SUPREME COURT OF INDIA

Panyam Cements and Minerals Ltd.

Vs.

Union of India

C.A.No.5576 of 1995

(Mrs. Ruma Pal and B. N. Srikrishna, JJ.)

07.07.2003

JUDGEMENT

RUMA PAL, J.:-

1. The appellant manufacturers cement at its factory in Kurnool District, Andhra Pradesh. The main raw-material used for the manufacture of cement is limestone. The land on which the factory is situated is owned by the appellant. In 1957 and 1959 the appellant was granted two mining leases by the State Government for extracting limestone covering a total area of 3597 acres and 85 cents. Under the lease deeds the appellant was liable to pay royalty in respect of the limestone quarried from the mines in the leased area at "5% of the sale value at the pit's mouth subject to a minimum of 0.37 paise per tonne of limestone". The rate of royalty payable under the lease deeds was revisable under sub-sections (1) and (3) of Section 9 of the Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter referred to as "the Act"), which as they then stood read :

"9(1) 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 by him from the leased area after such commencement, at the rate for the time being specified in the Second Schedule in respect of that mineral.

9(2) xxx xxx xxx xxx

9(3) The Central Government may, by notification in the Official Gazette, amend the Second Schedule so as to enhance or reduce the rate at which royalty shall be payable in respect of any mineral with effect from such date as may be specified in the notification

Provided that the Central Government shall not-

"(a) fix the rate of royalty in respect of any mineral so as to exceed twenty per cent of the sale price of the mineral at the pit's head, or

(b) enhance the rate of royalty in respect of any mineral more than once during any period of four years."

2. Sub-section (3) of Section 9 has since been amended by the Mines and Minerals (Regulation and Development Amendment) Act, 1972 (Act 56 of 1972) by which inter alia the proviso to sub-section (3) was deleted and the only limit at present on the Central Government's power to enhance or reduce the rate of royalty is that the enhancement cannot be made more than once during any period of four years.

3. We are concerned with the royalty and cess payable by the appellant for the period prior to the 1972 amendment namely for the period 11-10-1962 to 10-12-1971. The present dispute has arisen out of a claim made by the appellant in a suit against the respondents, claiming refund of excess royalty alleged to have been paid by the appellant to the respondents between the period 11-10-1962 to 10-12-1971 together with the cess thereon as well as for interest on such excess payment. According to the claim in the appellant's plaint, the appellant had paid royalty at the agreed rate of 0.37 paise per tonne on the limestone quarried by it from the leased areas till November, 1962. On 16-11-1962 the Central Government issued Notification No. M11-152 (26) 62 amending the Second Schedule to the Act with effect from 10-11-1962. The Notification sought to fix royalty on limestone at the rate of 0.75 p. per tonne subject to a rebate of 0.38 p. per tonne to be given on limestone beneficiated by froth floatation method. The rate of royalty was again revised by an amendment of the Second Schedule by a second Notification dated 8-7-1968. According to this

notification with effect from 1-7-1968, royalty of Rs. 1.25 paise per tonne was payable in respect of superior grade limestone and at the rate of 0.75 p. per tonne for inferior grade limestone. Since the limestone quarried by the appellant was of inferior grade, it continued to pay royalty at the rate of 0.75 p. per tonne. In 1970 the Central Government issued a third Notification in exercise of powers conferred by Section 9(3) of the Act. The third Notification No. GSR 200 dated 29-1-1970 did away with the difference in the rate of royalty on the basis of the grade of limestone and fixed the royalty payable in respect of all grades of limestone at Rs. 1.25 per tonne. Incidentally, both the Courts below had incorrectly recorded that the third notification fixed the rate of royalty at 0.75 p. per tonne. It is not in dispute that the appellant had paid for the limestone quarried by it subsequent to 29-1-1970 at 0.75 p. per tonne. The appellant has claimed it had submitted monthly and annual returns to the concerned authorities which disclosed the quantity of limestone quarried during each month, year, the total value and stock in hand, the royalty payable and paid together with land cess and the pit's mouth value of limestone.

4. The appellant challenged the second and third Notifications by way of a Writ Petition (W.P. No. 3276 of 1970) in the High Court of Andhra Pradesh on two grounds : first that the rate of Rs. 1.25 per tonne did not reflect 20% of the sale price under proviso (a) to Section 9(3) and second that there could be no revision in 1970 after the 1968 Notification in contravention of clause (b) of Section 9(3). The writ petition was disposed of on 22-2-1972 holding that under the first proviso to sub-section (3) of Section 9 of the Act, the Central Government did not have the power to enhance the rate of royalty in excess of 20% of the sale price of the limestone at the pit's head and directed the respondents to refund any amount which the appellant may have paid in excess to them. The submission of the respondents that the rate of Rs. 1.25 was fixed on the basis of an All India average was rejected following an earlier decision of the same High Court. This is what the learned Judge who disposed of the appellant's writ petition said :

"What is stated in clause (a) is very clear. The rate of royalty has to be fixed so as not to exceed 20 per cent. of the sale price of the mineral at the pits head. Evidently, the question of taking averages into consideration does not arise. The same view was taken by my learned brother Kuppuswami, J., in Writ Petition No. 5768/70 and batch, where the very same notification had been challenged on the grounds raised before me. In that case, it was argued that it was the All India average that had been taken into consideration. The learned Judge come to the conclusion that the royalty cannot in any case exceed 20 per cent of the sale price of the mineral at the pit's head and, therefore, the notification issued by the Government would have to be limited to 20 per cent of the sale price at the pit's head. The learned Judge also directed that the Government will ascertain the sale price of the limestone at the pit's head in each case and charge 20 per cent thereof as royalty and refund the excess, if any, paid by the persons concerned. I find myself in entire agreement with the direction given by the learned Judge. I also direct that the Government will determine the sale price of the limestone quarried by the Company at the pit's head and charge 20 per cent thereon as royalty and if the Company has paid any excess, refund the same to the Company."

5. The allegation of contravention of clause (b) of the proviso to Section 9(3) was however rejected.

6. The suit out of which these proceedings arise, was fixed by the appellant before the Subordinate Judge, Kurnool on 17-1-1973. The cause of action as pleaded in the plaint was that an amount of Rs. 14,82,311.50 of excess royalty had been paid by the appellant by mistake which became known to the appellant only after the decision in W.P. 3276 of 1970. A decree for the entire amount was sought together with interest from 27-4-1972 at 12% per annum. The claim of the appellant was resisted by the State respondents. In their written statement, they said that the periodical returns filed by the appellant indicating pit's mouth values of the limestone were not accepted by the State since royalties at flat rates were fixed for limestone. It was further stated that on a verification of the accounts produced by the appellant, the Assistant Director of Mines and Geology, Kurnool, had found discrepancies in the quantity of limestone stated to have been quarried by the appellant and that the appellant was in fact liable to pay royalty on a further quantity of 1,56,268.00 tonnes. The said respondents relied upon guidelines issued by the Central Government fixing the sale price at the pit's head year-wise for the period from 10-11-1962 to 31-3-1972. The sale price had been worked out by the Director, Mines and Geology on the basis of various items of expenditure involved in extraction of limestone from the leased areas which included expenditure on account of Staff Welfare Fund, Insurance and Depreciation. This was taken as the equivalent of the sale price of limestone at the pit's head and the royalty was calculated at 20% of the sale price so fixed. In Annexure-'F' to the written statement, the State-respondents gave the total amount payable by the appellant for the period 10-11-1962 to 31-3-1972 on account of royalty and cess including the additional royalty on the inferior quantity of limestone detected after giving credit to the appellant for the payments made by the respondents. On the basis that the sale price of the limestone was to be fixed from the point of its despatch to the appellant's factory, it was admitted that the appellant had paid the State-respondent in excess of 20% of the pit's mouth value during the period in question towards royalty and cesses. According to the State-respondents an amount of Rs. 2,50,571.61 were payable by the State to the appellant which sum would be adjusted against the royalty and cess payable by the appellant towards subsequent dues. An amendment to the written statement was allowed by the Subordinate Judge, Kurnool by which the State-respondents sought to claim that the sale price of limestone at the pit's head should also include the expenditure relating to the crusher and ropeway, as a result of which nothing was payable by the State to the appellant by way of refund.

7. The trial Court decreed the suit in part holding that the 'pit head' as referred to in proviso (a) to Section 9(3) meant the common area where the limestone was stocked in the leased area after the area was excavated and processed and readied for despatch either to purchasers or to the factories of the lessee/assessee for being used in the manufacture of cement. Therefore, all items of expenditure up to the point of stacking was includible for the purposes of calculating the sale price of the limestone. Any further expenditure in transporting the limestone from the 'pit head' so defined, to the appellants' factory was not so includible. In other words, the case made out by the respondents by the amendment to the written statement was rejected. An amount of Rs. 2,50,571.61 p. was held to be due to the appellant by way of refund. Interest @ 12% per annum was also granted on the decreed amount from 27-4-1972 till realisation. The appellate Court upheld the reasoning of the trial Court on 23rd January, 1987 and came to the conclusion that the trial Court's finding that the appellant had paid an excess amount of Rs. 2,50,571.61 p. was correct. No appeal has been preferred from the decision of the appellate Court by the respondents. The only question, therefore, is whether the appellant's further claim for a refund of the balance of Rs. 16,08,308.02 p. is

permissible.

8. The appellant's claim is founded on the definition of the word 'pit's head' used in proviso (a) to Section 9(3) of the Act. According to the appellant, the word 'pit' had been wrongly construed by the trial and High Courts not only by giving it the same meaning as 'mine' but also by importing the definition of the word 'mine' in the Mines Act, 1952 to define the word 'pit-head' in the 1957 Act. According to the appellant, 'pit' means the actual physical opening and the 'pits head' means the mouth of this opening. Therefore, according to the appellant, for the purposes of proviso (a) to Section 9(3) of the Act, the sale price of the mineral was to be ascertained with reference to the 'pits head' so defined and the royalty calculated on such sale price.

9. Learned Counsel for the respondents on the other hand has supported the reasoning of the Courts below. Both the trial Court as well as the High Court went into the question of the sale price of the limestone quarried by the appellant in the leased area in elaborate detail, an exercise which, as it now turns out was really futile.

10. On 23rd November, 1993, this Court in Saurashtra Cement and Chemicals Industries Ltd. v. Union of India and another1 disposed of an appeal from a decision of the Gujarat High Court which had, unlike the Andhra Pradesh High Court in W.P. No. 3276 of 1970, held that the 1970 Notification was not contrary to clause (a) of the proviso to sub-section (3) of Section 9 of the Act. In that case also the appellant was a manufacturer of cement and held a mining lease for excavating limestone like the appellant before us. The limestone mined was not sold but consumed in its own factory. The Union of India filed an affidavit before this Court showing the manner in which the royalty for limestone was fixed at Rs. 1.25 per tonne by the 1970 notification. It was stated that the restriction of 20% of the sale price of the mineral at the pit's head was worked out by taking the average sale price of the minerals at the pit's head for the entire country and the fixation of royalty by taking sale price of each unit in the country was not visualised by clause (a) nor was it practicable.

1. 1994 (1) SCC 226.

11. This was accepted by this Court by saying :

"Payment of royalty under sub-section (1) is in respect of mineral removal from area but fixation under clause (a) of proviso to sub-section (3) is related to mineral and not to area leased or the unit. It did not admittedly exceed 20% of the sale price of the mineral at the pit's head if the average sale price of the mineral for the entire country is taken into account. From the provisions extracted earlier it is apparent that the law does not require that fixation of royalty should be unitwise. In fact

it could not be as demonstrated in the counter-affidavit. It cannot therefore, be said that the notifications issued by the Government were violative of the proviso".

12. Therefore, both in law and as a matter of fact the fixation of Rs. 1.25 per tonne by the 1970 Notification was held to be valid and in accordance with proviso (a) of Section 9(3) of the Act. The view in Saurashtra Chemical is in keeping with subsequent observations of this Court in State of M.P. v. Mahalaxmi Fabric Mills Ltd. 1995 Supp (1) SCC 642, that: (1994) 1 SCC 226

1995 AIR SCW 1621 : AIR 1995 SC 2213, para 19

"The purpose of the Union control envisaged by Entry 54 and the MMRD Act, 1957, is to provide for proper development of mines and mineral areas and also to bring about a uniformity all over the country in regard to the minerals specified in Schedule I in the matter of royalties and, consequently, prices" (p. 663).

13. Strictly speaking therefore, since the substratum of the appellant's claim in the (1994) 1 SCC 226 suit was the High Court's decision in WP 3276 of 1970, and since that decision is clearly not good law in view of the decision in Saurashtra Chemicals, the suit is liable to be dismissed. However, since the respondents had not impugned either the decision in WP 3276 of 1970 nor the decision of the High Court partly directing the appellants suit, we cannot follow what would otherwise have been the legal course. However, having regard to the decision of this Court in Saurashtra Chemicals (supra) the appellant's submission that the words 'pit's head' in proviso (a) of Section 9(3) of the Act must be construed to mean the mouth of a particular excavation in a particular leased area is entirely unacceptable. When this Court has allowed the calculation of royalty on limestone on the basis of a national average pit head sale price, the decision of the Trial Court and High Court to reject the appellant's plea that the 'sale price' at the pit head must mean the price of limestone at the opening of each excavation within the leased area cannot be held to be erroneous.

14. We therefore dismiss the appeal with costs.

Appeal dismissed.