RAJASTHAN HIGH COURT

Associated Stone Industries Ltd.

Vs.

State of Rajasthan

Civil Writ Petn. Nos. 4312 of 1994 and 1117 of 1995

(Prem Shanker Asopa, J.)

19.01.2006

ORDER

Prem Shanker Asopa, J.

1. Since the common questions of facts and law are involved in the aforesaid two writ petitions filed by the same petitioner as to "whether the royalty is to be levied on the excavation of mineral or polished product of the mineral in the factory situated in leased area which is to be sold in the market and the further question is involved as to whether the State Government and its functionaries have right to charge royalty on 10% breakage of the mineral in polishing the same vide respective Assessment Order of the year 1991-92 and 1992-93." Therefore, both the writ petitions are being decided by common order.

2. The case of the petitioner in writ petition No. 4312/1994 is taken as leading case. Briefly stated the relevant facts of the case are that the petitioner-company is dealing in the business of excavating of lime stone and polishing the same, which is popularly known as Kota Stone and further dispatching both rough and polished stones outside the mining area.

3. The petitioner-Company is holding a mining lease of lime stone (building stone) since 1-10-59 from the State. The petitioner-Company was assessed for royalty up to 1989-90 as per the returns and thereafter a dispute is said to have been arisen between the parties with respect to the payment of royalty of breakage/wastage of the said mineral in polishing the same for the assessment year 1992-93. The petitioner-Company furnished the information to the Mining Engineer, Ramganjmandi, District Kota vide their letter dated 25-1-94 mentioning therein that it has dispatched 15,79,878 sq. feet of polished stones from its mining area. On 1-3-94 the Mining Engineer passed the assessment order on the basis of the said information and charged the royalty on the same also. The further case of the petitioner-Company is that they have deposited the amount of royalty except the amount of royalty levied on

breakage/wastage amounting to Rs. 39,497/-. The said figure is incorrect even as per the assessment order (Annex. 3) dated 1-3-94 the amount is Rs. 44,249/-.

4. In connected Writ Petition No. 1117/1995 the facts are the same but the assessment year for breakage/wastage is for the year 1991-92 made on 11-2-93.

5. The respondents have filed reply submitted therein that as per the definition of royalty under Rule 3(xx) of the Rules of 1986, the "Royalty" means the charge payable to the Government in respect of any ore or mineral excavated, removed or utilized from any land as prescribed in Schedule I. The respondents have further submitted that the main point of charging royalty is the excavation of the ore or mineral and the subsequent stages of removal and utilization are not relevant for the purpose of calculation of royalty, more particularly, in case the factory of a leaseholder is situated in the leased area wherein the processing/polishing is being carried out. As regards Rule 18(1)(a), it is submitted by the respondents in their reply that the said Rule is to be construed harmoniously with Rule 3(xx) as well as Rule 18(9)(a).

6. The submission of the counsel for the petitioner is that as per the provisions of Rule 18(1)(a) of the Rajasthan Minor Mineral Concession Rules, 1986 (hereinafter referred to as 'the Rules of 1986"), the petitioner is required to pay the royalty in respect of any mineral removed from and/or consumed within the leased area at the rates specified in Schedule-I and as such there was no justification for the authorities to impose the royalty on breakage/wastage on polished stone which was neither removed from nor consumed within the mining area. The further submission of the petitioner is that the factory of the petitioner is situated in the leased area as such the breakage/wastage incurred in polishing the rough stones will not be covered by the term mineral removed from and/or consumed within the leased area. The alternate submission made by the petitioner is that there is no justification of calculating the breakage/wastage as 10% of the polished lime stones. It is also submitted by the petitioner that the respondents have acted arbitrarily in levying royalty in respect of the breakage/wastage of the polished stone which has not been dispatched. In support of the submission, the petitioner has cited one judgment in the case of *Surajdin Laxmanlal v. State of M. P., reported* [1] *in*

7. The submission of the counsel for the respondents is that as per the definition of royalty under Rule 3(xx) of the Rules of 1986, the "Royalty" means the charge payable to the Government in respect of any ore or mineral excavated, removed or utilized from any land as prescribed in Schedule I. The further submission of the counsel for the respondents is that the main point of charging the royalty is the excavation of the ore or mineral and the stages of removal and utilization are the subsequent stages of excavation, therefore, for the purpose of calculation of royalty, the polished form of the mineral in leased area which is made for sale in the market is

not relevant. The counsel for the respondents has submitted that in other words the royalty is payable on the mineral in its raw form and the petitioner cannot take any advantage of breakage/wastage of the mineral while polishing the same in the leased area nor he is entitled to say that no royalty is payable on such breakage or wastage. As regards Rule 18(1)(a), the counsel for the respondents has submitted that the said condition is not to be read in isolation and is required to be read along with the definition of the Royalty under Rule 3(xx) as well as Rule 18(9)(a) of the Rules of 1986, according to which royalty is payable on excavation and a lessee is required to keep correct and regular accounts of all the minerals excavated from the mines. The combined reading as well as harmonious construction of all the aforesaid Rules is that the word 'removal' from and/or 'consumption' as contained in Rule 18(1)(a) has to be construed (as) the consumption of excavated mineral will not exclude the royalty of breakage/wastage in the process of polishing. Otherwise the leaseholder escaped royalty merely on account of situation of the factory in the leased area. The counsel for the respondents has cited one judgment of Hon'ble the Supreme Court in the case of *State of Orissa v. Steel Authority of India Ltd., reported [2] in* wherein the word 'consumption' under Section 9(1) of the Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter called as 'the Parent Act, 1957) has been interpreted. Under Section 15 of the Parent Act of 1957, the present Rules of 1986 have been framed.

8. I have gone through the record of the writ petition and considered the rival submissions of the parties.

9. The definition of royalty as given under Rule 3(xx) and other relevant rules dealing with payment of royalty Rule 18(1)(a) and 18(9)(a) are reproduced hereunder for ready reference :-

> '3(xx). "Royalty" means the charge payable to the Government in respect of the ore or mineral excavated, removed or utilized from any land as prescribed in Schedule I.
> 18(1)(a). The holder of a mining lease granted before the commencement of these rules, shall notwithstanding anything contained in the instrument of lease or any law or rules in force at such commencement, pay royalty in respect of any mineral removed by him from and/or consumed within the leased area after such commencement at the rates for the time being specified in Schedule I in respect of that mineral.
> 18(9)(a). The lessee shall keep correct and regular accounts of all minerals excavated from the mines, the quantity lying in stock at the mines and the quantity dispatched and utilized there from as also the number of persons

employed in Form No. 11-B. It shall contain particulars regarding the quantity of mineral sold/utilized, its value and name of persons or firms to whom sold. The accounts shall be produced before the assessing authority on such date as may be fixed by it in this behalf for the purpose of assessment. The lessee shall maintain up-to-date plans of the mines and shall also allow any officer of the department as may be authorized by the Director in this behalf to examine such accounts and plans at any time and shall furnish him other information as he may require."

10. The combined reading of the definitions would reveal that Rule 18(1)(a) is to be read with Rule 3(xx) and Rule 18(9)(a), according to which the lessee shall keep the current regular accounts of all minerals excavated from the mines and is liable for the payment of royalty.

11. In support of his submissions, the counsel for the petitioner Shri S. M. Mehta, Sr. Advocate has cited one judgment in the case of *Surajdin Laxmanlal v. State of M. P. (AIR 1960 Madhya Pradesh 129)* (supra). In para No. 7 it has been observed that "Royalties are payment which the Government may demand for appropriation of mineral, timber or other property belonging to the Government". The said judgment nowhere laid down the law that the polished mineral dispatched for sale is only to be taken into account while assessing the royalty.

12. The Dy. G. A. has submitted that language of Section 9(1) of the Parent Act, 1957 and Rule 18(1)(a) of the Rules of 1986 is *pari materia* and even if the royalty is payable in respect of mineral removed by him from and/or consumed from/within the leased area, then also Hon'ble the Supreme Court in the case of *State of Orissa v. Steel Authority of India Ltd.* [3] while interpreting Section 9(1) of the Parent Act has held that the processing amounts to consumption and, therefore, the entire mineral is exigible to levy of royalty. The relevant para Nos. 3, 5, 8, 10, 11 and 13 of the said judgment are reproduced hereunder for ready reference :-

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

undergone a processing to remove waste and foreign matter.

It was the case of the appellants that the respondent was liable to pay royalty on the mineral extracted while the case of the respondent was that the liability was on the quantity of mineral obtained after it had undergone the process.

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

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

8. The learned counsel appearing for the appellants submitted that the High Court was not right in making the distinction and concluding that the quantity of minerals which had undergone a certain process alone was liable to levy of royalty. According to the learned counsel, this view runs counter to the view already taken by another Division Bench of the same High Court in OJC No. 909 of 1974. The further case of the learned counsel was that the judgement in OJC No. 909 of 1974 was taken on appeal to this Court by the aggrieved assessee in *National Coal Development Corpn. Ltd. v. State of Orissa* [4] and this Court approved the view taken by the High Court and dismissed the said civil appeal on 5-12-1991. Learned counsel, in support of his argument, placed reliance on the judgments of this Court, namely, *India Cement Ltd. v. State of T. N.* [5] and *Saurashtra Cement and Chemical Industries Ltd. v. Union of India* [6] Learned counsel appearing for the respondent-assessee supported the judgments under appeal on the basis of the distinction made by the High Court.

10. Section 9(1) of the Act reads as follows: "The holder of a mining lease granted before the commencement of this Act shall, notwithstanding anything contained in the instrument of lease or in any law in force at such commencement, pay royalty in respect of any mineral removed or consumed by him or his agent, manager, employee, contractor or sub-lessee from the leased area after such commencement, at the rate for the time being specified in the Second Schedule in respect of that mineral.

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

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

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

"In the *Western India Theatres Ltd. v. Cantonment Board, Poona Cantonment* [7] it was held that an entertainment tax is dependent upon whether there would or would not be a show in a cinema house. If there is no show, there is no tax. It cannot be a tax on profession or calling. Professional tax does not depend on the exercise of one's profession but only concerns itself with the right to practice. It appears that in the instant case also no tax can be levied or is livable under the impugned Act if no mining activities are carried on. Hence, it is manifest that it is not related to land as a unit which is the only method of valuation of land under Entry 49 of List II, but is relatable to minerals extracted. Royalty is payable on a proportion of the minerals extracted."

While interpreting the word 'consumption', Hon'ble the Supreme Court has held that respondent Steel Authority of India Ltd. (AIR 1998 Supreme Court 3052) is liable to pay royalty on the quantity of mineral extracted as it is, not on the quantity arrived at after the said mineral had undergone a processing to remove wastage and foreign matter.

14. In para No. 13 of the aforesaid judgment the Supreme Court has considered the judgment of Constitution Bench of 7 Judges in the case of *Indian Cement Ltd. v. State of T. N.* [8] and has placed reliance on para No. 23 which has been quoted in para No. 13 of the aforesaid judgment of State of Orissa (supra), a bare perusal of which would reveal that the royalty is payable on a proportion of the minerals extracted. The similar view was earlier taken by the Supreme Court in the case of *D. K. Trivedi and Sons v. Ambalal Manibhai Patel etc., reported* [9] *in* in respect of royalty, where the issue was enhancement of the dead rent and royalty. The judgement of D. K. Trivedi has been subsequently followed by Hon'ble the Supreme Court in the case of The *State of West Bengal v. Kesoram Industries Ltd., reported in* [10] in para No. 70 and further in para No. 71 the judgements cited by the counsel for the respondents was also considered.

15. Although Section 9(1) of the Parent Act, 1957 is not applicable in case of minor mineral by virtue of Section 14 but since the language of Section 9(1) of the Parent Act, 1957 and clause 18(1)(a) is identical, therefore, the judgment of the Supreme Court in *State of Orissa v. Steel Authority of India (AIR 1998 Supreme Court 3052)* (supra), wherein it has been held that lessee is liable to pay royalty on the mineral extracted as it is and not on the quantity arrived at after the said mineral had undergone a processing to remove wastage and foreign matter, is fully applicable.

16. As per Section 89(7) of the Rajastahn Land Revenue Act, 1956, any person who without lawful authority extracts or removes mineral from any mine or quarry, is liable to be punished. So far as punishment also, the extraction is relevant for punishment, therefore, the quantity of excavation/extraction of the mineral is relevant for the purpose of calculation of royalty.

17. Apart from Rule 18(1)(a) is not to be read in isolation and has to be read with Rule 3(xx), 18(9)(a) and 89(7) of the Rajasthan Land Revenue Act, 1956 and the irresistible conclusion is that royalty is payable on mineral excavated/extracted.

18. The second submission of the petitioner is that there is no justification of calculating wastage at 10% of the total polished stones. From the record of the writ, it appears that the petitioner has not filed the details of the wastage or difference of the mineral excavated and polished. Thus, the assessing authority was left with no other alternative except to make the best judgment assessment, which in my opinion, is absolutely justified.

19. In view of the above, the submissions of the petitioner have no merit and the same are deserve to be rejected whereas the submissions of the respondents have merit and the same are deserve to be accepted. The submissions of the petitioner are rejected and the submissions of the respondents are accepted as indicated above.
20. Consequently, both the writ petitions fail and the same are hereby dismissed.

Petitions dismissed.

Cases Referred.

1. AIR 1960 MP 129
2. (1998) 6 SCC 476: (AIR 1998 SC 3052)
3. (AIR 1998 SC 3052)
4. (CA No. 807 of 1976 decided on 5-12-91)
5. ((1990) 1 SCC 12: (AIR 1990 SC 85)
6. ((1994) 1 SCC 226)

7. (AIR 1959 SC 582)
8. ((1990) 1 SCC 12): (AIR 1990 SC 85)
9. AIR 1986 SC 1323
10. JT 2004 (1) SC 375: (AIR 2005 SC 1646)