SUPREME COURT OF INDIA

Manganese Ore India Ltd.

Vs.

State of M.P. & Ors.

C.A.No.2464 of 2016

(Dipak Misra and Shiva Kirti Singh,JJ.,)

10.11.2016

JUDGMENT

Dipak Misra,J.,

SLP.(Civil) No. 9246 of 2012

1. In this batch of appeals, by special leave, the appellants have assailed the legal tenability of separate orders dated 01.12.2011 passed in Writ Petition No. 9017 of 2010 which relates to the writ petition filed by Manganese Ore India Ltd. and M.P. No. 2821 of 1988, M.P. No. 3827 of 1993 and W.P. No. 3103 of 1994 preferred by Hindustan Copper Limited.

2. As the commonality of controversy centres around interpretation of the terms "mineral" and "processing" under the definition of "mine" as defined under Explanation (b) of Part-B of Madhya Pradesh Electricity Duty Act, 1949 (for brevity, "the Act"), we shall enumerate the scheme of the Act and the various litigations that have taken place and thereafter advert to the facts in each case. For brevity and to avoid repetition, we have initially referred to the litigation and different orders passed in the case of Hindustan Copper Limited.

3. The erstwhile Central Provinces and Berar Legislative Assembly had enacted the CP and Berar Electricity Duty Act, 1949 which was adopted in the State of Madhya Pradesh and has come to be known as the Madhya Pradesh Electricity Duty Act, 1949. The Preamble to the Act as amended by the State Legislature provides that it is an Act for the levy of duty on sale or consumption of electrical energy. Section 3(1) of the Act accordingly provides for levy of duty on sale or consumption of electrical energy. It stipulates that subject to the exceptions specified in Section 3-A, every distributor of electrical energy and every producer shall pay every month to the State Government at the prescribed time and in the prescribed manner a duty calculated at the rates specified in the table below on the units of electrical energy sold or supplied to a consumer or consumed by himself for his own purposes or for purposes of his township or colony, during the preceding month. The table to Section 3(1) prescribes different rates of duty depending for the purpose for which the electrical energy is sold. Part-

B of the table provides for different rates of duty for the electrical energy sold, supplied or consumed for the purposes therein. Item 3 to the said table reads as follows:-

> "3. Mines (other than captive 40 mines of cement industry)"

4. The numeral 40 comes under the heading 'rate of duty as percentage of the electricity tariff per unit'. The Explanation (b) to Section 3(1) defines "mine" as under:-

> "Explanation .-(b) "Mine" means a mine to which the Mines Act, 1952 (No. 35 of 1952) applies and includes the premises or machinery situated in or adjacent to mine and used for crushing, processing, treating or transporting the mineral."

5. It is necessary to state here that Hindustan Copper Limited had filed a Writ Petition to strike down the provision of Section 3 and the Table Part-B Item 4 (which is now Item No. 3 after 1995 amendment) and Explanation (b) which contains extended definition of mines as ultra vires the Constitution. As the factual matrix would reveal, the High Court dismissed the Writ Petition by placing reliance on *State of M.P. v. Birla Jute Mfg. Co. Ltd*[1]. . The matter travelled to this Court which eventually formed the subject matter of Civil Appeal Nos. 3248-50 of 1998. A two-Judge Bench of this Court in *Hindustan Copper Ltd. v. State of M.P. and others*[2] taking note of certain facts opined that the main controversy that was required to be examined by the High Court was as to how the word "mines" is to be understood as contained in clause (b) of the Explanation under Item 4 of the Table contained in Section 3 of the Act. This Court took note of the contentions of the appellant therein that the activities carried on by it do not fall within the meaning of the word "adjacent" area and further the approach of the respondents was selective and discriminatory. As the submissions raised were not dealt with by the High Court but it proceeded to dispose of the case without examining the facts in greater details in regard to either the activities carried on at different places by the appellant or as to how in the context of the facts of the case and having due regard to the provisions, the word "adjacent" should be construed, the Court remitted the Writ Petition to the High Court by stating so:-

> "Under the circumstances, we consider it just and appropriate that the High Court should examine afresh the contentions advanced on behalf of the parties, having due regard to the materials placed on record and in the context of the provisions of the Act touching the controversy. Since we are taking a view to remit the case to the High Court, we do not wish to express one way or the other on the merits of the respective contentions urged by the parties. ..."

6. After the remit, the High Court heard the Writ Petition and dismissed the same. The order passed by the High Court was assailed in appeal, by special leave, in Civil Appeal No. 6725 of 2008. In the second round, the two-Judge Bench stated the facts in detail which are to the effect that the appellant therein is engaged in extraction of copper ore, by open cast mining process involving drilling and blasting the ore in the open pit mine, the ore in the form of boulders are transported to the primary crusher (situated at a distance of 2.53 km from the mine), where it is crushed into pebbles/pieces and such crushed ore is then carried on a

conveyor to a secondary crusher (situated at about 5 km from the mine) for further crushing into smaller pebbles. After the said stage, small pieces/pebbles are then carried by a conveyor to the Concentrator Plant (situated at 5.5 km from the mine).

7. This Court further proceeded to state the facts adumbrated as projected by the appellant before the High Court. It was asserted that:-

> "4. In the Concentrator Plant, the ore is milled into powder in the ball mills. Such powder mixed with water is carried in the form of slurry to floatation cells. In the floatation cells, the slurry is subjected to froth floatation process and the copper concentrate is removed and dried in vacuum driers and stored in concentrate storage sheds. The tailing pumps are at a distance of 8 km. A large quantity of water is required for the Concentrator Plant for being used in milling. Water is also required for the factory township. The required water is pumped from the mines through pumps located at an intake well (situated at a distance of 10 km from the mine). From the intake well, water is pumped to water treatment plant (situated at a distance of 6 km from the mine).
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> 5. According to the appellant, its activities consist of two distinct parts. First is mining, that is, drilling, blasting and collecting of ore which is carried on at mine pit. This activity is carried on in the mine area registered under the Mines Act, 1952. The second is processing, which is carried on at the primary crusher, the secondary crusher and the Concentrator Plant. The processing (manufacturing) part of the activities are carried on in the factory area. The primary crusher, the secondary crusher, the ball mill, the Concentrator Plant, the tailing pumps, the intake well and the water treatment plant are situated away from the mine, at distances varying from 2.5 km to 10 km and are registered separately as a "factory" under the provisions of the Factories Act, 1948. The open pit mine (mining area) and the processing plants/machineries (factory area) are all situated in a large tract of land taken on mining lease from the State Government."

8. The two-Judge Bench adverted to the chronology of the case and noted that the principal grievance of the appellant therein pertains to the definition of "mine" the effect of which is to make processing a part of mining and the prescription of a higher rate of duty for "mines" (that is composite activity of mining and processing), while prescribing a lesser rate for other categories of industries. That apart, the Court taking note of the fact that classification of factories into two categories: (a) those which are adjacent to a mine and used for crushing, processing, treating and transporting the mineral; and (b) other factories is permissible. It was urged on behalf of the appellant that the expression "adjacent to the mines" is vague and ambiguous that leads to discriminatory treatment by the authorities. Further, its processing plant, that is, the primary crusher, the secondary crusher, the ball mill, the Concentrator Plant, the tailing pumps, the intake well and the water treatment plant are not situated "adjacent" to its mine and therefore could not be treated as "mine" for the purpose of levy of electricity duty. The Court also took note of the issues framed by the High Court after the order of remit on the earlier occasion. The said issues read as follows:-

"(i) Whether prescribing different rates of tax for processing plant and machinery adjacent to a mine ('factory' falling within the extended definition of 'mine'), and other factories is discriminatory and arbitrary and therefore violative of Articles 14 and 19 of the Constitution of India?

(ii) Whether definition of the word 'mine' in Explanation (b) in the Table under Section 3 of the Act, gives unguided discretion to authority under the Act to decide what is 'adjacent to a mine' and therefore invalid.?

(iii) Whether use of the words 'adjacent to a mine' would mean only the premises or machinery abutting to or adjacent to the mine, and not premises or the plant/machinery situated at a distance of about 2.5 to 6 km?

(iv)Whether the State had applied different yardsticks in charging duty to petitioner and in charging duty to Bhilai Steel, Balco, Manganese Ore India Ltd. and thereby practised discrimination?"

9. It is imperative to state here that a contention was advanced by the appellant therein that the High Court had not considered the real issues and the questions formulated for determination did not cover the actual issues and disputes involved. The Court proceeded to state the controversy in following terms:-

"21. The Act was amended by the M.P. Electricity Duty (Amendment) Act, 1986 (in short "the Amendment Act"). Different rates of duty are provided in Part B. In the said Part, clause (4) relates to the mines other than the captive mines of cement factory and the rate is 50 paise per unit of energy. Explanation (b) defines "mine" as follows:

"(b) 'mine' means a mine to which the Mines Act, 1952 (35 of 1952) applies and includes the premises or machinery situated in or adjacent to a mine and used for crushing, processing, treating or transporting the mineral."

22. It was submitted that the entry relating to mines refers to processing, treating or transporting the mineral. According to the learned Solicitor General the stress is on the expression "mineral". It was pointed out that the appellant is manufacturing "copper concentrate" which is not a mineral and it is not doing "mining" so far as it is covered by clause (7) for other industries not covered under the above categories where the rate is 5 paise per unit of energy. Essentially the submission is that the Explanation only relates to mining or minerals. What is excisable is "copper concentrate" because there is a process of manufacturing involved. It is seen that Points (iii) and (iv) formulated by the High Court for determination are really relevant. But the points have not been correctly formulated to cover the actual essence of the dispute. The correct question would be as follows:

"Whether copper concentrate is a mineral and whether Explanation to Part B of the Act applies even though manufacturing process is involved to bring it into existence?""

In view of the aforesaid, this Court set aside the impugned judgment and remanded the matter to the High Court for fresh consideration of the question framed permitting the parties to place material in support of their respective stands.

10. After the remand, before the High Court it was contended that mineral is something which grows in the mine and is capable of being won or extracted so as to be subjected to the better or precious use. It was further contended that copper ore is extracted at the mine pit and then it is subjected to processing whereafter copper ore becomes copper concentrate which is a different commodity which is an excisable product. On that basis, it was urged that copper concentrate is not a "mineral" and consequently, Explanation (b) to Part-B of Section 3 of the Act will not apply. Reliance was placed on *State of W.B. v. Kesoram Industries Ltd. and others*[3] and *Uranium Corporation of India Ltd., Bihar v. Collector of Central Excise, Patna*[4] . On behalf of the State, it was urged that copper concentrate is a "mineral" regard being had to the definition contained in Section 2(jj) of the Mines Act, 1952 (for short, "the 1952 Act") as well as Schedules I and II appended to the Mines and Minerals (Development and Regulation) Act, 1957. The Division Bench was commended to the authority in *V.P. Pithupitchai and another v. Special Secretary to the Govt. of T.N*[5]. and the decision of the Division Bench of the High Court in *Stone Crusher Owners Association and other v. M.P. Electricity Board and others*[6] . On behalf of the respondents, the competent authority of the M.P. Electricity Board contended that the copper ore does not cease to be a "mineral" merely because it is subjected to the stated processing and therefore the copper concentrate does not lose its identity as a mineral. It was further submitted that even though the copper ore is subjected to processing yet its chemical structure does not change by placing reliance on the decision in *Minerals and Metals Trading Corporation of India Ltd. v. Union of India and others* [7].

11. The High Court considering the rivalised submissions at the Bar, came to hold that the State has the authority to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably and for the said purpose placed reliance on *East India Tobacco Co. v. State of Andhra Pradesh*[8] . It further opined that while latitude is available to the legislature in the matters of classification of objects, persons and things for purposes of taxation and it has to be so having regard to the complexities involved in the formulation of taxation policy. To express the said opinion, the High Court placed reliance on *Elel Hotels and Investments Ltd. v. Union of India*[9] *and Govt. of A.P. v. P. Laxmi Devi*[10] . Thereafter it referred to subject-and-object rule and in that regard reproduced a passage from Principles of Statutory Interpretation and commended itself to the authorities in *Tarlochan Dev Sharma v. State of Punjab & Ors*[11]. and *Union of India v. Harjeet Singh Sandhu* [12]. After stating the legal proposition in the aforesaid manner, the High Court ruled that the 1949 Act is an enactment meant to provide for levy of duty on sale or consumption of electrical energy and the Act has been enacted in exercise of power under item 48 (b) List II of the Government of India Act, 1953 which corresponds to Entry 53 of List II of the VIIth Schedule of the

Constitution of India, namely, tax on consumption or sale of electricity. It referred to Section 3 of the Act and the definition of the term 'mine' and deduced that electricity duty under the Act is a tax which is levied on sale of consumption of electricity and further proceeded to state that if the table appended to Section 3 of the Act is seen, the classification for the purpose of levy of electricity duty is based on the purpose for which the electrical energy is sold or consumed and the classification table for the purpose of levy of duty. Dealing with the facet of classification, the High Court observed that:-

> "The classification made under Section 3 of the Act has a clear nexus with the object sought to be achieved, namely, raising revenue by grouping different types of industries and prescribing different rates of duty depending upon the nature of the industry. The highest rate of electricity duty is prescribed by the legislature in its wisdom for the mining industry. The object of prescribing the highest rate of electricity duty appears to tax the person/industry exploiting the nature wealth which is non-renewable. The exploiter has been required to contribute more, so that such contribution is, hopefully, utilized for the welfare of the people to whim such natural wealth belongs".

12. After so stating, it adverted to the anatomy of the definition of the term 'mine' and observed that the expression creates a legal fiction and, therefore, the definition will embrace only what is comprised within the ordinary meaning of 'mine' part, together with what is mentioned in the inclusive part of the definition and, therefore, as per well settled rules of statutory interpretation has to be read with regard to subject and object of the Act. The Court proceeded to state that the object of the Act is to raise revenue by prescribing rate of duty and the highest rate of duty is prescribed for mining industries as it is exploiting the natural wealth which is non-renewable, therefore, it must pay higher rate of duty which can be utilized for meeting the essential expenditures by the State Government. Thereafter, the High Court held:-

> "Taking into account the fact that the expression 'mine' creates a legal fiction and if the word 'mineral' is read subject to the context and object of the Act, it is graphically clear that wide meaning has to be given to expression 'mineral'. If the copper ore is converted to copper concentrate by processing, it only enriches content of copper in the copper ^concentrate and it does not cease to be 'mineral' merely on its conversion from copper to copper concentrate. In view of the preceding analysis, in our considered opinion copper concentrate is a mineral as defined in explanation (b) to Part B of Section 3 of the Act and, therefore, the explanation (b) to Part B of Section 3 of the Act applies to it. Besides "copper concentrate: is the end product. What is 'crushed, processed, treated or transported' is not copper concentrate' but the ore. The electricity in question is being consumed for such "crushing, processing, treating or transportation"."

13. Dwelling upon the word "adjacent" and the argument raised pertaining to discrimination between industries located in close proximity of the mine and other industries carrying on

the same activity, namely, 'crushing, processing, treating or transportation', which are not located in such close proximity of the mine, the Division Bench opined that:-

> "The word 'adjacent' does not mean 'adjoining' or 'abutting', but has a wider connotation, and would include close proximity such being in the same locality. This proposition is not disputed, and therefore, it is not necessary to refer to the case law cited for the meaning of the word 'adjacent'. In reply the learned Additional Advocate General submits that this differentiation is justified because the increased overheads such as transportation costs have been considered for not subjecting the far away industries to higher tax".

14. When the matter was listed for hearing, Mr. Mukul Rohtagi, learned Attorney General appearing for the Manganese Ore India Ltd. and Mr. P.P. Rao, learned senior counsel appearing for Hindustan Copper Ltd. urged that the High Court has fallen into grave error by imposing the electricity duty on the basis of the definition engrafted under Explanation (b) to Section 3(1) of the 1949 Act. It was contended by Mr. Rohtagi that manganese order is a mineral under the Mines Act, 1952 but ferro manganese is not a mineral because the said mineral is converted into "alloy" and ceases to be a mineral. Mr. P.P. Rao, learned senior counsel submitted that copper is a mineral but copper concentrate does not contain any character of a mineral and, therefore, the duty has to be charged at the rate of 8% and not at the rate of 40%.

15. Mr. Saurabh, learned counsel for the State, per contra, contended that the definition is an inclusive one and hence, when the mineral is processed for the purpose of conversion to alloy, duty at the rate of 40% is leviable. Learned counsel for the State would submit that the view expressed by the High Court is absolutely defensible.

16. The thrust of the matter is whether the aforesaid activity after the mineral i.e. ore has been mined would be covered by the word 'processing' used in the Explanation B to Item 3(1) which defines the term 'mine'. Mine as per the said explanation means a mine as to which the Mines Act, 1952 applies. The word "mine" as defined in the Mines Act, 1952 reads as follows:-

> "(j) "mine" means any excavation where any operation for the purpose of searching for or obtaining minerals has been carried on, and includes
> (i-iv)
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> (v) all conveyors or aerial ropeways provided for the bringing into or removal from a mine of minerals or other articles or for the removal of refuse therefrom;
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> (vi) all adits, levels, machinery, railways, tramways and sidings in or adjacent to and belonging to a mine;
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> (vii) all protective works being carried on in or adjacent to the mine;"

17. The word ‘minerals’ as defined in the Mines Act, 1952 reads as follows:

> “(jj) “minerals” mean all substances which can be obtained from the earth by mining, digging, drilling, dredging, hydraulicking, quarrying or by any other operation and includes mineral oils (which in turn include natural gas and petroleum)”.

18. Mining would comprehend every activity by which the mineral is extracted or obtained from earth irrespective of whether such activity is carried on at the surface or in the bowel, but it must be an activity for winning a mineral. For the purpose of Item 3 ‘mine’ to which electrical energy is sold, supplied or consumed, it would include machinery or premises situated in the adjacent to the mine, provided the electricity is used for crushing, processing, treating or transporting the minerals. The word ‘mineral’ used in the aforesaid Explanation under the Act would have reference to the mineral which is mined and is then crushed, processed, treated or transported. The word ‘processing’ used in the Explanation has to be interpreted in the context and for the purpose of the said item. Process can be given either a wide or a narrow meaning. In the context in which it is used in the Explanation, we are disposed to think that it must be given a meaning which emerges when we apply the rule of noscitur a sociis which means that the meaning of the word is to be judged by the company it keeps. [See : *Rohit Pulp and Paper Mills Ltd. v. Collector of Central Excise*[14]]. The rule of noscitur a sociis has been applied and accepted in Ahmedabad Pvt. *Primary Tea.ch.ers’ Association v. Administrative Officer & Ors*[15]. We would prefer to construe the said word in the Explanation with reference to the words before and after for the word ‘processing’ used therein. The word ‘processing’ herein, we think, should be interpreted and understood with the associated words ‘crushing’ and ‘treating’. The word ‘processing’ is susceptible of the meaning keeping in view the word ‘crushing’ and ‘treatment’ used before and afterwards.

19. We are absolutely conscious that noscitur a sociis rule is not applied when the language is clear and there is no ambiguity, which according to us does exist and perceptible in the Explanation in question. A very broad and a wide definition of the term ‘processing’ if applied, would include manufacture of a new or distinct product. Manufacture normally involves a series of processes either by hand or machine. If a restricted construction is not applied it would create and give rise to unacceptable consequences. It is not the intent to treat and regard manufacturing activities as processing. Manufacturing, as is understood, means a series of processes through different stages in which the raw material is subjected to change by different operations. [For different between process and manufacturing see *CIT v. Tara Agency* [16], *Orient Paper and Industries v. State of M.P. and Anr*[17]. *and Aspinwall & Co. Ltd. v. Commissioner of Income Tax, Ernakulam*[18]*}.]*

20. The words ‘crushing’, ‘treating’ and ‘transporting’ are words of narrower significance and the word ‘processing’ used between these words should not be given a very wide meaning, for the legislative intent, according to us, is narrower. The word ‘processing’ would take its meaning in the cognate sense. In other words, the general word ‘processing’ will be restricted to the sense conveyed by the words ‘crushing’, ‘treating’ and ‘transporting’. The intent being that electricity tariff payable in respect of mining activities would include the mine itself, all machinery situated or located in the mine or in a premises adjacent to the

mine wherein crushing, processing, treatment or transportation of the minerals as mined is undertaken. The word 'processing' herein would mean those processes with the help of hands or machineries connected and linked to mining activity. It would not include process by which a new or different article other than the one which has been mined, is produced. It relates and signifies the composite activity of mining and processing. The intent is not to include processes which would lead to creation of a different commodity as known in the commercial world for otherwise even manufacturing activity would get covered, whereas manufacturing unit is liable to pay electricity tariff at a lower rate. The intent and purpose is certainly not to compel and force a manufacturing unit being set up at an acceptable distance from the mine, for the manufacturing unit adjacent to the mine would have to pay electricity tariff at a higher rate. Pertinently, a manufacturing unit set up by another entity, whether adjacent to the mine or not, would pay a lower tariff. Such absurdity and irrationality has to be avoided. In the present context, we would, therefore, hold 'processing' would mean activities in order to make the mineral mined marketable, saleable and transportable, without substantially changing the identity of the mineral, as mined. When there is a substantial change at the mineral mined and the process results in a different commodity being produced or transforming and completely changing the mineral, it would fall outside the scope of the word 'processing'. The restricted construction will also be acceptable in view of the use of the word 'mineral' in the end of the Explanation. The word 'mineral' in the Explanation is the product which was mined and is put to 'crushing', 'processing', 'treatment' and 'transporting' the mineral. In other words, mineral means mineral which was mined and not a new product created by using or processing the mineral mined.

21. Be it noted, learned counsel for the appellants would submit that the metals and minerals available in the earth are rarely found in the pure forms and degree of purity that the ultimate users demand. They are intimately mixed, physically or chemically and often both, with other substances. For use, the good must be separated from the worthless substances. The sum total of the treatments to which the ores are subjected to in order to separate and discard their worthless fractions by essentially physical means is called "Ore Dressing". The various modes of Ore Dressing include handpicking, sorting, screening, washing, jigging, magnetic separation, crushing, grinding, etc. In this process, there is no change in the chemical composition and properties of mined mineral, before and after processing/dressing to make it saleable. It is important to point out that mineral/dressing is a subject matter of Mineral processing.

22. As distinguished from the above, manufacturing of an alloy, etc. is a subject matter of Metallurgy and is a part of Metallurgical branch of engineering. Ore Dressing is defined as the processing of raw mineral to yield a marketable mineral by such means that do not destroy the chemical identity of the minerals. On the other hand, an alloy like the Ferro Manganese Alloy is a result of a manufacturing method which involves Electro thermic smelting in case of the appellant which ultimately changes the chemical identity of manganese ore resulting into ferromanganese alloy. This method requires manganese ore as one of the raw materials for the manufacture of Ferro Manganese Alloy. Ferro Alloy is defined as an alloy of iron with a sufficient amount of some element or element such as manganese, silicon, chromium or vanadium as a means of introducing these elements into

iron and steel. Customarily, Ferro alloys are identified or designated by the principal base metals present in them. The names of Ferro alloys are abbreviated by using chemical symbols, e.g., FeMn, FeSi and FeCr standing for Ferro Manganese, Ferro Silicon and Ferro Chromium, respectively. Manufacturing of Ferro manganese alloy involves the use of manganese ore as a raw material which is subjected along with other raw material (Dolomite, Iron Ore, Coke, Coal and Carbon Paste), to Electro thermic smelting. The manufacturing of Ferro Manganese by Electro thermic smelting is a continuous smelting with the electrodes submerged deep into the charge. The smelting includes the stages as follows: pre-heating of the materials, drying and removal of volatiles, reduction of oxides, and smelting of the metal and slag. The same reasoning and manufacturing processing is required to create copper concentrate, a new and different commercial product. It is not the mineral as mined.

23. It is urged that Ferromanganese is an alloy and is not a mineral. The same is an alloy of manganese and iron and is not available in natural form. It is manufactured in the ferromanganese plant of the appellant - Manganese Ore India Ltd. by using raw materials LIKE manganese ore, iron, coal, coke, dolomite, etc. It is further contended that the appellant, Manganese Ore India Ltd. has, within its manganese ore mine area, an Integrated Manganese Beneficiation Plant (IMB Plant) as also a Ferro Manganese Plant (FMP). Following is the seriatim in which the mining/processing/manufacturing takes place:-

> "a. First Stage : The appellant mines manganese ore from its mines. There is a levy of electricity duty on the appellant's consumption of electricity during mining at 40%, which the appellant is not disputing.
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> b. Second State: Such mines manganese ore is processed by removal of impurities in the appellant's Integrated Manganese Beneficiation Plant (IMB Plant). During this process the cleaning of mineral takes place by various methods to remove impurities and foreign contents for the enrichment of the manganese content and during this process, the manganese mineral remains a mineral. There is a levy of electricity duty on the appellant's consumption of electricity of IMB Plant at 40%, which the appellant is not disputing. It is relevant to note that 95% to 98% of such processed manganese ore is sold in open market. Remaining is then sent as a raw material to the appellant's Ferro Manganese Plant (FMP).
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> c. Third State: At the Ferro Manganese Plant, raw materials like, processed manganese ore (for which 40% electricity duty is already paid by IMB Plant), iron ore, coke, dolomite, coal, carbon, etc., are by way of a manufacturing process through a furnace, blended into a completely new product commercially known and sold in the market as ferromanganese alloy which is a different product with different chemistry and, through smelting in furnace. This is nothing but a manufacturing activity, where raw materials like manganese ore, iron ore, coke, dolomite, coal, carbon, etc are completely consumed/exhausted."

24. To bring to the Ferro Manganese Plant of the appellant within the meaning of 'mine', the State has argued before this Court that the Ferro Manganese Plant is being "used for crushing, processing, treating or transporting" the mineral, that is, manganese ore. This is clearly unsustainable as the appellant is neither crushing or processing or treating or transporting manganese ore but rather using it as one of the raw materials and consuming the same while manufacturing ferromanganese alloy. The state of crushing, treating, processing, etc. of the manganese ore (mineral) was in the IMB Plant (second stage), where the appellant is paying electricity duty at 40%. The same rate cannot be applied in the Ferro Manganese Plant (the third stage) as it cannot be taken to be within the meaning of 'mine' for the aforesaid reason.

25. Learned counsel for the appellants would contend that in numerous decisions, this Court has reiterated that if a new substance is brought into existence or if a new or different article having a distinctive name, character or use results from particular processes, such process or processes would amount to manufacture. In the case of *Gramophone Co. of India Ltd. v. Collector of Customs, Calcutta*[19] , this Court held:-

> "11. The term "manufacture" is not defined in the Customs Act. In the allied Act, namely the Central Excise Act, 1944 also, the term "manufacture" is not to be found defined though vide clause f) of Section 2 an inclusive definition is given of the term "manufacture" so as to include certain processes also therein.
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> 12. "Manufacture" came up for the consideration of the Constitution Bench in Ujagar Prints v. Union of India (1989) 3 SCC 488. It was held that if there should come into existence a new article with a distinctive character and use, as a result of the processing, the essential condition justifying manufacture of goods is satisfied. The following passage in the Permanent Edition of Words and Phrases was referred to with approval in Delhi Cloth and General Mills, AIR 1963 SC 791 at p. 795:
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> "'Manufacture' implies a change, but every change is not manufacture and yet every change of an article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation; a new and different article must emerge having a distinctive name, character or use."
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> 13. In a series of decisions [to wit, Decorative Laminates (India) (P) Ltd v. CCE, (1996) 10 SCC 46, Union of India v. Parle Products (P) Ltd. 1994 Supp. (3) SCC 662, Laminated Packings (P) Ltd v. CCE, (1990) 4 SCC 51 and Empire Industries Ltd. v. CCE, (1985) 3 SCC 314] the view taken consistently by this Court is that the moment there is transformation into a new commodity commercially known as a distinct and separate commodity having its own character, use and name whether it be the result of one process or several processes, manufacture takes place; the transformation of the goods into a new and different article should be such that in the commercial world it is known as another and different article. Pre-recorded audio cassettes are certainly goods known in the market as distinct and different from blank audio cassettes. The two have different uses. A pre-recorded audio cassette is generally sold by reference

to its name or title which is suggestive of the contents of the audio recording on the cassette. The appellant is indulging in a mass production of such pre-recorded audio cassettes. It is a manufacturing activity. The appellant's activity cannot be compared with a person sitting in the market extending the facility of recording any demanded music or sounds on a blank audio cassette brought by or made available to the customer, which activity may be called a service. The Tribunal was not right in equating the appellant's activity with photoprocessing and holding the appellant a service industry."

26. In Aspinwall & Co. Ltd. (supra) this Court has held as follows:-

"13. The word "manufacture" has not been defined in the Act. In the absence of a definition of the word "manufacture" it has to be given a meaning as is understood in common parlance. It is to be understood as meaning the production of articles for use from raw or prepared materials by giving such materials new forms, qualities or combinations whether by hand labour or machines. If the change made in the article results in a new and different article then it would amount to a manufacturing activity.

14. This Court while determining as to what would amount to a manufacturing activity, held in CST v. Pio Food Packers, 1980 Supp. SCC 174 : that the test for determination whether manufacture can be said to have taken place is whether the commodity which is subjected to the process of manufacture can no longer be regarded as the original commodity, but is recognized in the trade as a new and distinct commodity. It was observed: (SCC p. 176, para 5)

"Commonly manufacture is the end result of one or more processes through which the original commodity is made to pass. The nature and extent of processing may vary from one case to another, and indeed there may be several stages of processing and perhaps a different kind of processing at each stage. With each process suffered, the original commodity experiences a change. But it is only when the change, or a series of changes, take the commodity to the point where commercially it can no longer be regarded as the original commodity but instead is recognized as a new and distinct article that a manufacture can be said to take place."

15. Adverting to facts of the present case, the assessee after plucking or receiving the raw coffee berries makes it undergo nine processes to give it the shape of coffee beans. The net product is absolutely different and separate from the input. The change made in the article results in a new and different article which is recognized in the trade as a new and distinct commodity. The coffee beans have an independent identity distinct from the raw material from which it was manufactured. A distinct change comes about in the finished product.

16. Submission of the learned counsel for the Revenue that the assessee was doing only the processing work and was not involved in the manufacture and production of a new article cannot be accepted. The process is a manufacturing process when it

brings out a complete transformation in the original article so as to produce a commercially different article or commodity. That process itself may consist of several processes. The different processes are integrally connected which results in the production of a commercially different article. If a commercially different article or commodity results after processing then it would be a manufacturing activity. The assessee after processing the raw berries converts them into coffee beans which is a commercially different commodity. Conversion of the raw berry into coffee beans would be a manufacturing activity."

27. This Court in *Servo-Med Industries Pvt. Ltd. v. Commissioner of Central Excise*[20] has held as under:-

"27.(1) Where the goods remain exactly the same even after a particular process, there is obviously no manufacture involved. Processes which remove foreign matter from goods complete in themselves and/or processes which clean goods that are complete in themselves fall within this category."

"27.(4) Where the goods are transformed into goods which are different and/or new after a particular process, such goods being marketable as such. It is in this category that manufacture of goods can be said to take place."

28. Thus, the Ferro Manganese Plant, being a unit involved in manufacturing of ferromanganese alloy as opposed to a unit involved in crushing, treating, processing, etc. of manganese ore, cannot be treated within the extended definition of 'mine' within the Explanation (b) of Part B of Table of Rates of Duty to Section 3(1) of the Act.

29. The Executive Engineer and Chief Electrical Inspector, Government of Madhya Pradesh, vide its letter dated 06.02.2005 to the Superintendent Engineer and Deputy Electrical Inspector, Government of Madhya Pradesh, had confirmed as under:-

"On spot inspection it is confirmed that, Ferro Manganese Plant does not come in the Mining Area and Electricity Duty @ 8% being charged at present by the M.P. State Electricity Board is proper."

30. The Ferromanganese Alloy so manufactured by the appellant using the mineral Manganese at its Ferromanganese plant is an entirely different product from its mineral raw material both physically and even chemically. Moreover, unlike Manganese ore a ferromanganese alloy can never be found in the natural state and it has to be manufactured from the manganese ore and other minerals only. The same logic applies to copper concentrate as a different and distinct product comes into existence.

31. Thus analyzed, we find that in both the cases, the different products in commercial parlance have emerged. Hence, we are inclined to think that the principle of noscitur a sociis has to be applied. As a logical corollary, tariff has to be levied as meant for manufacturing unit. Therefore, the analysis made by the High Court is not correct and, accordingly, the

judgments rendered by it deserve to be set aside and we so direct. However, during this period if any amount has been paid by the appellants to the revenue, the same shall be adjusted towards future demands.

32. Consequently, appeals are allowed. In the facts and circumstances of the case, there shall be no order as to costs.

[1]*(1995) 4 SCC 0603*
[2]*(2004) 12 SCC 0408*
[3]*(2004) 10 SCC 0201*
[4]*(1985) 19 ELT 0609*
[5]*(2003) 9 SCC 0534*
[6] *MP No. 673/1993*
[7]*(1972) 2 SCC 0620*
[8]*AIR 1962 SC 1733*
[9]*(1989) 3 SCC 0698 = AIR 1990 SC 1664*
[10]*(2008) 4 SCC 0720*
[11]*Justice G.P. Singh, 12th Edn., Page 349-350*
[12]*(2001) 6 SCC 0260*
[13]*(2001) 5 SCC 0.593*
[14]*(1990) 3 SCC 0447*
[15]*(2004) 1 SCC 0755*
[16]*(2007) 6 SCC 0429*
[17]*(2006) 12 SCC 0468*
[18]*(2001) 7 SCC 0525*
[19] *(2000) 1 SCC 0549*
[20]*(2015) 6 SCALE 0137*