

SUPREME COURT OF INDIA

Ultratech Cemco Ltd.

Vs.

State of Maharashtra & Anr.

C.A.No.864 of 2005

(R.V.Raveendran and A.K.Patnaik,JJ.,)

27.09.2011

JUDGMENT

R.V.Raveendran,J.,

1. The appellant (the term `appellant' refers to M/s Larsen & Toubro Ltd. till date of its demerger in 2004 and thereafter to M/s. Ultra Tech Cement Ltd.) obtained a mining lease for limestone from the Government of Maharashtra, as per lease deed dated 12.2.1980. Under the terms of the said lease, the appellant as lessee was required to pay dead rent as per clause V(1) and (2), royalty in terms of clause V(3) and surface rent, water rate and cesses in terms of clauses V(4) of the lease deed. In response to a notice served by the Collector on the appellant demanding payment of surface rent (equal to non-agricultural assessment) and the Zilla Parishad Cess (for short `ZP Cess') and Gram Panchayat Cess (for short `GP Cess'), the appellant informed the Collector by letter dated 3.1.1991, that it was not liable to pay the ZP cess and GP cess and that those cesses may be deleted from the demand. However by notice of demand dated (nil) July 1991, revised by notice dated 28.1.1994, the Collector, Chandrapur, reiterated the demand for surface rent as also the ZP and GP cesses for the years 1987 to 1992, on the following ground:

"The Government of Maharashtra vide its letter Industries Energy and Labour Department (IND) No.TQCR-2176/45691/1172/IND-9 Bombay dated 13.06.1978 and Director, Geology & Mining, Govt.of Maharashtra, Nagpur vide letter No.STC/295/39/2007 dated 09.06.1989 have issued instructions regarding fixation of surface rent on the lease area used for mining purpose. As per these directives and Rule 27(1)(d) of Mineral Concession Rules, 1960, the lessee is required to pay the surface rent at such rate not exceeding the land revenue and the cesses assessable on the land. Since the mining operation is the use of land other than the Agriculture purpose, the rate of non-agricultural assessment, together with the cesses assessable on the land, are applicable for levying the surface rent."

(emphasis supplied)

2. The appellant was aggrieved by the demand in so far as it relates to ZP cess and GP cess. According to appellant section 151(1) of Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 ('Zilla Parishad Act' for short) exempted the lessees from the state government from payment of the ZP cess. The appellant also contended that it was not liable to pay the GP cess, as section 127 (1) of Bombay Gram Panchayats Act, 1958 ('Panchayats Act' for short) provides for levy of GP cess at the rate of one hundred paise on every rupee payable to the state government as ordinary land revenues in the area within the jurisdiction of the Panchayat, and as the appellant was exempted from paying land revenue under section 64 of the Maharashtra Land Revenue Code, 1966 ('Revenue Code' for short) read with clause VII(1) of the lease deed, it was not liable to pay the GP cess also. The appellant admitted the liability to pay surface rent equal to non-agricultural assessment.

3. On the other hand, the respondents contend that the demand for ZP cess and GP cess is authorized by Rule 27(1)(d) of the Mining Concession Rule, 1960 ('MC Rules' for short) read with clause V(4) of the lease deed and the appellant is liable for the same. The submission of the respondents is that they have not made any demand for cess under the Zilla Parishads Act or Panchayats Act and that the demand for ZP cess and GP cess is as a part of the surface rent. According to the respondents, the reference to ZP cess and GP cess assessable on the land, in the lease deed is only for the purpose of arriving at the figure of surface rent. The respondents' submission is that though "cesses per se could not have been levied under the Mineral Concession Rules", cesses assessable on the land has been demanded as a mode of calculating the charges for the surface area used by the lessee; and so long as the amount charged does not exceed the land revenue plus ZP cess and GP cess assessable on the land, the lessees can have no grievance.

4. On the rival contentions urged, two questions arise for our consideration:

(i) Whether the appellant is liable to pay ZP Cess?

(ii) Whether the appellant is liable to pay GP Cess?

Re: Question No.(i)

5. Rule 27 of the Mining Concession Rules, 1960 prescribes the conditions subject to which a mining lease should be made. Clause (d) of sub-section (1) thereof is relevant and is extracted below :

"27. Conditions - (1) Every mining lease shall be subject to the following conditions –

XXXX XXXX

(d) the lessee shall also pay, for the surface area used by him for the purposes of mining operations, surface rent and water rate at such rate, not exceeding the land revenue, and cesses assessable on the land, as may be specified by the State Government in the lease."

(emphasis supplied)

Clause 4 of Part V of the lease deed reads thus:

"The lessee/lessees shall pay rent and water rate to the State Government in respect of all parts of the surface of the said lands which shall from time to time be occupied or used by the lessee/lessees under the authority of those presents at the rate of Rs...and Rs...respectively per annum per hectare of the area so occupied or used and so in proportion for any area less than a hectare during the period from the commencement of such occupation or use until the area shall cease to be so occupied or used and shall as far as possible restore the surface land so used to us in original condition. Surface rent and water rate shall be paid as hereinbefore detailed in clause (2) provided that no such rent/water rate shall be payable in respect of the occupation and use of the area comprised in any roads or ways to which the public have full right of access.

1. Surface rent equal the non-agricultural assessment.
2. Water rates not exceeding the land revenue.
3. Cesses assessable on the land (ZP and GP Cesses) subject to the revision of rates prescribed by government from time to time."

(emphasis supplied)

A combined reading of Rule 27(1)(d) of the Rules and Clause V(4) of the lease deed, makes it clear that the lessee under the mining lease deed is liable to pay, in addition to dead rent and royalty, the following amounts : (i) surface rent equivalent to non-agricultural assessment; (ii) water rate not exceeding the land revenue and (iii) cesses assessable on the land specified by the state government in the lease, that is ZP cess and GP cess assessable on the land subject to revision of rates prescribed by government from time to time.

6. What is significant to note is that the State Government has stipulated in the lease that the mining lessee shall pay ZP cess assessable on the land. It has not used the words 'an amount equivalent to ZP cess that could be or may be assessed on the land.' The word 'assessable' means liable to be assessed. Therefore when Clause V(4) of the lease deed requires the lessee to pay ZP cess assessable on the land, it would mean that the mining lessee would be liable to pay ZP cess if it is so due under the Maharashtra Zilla Parishads Act.

7. Section 151(1) of the Zilla Parishad Act which is relevant is extracted below:

"151. (1) - In the Vidarbha area of the State of Maharashtra, every malik- makhuz, raiyat malik and occupant and every raiyat, other than a sub-tenant and lessee from the State Government shall be liable in respect of the land held by him in the district to pay cess for the purpose of this Act at the rate of twenty paise or at such increased rate not exceeding two hundred paise as may be determined by the State Government under section 155 on every rupee of the land revenue or rent assessed or fixed on such land or the lease money payable in respect thereof, whether or not such land revenue or rent or lease money or any portion thereof has been released, compounded for or redeemed. [Note : the words in italics should be read as 'at the rate of two hundred paise or at such increased rate not exceeding seven hundred paise as may be determined by the concerned Divisional Commissioner' after amendment of section 151(1) by Maharashtra Act 1 of 1993] (emphasis supplied) It is evident from the said provision of the Zilla Parishad Act that a 'lessee from the state government' is not liable to pay ZP cess under section 151 (1) of the Zilla Parishads. The ZP cess can be levied only in terms of and under the Zilla Parishads Act and cannot be levied by the state government, under the terms of a contract. Where a particular cess is leviable under an enactment, and the contract says that the lessee is liable to pay such cess leviable under that enactment, but the enactment exempted a specified class of persons (to which the lessee belongs) from paying the said cess, the state government cannot make the lessee liable to pay the said cess on the ground that under the contract entered under a different enactment, the lessee is liable to pay such cess. For example, if a Sales Tax Act exempts the sale of particular goods from tax, the seller of such goods cannot demand Sales Tax on the ground that the contract of sale provides that the buyer is liable to pay all taxes leviable under any enactment. It follows that if a lessee from the State Government is exempted from payment of ZP cess leviable under section 151(1) of the Zilla Parishads Act, by section 151(1) itself, the State Government cannot 'levy' the said ZP cess under a contract entered in terms of the Mineral Concession Rules. For payment of a cess under a particular Act, liability under that Act is condition precedent. Therefore if ZP cess is not due or payable by a lessee under the ZP Act, the State cannot say that the amount is due under the lease deed executed in terms of the Mineral Concession Rules.

8. The effect of clause V(4) of the lease deed providing that the mining lessee shall pay 'ZP cess assessable on the land' is this: if it is liable to be paid under the Zilla Parishads Act, that should be paid by the lessee and payment thereof is a term of the lease; and if the lessee is not liable to pay ZP cess in view of the exemption under the ZP Act, it is not payable. The position would have been different if the lease deed had stipulated that the lessee is liable to pay as consideration, in addition to other sums payable, a sum equivalent to ZP cess under Zilla Parishad Act, irrespective of whether the lessee is liable to pay such cess under the Zilla Parishads Act or not. If the lease deed had contained such a term, the lessee would have been liable to pay a sum equivalent to ZP cess, irrespective of his liability under the Zilla Parishads Act.

9. We may in contrast, refer to the term in the lease regarding payment of surface rent. The clause says what is payable is 'surface rent equal the non-agricultural assessment'. The clause does not say that the lessee is liable to pay 'non-agricultural assessment' assessable on the land. Consequently, irrespective of whether non-agricultural assessment is leviable or not under the Maharashtra Land Revenue Code, 1966, the lessee shall be liable to pay an amount equivalent to non-agricultural assessment, as surface rent. What is payable under the contract is 'surface rent' and non-agricultural assessment is made only the basis for quantification of the surface rent. But the wording relating to payment of ZP cess and GP cess, are significantly different from the wording relating to payment of surface rent.

10. There is yet another indication that what is required to be paid in ZP cess, only if it is leviable under Zilla Parishads Act. Clause V(4) provides that the mining lessee shall pay "cesses assessable on the land (ZP and GP cesses) subject to the revision of rates prescribed by Government from time to time." This refers to revision by the State Government in exercise of the power under section 151(1) of Zilla Parishads Act and not in exercise of any power under the lease deed, as a lessor. This also shows that ZP cess as revised under the Zilla Parishads Act is payable only if it is payable under the Zilla Parishads Act and not otherwise.

Re: Question No.(ii)

11. Section 127 of the Bombay Gram Panchayats Act, 1958 deals with levy and collection of cess. The said section is extracted below :

"(1) The State Government shall levy cess at the rate of one hundred paise, on every rupee of every sum payable to the state government as ordinary land revenue in the area within the jurisdiction of a panchayat and thereupon, the state government shall (in addition to any cess leviable under the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961) levy and collect such cess in such area. (2) to (4) deleted by Maharashtra Act 10 of 1992. (5) For the purpose of levying and collecting the cess referred to in sub- section (1), in the Bombay area the provisions of section 144 (including the Fourth Schedule), 145, 147 and 149, in the Vidarbha area, the provisions of section 151, and in the Hyderabad area, the provisions of section 152 of the Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961, shall apply thereto as they apply to the levy of cess leviable under section 144, section 151, or as the case may be, section 152 of that Act."

(emphasis supplied)

Section 64 of the Maharashtra Land Revenue Code, 1966 ('Code' for short) reads thus:

"64. All land liable to pay revenue unless specially exempted. All land, whether applied to agricultural or other purposes, and wherever situate, is liable to the payment of land revenue to the State Government as provided by or under this Code except such as may be wholly exempted under the provisions of any special contract with the State Government, or an any law for the time being in force or by special grant of the State Government. But nothing in

this Code shall be deemed to affect the power of the Legislature of the State to direct the levy of revenue on all land under whatever title they may be held whenever and so long as the exigencies of the State may render such levy necessary."

(emphasis supplied)

The term 'land revenue' is defined in section 2(19) of the said Code as under:-

"(19) "land revenue" means all sums and payments, in money received or legally claimable by or on behalf of the State Government from any person on account of any land or interest in or right exercisable over land by or vested in him, under whatever designation such sum may be payable and any cess or rate authorised by the State Government under the provisions of any law for the time being in force; and includes premium, rent, lease money, quit rent, judi payable by an inamdar or any other payment provided under any Act, rule, contract or deed on account of any land."

12. Section 127(1) of the Panchayats Act casts a liability to pay one hundred paise as cess on every rupee of every sum payable to the state government as ordinary land revenue. This cess is described as Gram Panchayat cess or GP cess. The effect of section 127(1) is that wherever land revenue is payable by a person, such person liable to pay the land revenue, will also have to pay GP cess equal to the amount of the land revenue. Therefore only a person who is liable to pay land revenue will be liable to pay GP cess. Section 64 of the Land Revenue Code provides that all lands are liable to payment of land revenue to the state government except such as may be wholly exempted under the provisions of the special contract with the state government. Clause VII(1) of the lease deed dated 12.2.1980 between State Government and the appellant provides such exemption as it says the lessee shall not be liable to pay land revenue. We extract below clause (1) of Part VII of the lease deed for ready reference:

"Lessee to pay rents and royalties, taxes, etc.

1. The lessee/lessees shall pay the rent, water rate and royalties reserved by this lease at such times and in the manner provided in the PARTS V and VI of these presents and shall also pay and discharge all taxes, rates assessment and impositions whatsoever being in the nature of public demands which shall from time to time be charged, assessed or imposed by the authority of the Central and State Governments upon or in respect of the premises and works of the lessee/lessees in common with other premises and works of the like nature except demands for land revenues."

(emphasis supplied)

13. Even under Clause V(4) of the lease deed, what is liable to be paid is 'surface rent' which is equivalent to the non-agricultural assessment, and not land revenue, that is non-agricultural assessment itself. Thus there is a special contract between the State and the appellant whereby the appellant is exempted from paying land revenue. If the appellant is not liable to

pay the land revenue, it will not be liable to pay any GP cess, as section 127(1) makes it clear that the said cess is payable only on the amount payable as land revenue. If no amount is payable as land revenue, it follows as no amount is payable as GP cess. Therefore appellant is not liable to pay GP cess under the Panchayats Act. Clause V(4) of the lease deed requires payment of GP cess only if it is payable under the Panchayats Act. For the reasons stated while dealing ZP cess, we hold that the appellant is not liable to pay GP cess also.

Conclusion

14. The object of clause V(4) of the lease deed is clear. Normally, all leases will contain a provision as to who will be liable to pay the rates, taxes, cesses on the property leased. If the lease deed is silent, then the lessor would be liable to bear and pay the rates, taxes and cesses. Therefore, where the understanding is that the lessee should be liable to pay the rates, taxes and cesses in addition to the rent or premium, the lease deed will provide specifically that the lessee shall bear and pay all rates, taxes and cesses. But this is always on the assumption that there is a liability under the respective enactments to pay any rates, taxes, cesses in respect of the property. All that clause V(4) of the lease deed provides is that the lessee should bear and pay the ZP cess and GP cess, if it is leviable under the respective enactments.

15. In view of the above, we accept the contention of the appellant that it is not liable to pay ZP cess or CP cess to the State Government under the lease deed. It is however made clear that if the said cesses (ZP cess and CP cess) become payable by the appellant by virtue of any amendment to the provisions of the respective enactments under which such cesses are leviable, then the appellant may have to pay the same. Be that as it may.

16. The appeal is therefore allowed. The judgment of the High Court is set aside. The writ petition filed before the High Court stands allowed and the demand notices dated (nil) July 1991 as amended on 28.10.1994 in regard to the period 1987 to 1992 is quashed in so far as the demand for payment of ZP cess and CP cess.