arises for consideration out of the two judgments of the High Court is whether the respondent is liable to pay royalty on the quantity of mineral extracted as it is or on the quantity arrived at after the said minerals had undergone a processing to remove waste and foreign matter. It was the case of the appellants that the respondent was liable to pay royalty on the mineral extracted while the case of the respondent was that the liability was on the quantity of mineral obtained after it had undergone the process.

4. The process adopted by the respondent is given in the SLP paper-book at p. 11, which reads as follows :

"In the Mechanised Section of the respondent's quarry, after blasting, the blasted materials containing limestone and other foreign materials are loaded by mechanical shovels and are brought to the crushing plant by dumpers. These are called 'run of mines', for short ROM. The ROM are fed into the crusher, and when necessary stockpile is made, the same fed into the primary crusher whereafter it goes to the secondary crusher mechanically.

In between the secondary crusher and the screening plant is affixed the weightometer. From the secondary crusher, the limestone is moved into the screening plant and from the screening plant to the stockpile. The stockpile is then transported and loaded into the railway wagons.

The weightometer recording mentioned hereinabove, is done as the workmen are paid their incentives on the basis of production. This figure recorded by the weightometer is duly recorded in the books kept by the respondent-Company in the regular course of business as 'production'.

The Senior Mining Officer is duly intimated of the weight recorded in the manner as aforesaid."

5. The High Court, after referring to Section 9(1) of the Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter called "the Act") and also clause 3 of Part V of the Lease Deed, held as follows :

"A distinction has to be made between removal from the mine and removal from the leased area. If after the mineral is extracted from the mine, it undergoes some processing and during processing, a part of the minerals is wasted and the wastage remains on the leased area and is not removed therefrom, the lessee cannot be asked to pay royalty on that portion of the wastage."

6. On that view of the matter, the High Court quashed the demands which were levied on the quantity of "unprocessed" minerals.

7. Aggrieved by the order of the High Court, the present appeals are filed by special leave.

8. The learned counsel appearing for the appellants submitted that the High Court was not right in making the distinction and concluding that the quantity of minerals which had undergone a certain process alone was liable to levy of royalty. According to the learned counsel, this view runs counter to the view already taken by another Division Bench of the same High Court in OJC No. 909 of 1974. The further case of the learned counsel was that the judgment in OJC No. 909 of 1974 was taken on appeal to this Court by the aggrieved assessee in National Coal Development Corpn. Ltd. v. State of Orissa (CA No. 807 of 1976 decided on 5-12-1991 (Printed below on p. 480) and this Court approved the view taken by the High Court and dismissed the said civil appeal on 5-12-1991. Learned counsel, in support of his argument, placed reliance on the judgments of this Court, namely, India Cement Ltd. v. State of T. N. ((1990) 1 SCC 12) and Saurashtra Cement and Chemical Industries Ltd. v. Union of India ((1994) 1 SCC 226). Learned counsel appearing for the respondent-assessee supported the judgments under appeal on the basis of the distinction made by the High Court.

9. We have considered the arguments and the reasonings contained in the judgments under appeal.

10. Section 9(1) of the Act reads as follows :

"The holder of a mining lease granted before the commencement of this Act shall, notwithstanding anything contained in the instrument of lease or in any law in force at such commencement, pay royalty in respect of any mineral removed or consumed by him or his agent, manager, employee, contractor or sub-lessee from the leased area after such commencement, at the rate for the time being specified in the Second Schedule in respect of that mineral."

11. It is to be noted that the levy of royalty is in respect of minerals removed or consumed by the contractor from the leased area. We have seen earlier the process that the minerals was said to

undergo before the same was removed from the leased area. Section 9(1) of the Act also contemplates the levy of royalty on the mineral consumed by the holder of mining lease in the leased area. If that be so, the case of the appellants that such processing amounts to consumption and, therefore, the entire mineral is exigible to levy of royalty has to be accepted. We are unable to agree with the distinction made by the High Court and the conclusion that the royalty can be levied only on the quantity of mineral obtained after processing.

12. Another Division Bench of the Orissa High Court in National Coal Development Corpn. Case (OJC No. 909 of 1974) while considering the question whether the coal extracted by the workmen for their own domestic consumption is exigible to levy of royalty, accepting the contention of the Revenue, held "that removal from the seam in the mine and extracting the same through the pit's mouth to the surface satisfy the requirement of Section 9 in order to give rise to liability for royalty". This view of the High Court found approval by this Court in National Coal case (CA No. 807 of 1976 decided on 5-12-1991 (Printed below on p. 480) and this Court held that the lessee in that case was liable to pay royalty for the coal supplied to its workmen for consumption.

13. In India Cement Case ((1990) 1 SCC 12) a Constitution Bench, while considering the constitutionality of levy of cess on the royalty, held as follows : (SCC p. 26, para 23)

"In the Western India Theatres Ltd. v. Cantonment Board, Poona Cantonment (AIR 1959 SC 582 : 1959 Supp (2) SCR 63) it was held that an entertainment tax is dependent upon whether there would or would not be a show in a cinema house. If there is no show, there is no tax. It cannot be a tax on profession or calling. Professional tax does not depend on the exercise of one's profession but only concerns itself with the right to practice. It appears that in the instant case also no tax can be levied or is leviable under the impugned Act if no mining activities are carried on. Hence, it is manifest that it is not related to land as a unit which is the only method of valuation of land under Entry 49 of List II, but is relatable to minerals extracted. Royalty is payable on a proportion of the minerals extracted."

14. For the reasons stated above, we hold that the High Court was not right in quashing the demands which were rightly calculated and levied. The impugned judgments of the High Court are set aside and the OJCs filed by the respondent stand dismissed.

15. The appeals are allowed accordingly with no order as to costs.