RAJASTHAN HIGH COURT

Hindustan Zinc Limited

Vs.

Union of India

C.W.P. No. 4785 of 2003
(Prakash Tatia, J.)

21.11.2005

ORDER

Prakash Tatia, J.

1. The facts leading to the filing of this writ petition are that the petitioner is a company incorporated under the Companies Act, 1956 and is engaged *inter alia* in the business of mining of zinc and lead. The material excavated from the mines by the petitioner is processed in Beneficiation Plants situated within the leased area taken on lease by the petitioner-company from the State. Beneficiation is a process under which the ore excavated is treated so as to increase the percentage of one or other metals, in the instant case, zinc and lead. In this process, zinc and lead are removed from ore leaving behind waste which is termed as tailings or rejects. The tailings and rejects are dumped by the petitioner in a tailing dam situated within the leased area itself. According to the petitioner zinc and lead that are found in the form of zinc and lead sulphite in the run-of-mine ore do not change their chemical composition at the end of the beneficia-tion. The material that remains after beneficiation is known as metal concentrate. It is the concentrate that is removed from the leased area for sale or use by the petitioner and it is only the said concentrate that is a usable material. The rest is the waste and is of no use.

2. The Central Government notified the rates of royalty to be charged on different minerals removed or consumed from the mining lease area under Section 9(3) of the Mines and Minerals (Development and Regulation) Act, 1957 (for short "the Act of 1957"). These rates are listed in the Second Schedule to the Act of 1957. Royalty rates are prescribed for different minerals on ad valorem basis or per tone basis or on the basis of the metal contained in the ore or concentrate. In the case of some minerals

this Schedule prescribes royalty on pure minerals and in the case of others on concentrates. On 11-4- 1997, respondent No. 1 issued a notification where under royalty was stated to be chargeable on lead concentrate at 4% of the London Metal Exchange metal price on ad valorem basis chargeable per tone of concentrate produce and on zinc concentrate at 3.5% of the London Metal Exchange metal price on ad valorem basis chargeable per tone of concentrate produced. On 12-9-2000, a new notification was issued by the Union of India under Section 9(3) of the Act substituting the earlier notification. As per the new notification, the royalty chargeable in respect of "Lead" would be 5% of London Metal Exchange lead metal price chargeable on the contained lead metal in ore produced. At No. 50 in Second Schedule, it is provided that the royalty chargeable in respect of "zinc" would be 6.6% of London Metal Exchange zinc metal price chargeable on contained zinc metal in ore produced. After the notification dated 12-9-2000, the petitioner's leases were renewed on 15-9-2000. A further notification was issued by respondent-Union of India on 25-9-2000 inserting new rules in the Minerals Concession Rules, 1960 (for short "the Rules of 1960"), which are Rules 64B, 64C and 64D and some guidelines. Rule 64B provides that in case of run-of-mine is carried out within the leased area then royalty shall be chargeable on the processed mineral removed from the leased area and in case of run-of-mine mineral is removed from the leased area to a processing plant which is located outside the leased area then royalty shall be chargeable on the unprocessed run-of-mine mineral and not on the processed product. Rule 64C makes the position further clear which says that royalty on tailings or rejects from the leased area for dumping and not for sale or consumption outside leased area, such tailing or rejects shall not be liable for payment of royalty, Rule 64C further provides that even if the dumped tailing or rejects are used for sale or consumption on any later date after the date of such dumping then such tailings or rejects shall be liable for payment of royalty.

3. On 22-12-2001, the Mining Engineer, Mines and Geology Department, Government of Rajasthan, Bhilwara issued a notice to the petitioner *inter alia* stating that it was not paying royalty in respect of its Rampura Agucha Mine in accordance with the new provisions of the Mineral Concession Rules, 1960. The Mining Engineer, therefore, demanded payment of short-fall in royalty paid by the petitioner. The Mining Engineer, Mines and Geology Department, Government of Rajasthan, Udaipur issued a notice to the petitioner on 24-12- 2001, that too stating that the petitioner was not paying royalty in respect of its mine at ZAWAR in accordance with the new Rules 64-

B, 64C and 64D of the Minerals Concession Rules, 1960. The Mining Engineer, Udaipur also demanded short-fall in royalty paid by the petitioner. The Mining Engineer, Mines and Geology Department, Government of Rajasthan, Rajsamand also issued demand notice of same nature on 3-1-2002 to the petitioner in respect of the mines at ZAWAR, Rajpura-Dariba and Rampura-Agucha and stated in the notice that the petitioner has wrongly calculated royalty on the metal in concentrate whereas under the new Rules, royalty should be paid on the metal content in the run-of-mine mineral. The respondent No. 4, Mining Engineer, Rajsamand further issued notice on 4-1-2002 stating that in respect of its mines at Rajpura- Dariba, the petitioner wrongly calculated royalty on the metal in concentrate. On 19-10-2002, the petitioner received yet another notice from the Mining Engineer, Bhilwara by which said Mining Engineer rejected the petitioner's pleas and informed the petitioner that the petitioner should now send the demand draft of Rs. 24,85,57,164/-. In the revision petitions, comments were filed by the respondents. Then rejoinder was filed by the petitioner. According to the petitioner, the revision petitions were filed in the morning of 6-3-2003 whereas in the afternoon of the same day, the petitioner-Bank informed that the bank account of the petitioner had been attached against the demand of Rs. 1,14,336,633/- and the bank has been directed against releasing money from the said account without permission of respondent No. 4. The petitioner being aggrieved against the action of the respondent, preferred S. B. Civil Writ Petition No. 1186/2003 before this Court against the demand notices dated 22-12-2001, 23-12-2001 and 4-1-2002 respectively and for declaration that the royalty is to be calculated under the Act and the Rules on the metal in concentrate and for refund of money paid as royalty by the petitioner under protest on tailings which were stored in the mining lease area. The petitioner also filed two revision petitions under Rules 54 and 55 of the Rules of 1960. The petitioner in these revision petitions challenged demand raised against the petitioner.

4. The petitioner writ petition No. 1186/2003 was disposed of by this Court holding that it is not a fit case for interference by the High Court because of the fact that the reliefs claimed in the writ petition were substantially the same as those claimed in the revision petitions under Sections 54 and 55 of the Rules of 1960 which were then pending before respondent No. 1-Union of India. This Court also directed that the revision petitions may be decided within 60 days from the date of receipt of the order of this Court. Respondent No. 1-Union of India decided the two revision petitions of the petitioner by common order dated 2-7-2003 rejecting the petitioner's contention

that under the relevant provisions royalty was not payable on tailings. Respondents No. 1 also held that royalty was payable on the ore and upheld the demand notices dated 22-12-2001, 24-12-2001 and 4-1-2002 issued by respondents Nos. 6, 5 and 4 respectively.

5. In this writ petition, the petitioner submits that amount of royalty demanded by the respondents is in contravention of the Act, new schedule notified by the notification of 12-9-2000, the new Rules inserted in the Rules of 1960 by the notification dated 15-9-2000, the term of mining lease dated 15-9-2000 between the petitioner and the Governor of Rajasthan. The petitioner also submitted that the impugned order is *ultra virus* Section 9(3) of the Act of 1957, Rules 64B to 64D of the Rules of 1960.

6. Principally and substantially the controversy is that whether the royalty is livable on the metal in concentrate or payable on the ore extracted from the mother earth.

7. The respondents No. 2 to 6 submitted detailed reply. According to the respondents, the beneficiation has been defined to mean processing of minerals or ores for the purpose of (i) regulating the size of desired products; (ii) removing unwanted constituents; and (iii) improving quality, purity or assay grade of desired product. It is admitted by the respondents that zinc and lead are found in the form of zinc and lead sulphate. The respondents disputed that the contention of the petitioner that beneficiation of run-of-mine ore do not change chemical composition. According to the respondents the moment mineral ore is raised from the pit, it is collected at the pit head and from pit head also, the ore produced known as run-of-mine, it is again examined and analyzed in order to find the metal contents therein and it is only thereafter that the run-of-mine is taken to the beneficiation plant. According to the respondents, the holder of the mining lease is required to pay royalty in respect of mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lease from the leased area at the rate specified in second schedule in respect of mineral. According to the respondents, the various notifications dated 11-4-1997 (Annx. P1) and 12-9-2000 (Anx. 2) for lead and the notification for zinc were issued and the changes were made for the purpose of computation of royalty on lead and zinc in the rates as specified in the rates of lead and zinc under the notification dated 11-4-1997. According to the respondents, as per notification dated 11-4-1997 (Annex. P1), the royalty was fixed with respect to lead/zinc concentrate on ad valorem basis chargeable per tonne of concentrate produced and under the notification dated 12-9-

2000 (Annx. P.2) has been fixed on lead/zinc at the rate chargeable on contained lead/zinc metal in ore produced. This shows marked difference in the rates as specified. According to the respondents, the petitioner was bound to pay the royalty as specified in the second schedule and he was to calculate royalty on the two minerals, i.e. Lead and Zinc in accordance with what has been specified in the new Rule 64D. The respondents also relied upon the illustration given in the heading Case No. 3 and the guidelines prescribed under the Rules.

8. In sum and substance, according to the respondents, the petitioner is required to pay royalty, after insertion of the Rules 64B, 64C and 64D on the ore containing the lead or zinc as the case may be.

9. The learned Senior Counsel Mr. I. M. Chagla appearing on behalf of the petitioner vehemently submitted that the charging section for the royalty is Section 9 of the Act of 1957 which provides that the holder of a mining lease shall pay royalty in respect of any mineral removed or consumed by him from the leased area at the rate which is specified in second schedule in respect of that mineral. How the royalty is to be calculated under Section 9(1), the matter came up before the Hon'ble Apex Court in the case of the *State of Orissa v. Steel Authority of India Ltd.,* [1] That was a case of lime-stone and dolomite for which the Hon'ble Apex Court held that extracted mineral subjected to a certain process to remove waste and foreign matter, hence the lessee-manufacturer is liable to pay royalty on the entire mineral extracted by him and not only on the net quantity of mineral obtained after processing. Hon'ble the Apex Court held that royalty is in respect of minerals removed or consumed by the contractor from the leased area and Section 9(1) of the Act also contemplated levy of royalty on the holder of a mining lease in the leased area. According to the learned counsel Sri Chagla, the law has been amended after the said decision of the Supreme Court by inserting Rules 64B, 64C and 64D, which made the position clear and which makes clear that lessee need not to pay royalty for waste.

10. The contesting learned counsel Mr. B. B. Aggarwal, Advocate General vehemently submitted that as per the earlier notification dated 11-4-1997 royalty was livable on zinc concentrate under the Entry Nos. 22 and 41 for lead and zinc concentrate respectively. The word "concentrate" has been removed from the heading also as well as from the charging provisions, therefore, it is clear that now the royalty as per the amended provisions as amended by the notification dated 12-9-2000 is

livable on metal ore and not on zinc concentrate. Otherwise also there was no reason for removing word "concentrate" from the charging schedule for lead and zinc. It is also submitted that Hon'ble Apex Court in the judgment of the Steel Authority of India Ltd., (AIR 1998 Supreme Court 3052) (supra), after considering Section 9(1) of the Act of 1957 clearly held that the mineral subjected to a certain process to remove waste and foreign matter, is a processing of ore amounting to consumption and, therefore, the entire mineral is excisable to levy of royalty. Therefore, the plea raised by the petitioner is liable to be rejected in view of the judgment of the Hon'ble Apex Court delivered in the case of Steel Authority of India Ltd. (supra). According to the learned counsel for the respondents, the case of National Mineral Development Corporation Ltd., (AIR 2004 Supreme Court 2456) (supra), is quite distinguishable because in that case, the subject-matter involved was the iron for which in the schedule there are different heads, like for iron ore (i) lumps (ii) fines and (iii) concentrate prepared by beneficiation, whereas in the case of zinc and lead there is no separate categories for charging the royalty differently for different quality of lead and zinc.

11. I gave thoughtful consideration to the arguments advanced by both the learned counsels and judgments relied upon by them as well as on relevant law. It will be beneficial to quote the relevant portion of second schedule appended to the Act of 1957, amended and unlamented, which reads as under :-

> "As per notification dated 11-4-1997.
> Lead Concentrate4% of London Metal No. 22Exchange metal price on ad valorem basis chargeable per tonne of concentrate produced.
> As per notification dated 12-9-2000
> Lead___5% of London Metal No. 25Exchange lead metal price chargeable on the contained lead metal in ore produced.
> As per notification dated 11-4-2000
> Zinc Concentrate3-1/ 2% of London No. 41Metal Exchange metal price on ad valorem basis chargeable per tonne of concentrates produced.
> As per notification dated 12-9-2000
> Zinc__6.6% of London Metal No. 50Exchange zinc metal price chargeable on contained zinc metal in ore produced."

12. This change in law was considered by the Hon'ble Apex Court in the case of

National Mineral Development Corporation Ltd. v. State of M. P[1] wherein Hon'ble the Apex Court considered the definitions of tailings, concentrate, run-of-mine and beneficiation which are the terms used in reference to the process of mineral extractions, its beneficiation and making them concentrate. In the case of National Mineral Development Corporation Ltd. (supra), the subject-matter was the iron ore. Hon'ble the Apex Court held that (para 22):-

> "There can be no manner of doubt that the entire material extracted from the earth, so far as iron ore mines are concerned, has to be subjected to a process for the purpose of winning iron there from. The process results in (i) lumps, (ii) fines and (iii) slimes. Section 9 of the Act obliges the holder of a mining lease to pay royalty in respect of any mineral removed or consumed from the leased. If only it would have been the question of considering Section 9 and determining the impact thereof, may be, it is the total quantity of mineral removed from the leased area or consumed in the beneficiation process which would have been liable for payment of royalty and that quantity may have included the quantity of slimes as well, as was held by this Court in *State of Orissa v. Steel Authority of India Ltd. (AIR 1998 Supreme Court 3052)* (supra). But in case of iron ore, the process of beneficiation involves introduction of catalytic agents leading to separation and generation of waste consisting of impurities which the scheme of the Act has left out from charging."

Thereafter, Hon'ble the Apex Court further held as under (para 23) :-

> "Section 9 is not the beginning and end of the levy of royalty. The royalty has to be quantified for purpose of levy and that cannot be done unless the provisions of the Second Schedule are taken into consideration. For the purpose of levying any charge, not only has the charge to be authorized by laws, it has also to be computed. The charging provision and the computation provision may be found at one place or at two different places depending on the draftsman's art of drafting and methodology employed. In the latter case, the charging provision and the computation provision though placed in two parts of the enactment shall have to be read together as constituting one integrated provision. The charging provision and the computation provision do differ qualitatively. In case of conflict, the computation provision shall give way to the charging provision. In case of doubt or ambiguity the computing provision shall be so interpreted as to

act in aid of charging provision. If the two can be read together homogeneously then both shall be given effect to, more so, when it is clear from the computation provision that it is meant to supplement the charging provision and is, on its own, a substantive provision in the sense that but for the computation provision the charging provision alone would not work. The computing provision cannot be treated as mere surplus age or of no significance, what necessarily flows there from shall also have to be given effect to."

Thereafter, Hon'ble the Apex Court held that (para 24) :-

"Section 9 neither prescribes the rate of royalty nor does it lay down how the royalty shall be computed. The rate of royalty and its computation methodology are to be found in the second schedule and therefore the reading of Section 9 which authorizes charging of royalty cannot be complete unless what is specified in the Second Schedule is also read as part and parcel of Section 9."

13. The Hon'ble Apex Court also held that "a bare reading of Entry 23 reveals that Parliament has not chosen to compute royalty on iron ore but by itself and quantifiable as run-of-mine (ROM). Parliament is conscious of the fact that iron ore shall have to be subjected to processing where after it would yield (i) lumps, (ii) fines, (iii) concentrates and (iv) slimes. The last one to be found deposited in the railing pond." The Hon'ble Apex Court held that "Parliament has to be attributed with the knowledge that keeping in view the advancement in the field of science and technology as on the date, the slimes do not have any commercial value." In the case of iron, it has been held that the Entry 23, the manner in which it has been drafted, mandates the quantification of royalty to await or be postponed until the processing has been carried out and the lumps, fines and concentrate are prepared. Once the result of processing is available, the lumps, fine and the concentrates are subjected to levy of royalty at different rates applied by reference to the quantity of each of the threes earned as a result of processing. The slimes have been left out of consideration by Entry 23 for the purpose of quantification and levy." After considering the Rules 64B, 64C, the Hon'ble Apex Court held that though the objects and reasons which prompted the above said amendment are not known to us, in all probability the same seems to have been promoted by the pronouncement of this Court in the *State of Orissa v. Steel Authority of India Ltd.,* [2] The Hon'ble Apex Court held that the rules also suggest the intention of the Government that dumped tailings or rejects, or in other words

"slimes", are to be treated as a separate head and charge of royalty thereon is not to be made as a matter of course. Dumped tailings or rejects may be liable to payment of royalty if only they are sold or consumed. Rules 64B and 64C are general in nature, applicable to all types of minerals. There are several other entries in the Second Schedule where a mineral is liable to royalty on tonnage basis no sooner extracted and as run-of-mine. Such entries do not further classify the mineral by reference to its constituents. The Hon'ble Apex Court also held that iron ore is different and Entry 23 of the Second Schedule and the rules if homogeneously constructed, do not subject the run-of-mine to payment of royalty.

14. In the light of the above two judgments, the question of liability of royalty on lead can be examined. The revisional authority in the impugned order dated 2-7-2003, after considering the rules referred above, particularly Rules 64B, 64C, 64D, held that royalty payable on the ore exploited from the mother earth and the rate for royalty to be paid for such exploitation has been prescribed in the Second Schedule of the Act of 1957, as amended from time to time. The revisional authority held specifically as under:-

> "The petitioner, therefore, is liable to pay royalty on the ore exploited whether it is removed or consumed (used) then and there or at a subsequent date is not on which the rates of royalty will depend."

15. In view of the above finding, the revisional authority upheld the decision of the State Government to calculate royalty in respect of zinc, lead and copper as per guidelines in Case No. 3 of Rule 64D of the Rules of 1960.

16. The change made by insertion of Rules 64B, 64C and 64D are very relevant and before that it will be relevant to mention again here as per the law laid down by the Hon'ble Apex Court in the case of National Mineral Development Corporation Ltd. (AIR 2004 Supreme Court 2456) (supra). Section 9 is not the beginning and end of the levy of royalty. The royalty has to be quantified for purpose of levy and that cannot be done unless the provisions of the Second Schedule are taken into consideration. It is not in dispute that ore in the present case also is in a very crude form and it contained waste material called impurity. It is required to be subjected to beneficiation process and that saves the cost of transportation. After beneficiation, the valuable constituents are retained leaving behind tailings or waste having no commercial value and in the form of unusable material. Earlier in Second Schedule at No. 22 for lead, heading was

"lead concentrate" whereas after notification dated 12-9-2000, heading is "lead". The word "concentrate" has been removed from the heading. At the same time, there is material change in royalty computing provision. Earlier the royalty was chargeable per tone concentrate produced. After notification dated 12-9-2000 under the head "rate of royalty", language has been changed against Entry Nos. 25 and 50 for lead and zinc with "chargeable on contained lead metal in ore produced." The word "concentrate" after the "Lead" and "zinc" has been removed. At the same time, the heading has not been changed to "Lead Ore" or "Zinc Ore". This suggests only that royalty can be levied on Lead and Zinc and not on Lead Ore and Zinc Ore. Even as per the amended charging provisions under Entry Nos. 25 and 50 of the Second Schedule, the chargeable commodity is "contained Lead Metal" in Ore produced for Lead and Zinc as the case may be. This also suggest that the royalty can be charged on contained zinc metal or contained lead metal which may be found in the ore produced. Therefore, the definition unambiguously suggests that the royalty can be charged on the lead metal and zinc metal and not on ore produced. The words "in ore produced" separates the metal from the ore for the purpose of levy of royalty.

17. Hon'ble the Apex Court in the case of National Mineral Development Corporation Ltd. (AIR 2004 Supreme Court 2456) (supra) held that Rules 64C and 64C are general in nature, applicable to all types of minerals. Rule 64-B(i) very specifically provides that in case processing of run-of-mine is carried out within the leased area, then, royalty shall be chargeable on the processed mineral removed from the leased area, which is the case here, then royalty shall be chargeable on the processed mineral removed from the leased area. Here the word has not been used "beneficiation" but has been used "processed mineral". Sub-rule (2) of Rule 64-B makes it further clear that in case, run- of-mine mineral is removed from leased area to a processing plant which is located out side the leased area, then the royalty shall be chargeable on unprocessed run-of-mine minerals and not on the processed product. Therefore, sub-rule (1) and sub-rule (2) of Rule 64-B are separate provisions for charging of royalty, one for only processed minerals manufactured from the leased area and another for unprocessed run-of-mine minerals. Rule 64-C further made it clear that on removal of tailings or rejects from the leased area for dumping and not for sale or consumption, outside leased area such tailings or rejects shall be liable for payment of royalty, in case the royalty will be charged immediately on the extraction of the mineral then there was no reason for framing Rule 64C which provides that royalty shall not be charged on removal of tailings or rejects from the leased area unless as per the proviso

to Rule 64-C the tailings and rejects are used for sale or consumption. The Hon'ble Apex Court also held in the case of National Mineral Development Corporation Ltd. (supra) that the rule also suggests the intention of the Government for the dumped tailings or rejects, or in other words "slimes", are to be treated as a separate head and charge of royalty thereon is not to be made as a matter of course. Dumped tailings or rejects may be liable to payment of royalty if only they are sold or consumed.

18. In view of the above, the respondents have no right to demand the royalty on Lead Ore or Zinc Ore and the respondents can charge the royalty on zinc metal or lead metal which is contained in ore produced by the lessee. I do not find any force in the submission of the learned Advocate General appearing on behalf of the State that removal of the word "concentrate" from the old Entry No. 22 by notification dated 12-9-2000 is sufficient for charging the royalty of lead and zinc ore. The removal of the word "concentrate" cannot convert the word "lead" and "zinc" into "lead ore" and "zinc ore" or into the words lead with impurities and zinc with impurities.

19. In view of the above reasons, the order passed by the revisional authority dated 2-7-2003 deserves to be set aside and the present writ petition deserves to be allowed.

20. Hence the writ petition of the petitioner is allowed. The order dated 2-7-2003 is quashed and set aside. The demand notices dated 22-12-2001, 24-12-2001 and 4-1-2002 are quashed. The respondents Mining Engineers as well as respondent No. 2 are directed to refund the amounts which have been recovered in excess from the petitioner in pursuance of the demand notices or may adjust the amount against the future demand of royalty.
Petition allowed.

Cases Referred.

1. (2004) 6 SCC 281: AIR 2004 SC 2456)
2. (AIR 1998 SC 3052)