A HINDUSTAN COPPER LTD.

v.

STATE OF MADHYA PRADESH AND ORS.

(Civil Appeal No.6725 of 2008)

B NOVEMBER 19, 2008

[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM SHARMA, JJ.]

C *Madhya Pradesh Electricity Duty Act, 1949:*

s.3, Explanation (b) – 'Mine' – Levy of electricity duty as regards manufacturing of copper concentrate – Matter remitted to High Court to decide the question as to whether copper concentrate is a mineral and whether the Explanation D *applies even though manufacturing process is involved to bring it into existence – Since the basic question has not been decided by the High Court, the impugned judgment is set aside and the matter is remitted to it for fresh consideration of the question as formulated by Supreme* E *Court – In the meantime, appellant is directed to pay the current dues, but there shall be no recovery of arrears relating to interest, if any.*

The appellant, a Government company, was engaged F **in extraction of copper ore by open cast mining process. Appellant's Mine as well as the processing plant were subjected to uniform electricity duty under the entry relating to 'mines other than captive mines of a Cement Industry' in the table contained in s.3 of the M.P.** G **Electricity Duty Act, 1949. According to the appellant its activities consisted of two distinct parts: (1), mining which included drilling, blasting and collecting of ore and these activities were carried on in the mining area registered**

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under the Mines Act, and (2) the processing, which was carried on at the Primary Crusher, Secondary Crusher and Concentrator Plant, situated away from the mine at distances varying 2.5 km to 10 km and separately registered as 'factory' under the Factories Act. The stand of the appellant that as regards the activities (2), the processing part, it was entitled to lesser rate of duty as was applicable to 'non-domestic and commercial establishments'. The appellant filed a writ petition before the High Court challenging the provisions of s.3 of the M.P. Electricity Duty Act, namely the entry in the Table (Part B) relating to 'mines other than captive mines of cement industry' and Explanation (b) defining 'mine' and extending the definition of 'mine' to its 'factory' activities for the purpose of levying electricity duty thereon. The appellant also filed other writ petitions involving similar issues. A Division Bench of the High Court dismissed the writ petitions. On appeal the matter was remitted to the High Court for disposal of the writ petitions afresh. The High Court again dismissed the writ petitions.

In the instant appeal by the Government Company, it was contended for the appellant that the questions were not correctly formulated by the High Court and actual essence of the dispute could not be covered.

The court formulated the question 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".

Allowing the appeal, the Court

HELD: Since the basic question has not been decided by the High Court, the impugned judgment is set

aside and the matter is remitted to it for fresh consideration of the question as formulated by this Court. In the meantime, the appellant is directed to pay the current dues, but there shall be no recovery of arrears relating to interest, if any. [Para 8] [446-B-C]

State of M.P. v. Birla Jute Manufacturing Company Ltd. **1995 (4) SCC 603 and** *Hindustan Copper Ltd. v. State of M.P. and Ors.* **2004 (12) SCC 408, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6725 of 2008.

From the final Judgment and Order dated 9.2.2005 of the High Court of Madhya Pradesh at Jabalpur in Misc. Petition Nos. 2821 of 1988 & 3827 of 1993 & Writ Petition No. 3103 of 1994.

G.E. Vahanvati, S.G., Nandini Sen and Deba Prasad Mukherjee for the Appellant.

S.K. Dubey, Vikas Upadhyay, Yogesh Tiwari, Nandita Dubey and B.S. Banthia for the Respondents.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the judgment of a Division Bench of the Madhya Pradesh High Court dismissing the writ petition and miscellaneous petitions filed by the appellant.

3. Factual position as projected by the appellant before the High Court is as follows:

The appellant is a Government Company. Its 'Malanjakhand Copper Mining & Ore Concentration Project' is situated in District Balaghat, where it is engaged in extraction of copper

ore, by open cast mining process. The appellant has described the process thus: After 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. 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. The small pieces/pebbles are then carried by a conveyor to the Concentrator Plant (situated at 5.5 km from the mine). 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. From the Large quantity of water is required for 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).

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, Secondary Crusher and Concentrator Plant. The processing (manufacturing) part of the activities are carried 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 2.5 KM to 10 KM and are registered separately as a 'Factory' under the provisions of Factories Act, 1948. The open pit mine (mining area) and the

A processing plants/machineries (Factory area) are all situated in a large tract of land taken on mining lease from the State Government.

The M.P. Electricity Duty Act, 1949 (in short 'the Act') B enacted by the State Legislature provides for levy of electricity duty (in short 'the duty') on sale or consumption of electrical energy. Section 3 of the Act provides that every distributor of electrical energy and every producer shall pay every month to the State Government at the prescribed time and in the C prescribed manner, a duty calculated at the rates specified (in the Table given below the Section) 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. Part-B of the Table prescribes the D rate of electricity duty on the electrical energy sold/supplied for consumption for different specified purposes, namely domestic, non-domestic & Commercial, industrial and non-industrial. Industrial purpose is further divided into four categories, one of which is 'for mines other than captive mines of a Cement E industry' (vide Energy 3). The term 'mine' is defined in the Explanation (b) to Section 3 of the Act, as 'a mine to which the Mines Act, 1952 applies and includes the premises or machinery situated in or adjacent to a mine and used for crushing, processing, treating and transporting the mineral'. Up F to 31.12.1987, the duty was 50 paise per unit; from 1.1.1988 to 31.5.1988, the duty was 60 paise per unit; from 1.6.1988 to 30.11.1988 the duty was 61 paise per unit; and from 1.12.1988, the duty was 75 paise per unit. During the pendency of the petition, the Table has been substituted providing for electricity G duty, as a percentage of the electricity tariff. At present, the electricity duty for 'mines other than captive mines of cement industry' is 40% of the electricity tariff. Given below in the form of a comparative Table, the different rates of duty for different types of industries, culled out from Part 'B' of the Table in H Section 3 of the Act:

The M.P. Electricity Duty Act, 1949 (for short 'the Act') enacted by the State Legislature provides for levy of electricity duty (for short 'the duty') on sale or consumption of electrical energy. Section 3 of the Act provides that 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 given below the Section) 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. Part- B of the Table prescribes the rate of electricity duty on the electrical energy sold/supplied for consumption for different specified purposes, namely domestic, non-domestic & Commercial, industrial and non- industrial. Industrial purpose is further divided into four categories, one of which is 'for mines other than captive mines of a Cement industry' (vide Energy 3). The term 'mine' is defined in the Explanation (b) to Section 3 of the Act, as 'a mine to which the Mines Act, 1952 applies and includes the premises or machinery situated in or adjacent to a mine and used for crushing, processing, treating and transporting the mineral'. Up to 31.12.1987, the duty was 50 paise per unit; from 1.1.1988 to 31.5.1988, the duty was 60 paise per unit; from 1.6.1988 to 30.11.1988 the duty was 61 paise per unit; and from 1.12.1988, the duty was 75 paise per unit. During the pendency of the petition, the Table has been substituted providing for electricity duty, as a percentage of the electricity tariff. At present, the electricity duty for 'mines other than captive mines of cement industry' is 40% of the electricity tariff. We give below in the form of a comparative Table, the different rates of duty for different types of industries, called out from Part 'B' of the 'Table in Section 3 of the Act:

Sl. No.	Industry	Period To 1.1.88	1.1.88 to 31.5.88	1.6.88 to 31.11.88	From 1.12.88	Present Rate (% of Electricity Tariff)
(i)	For mines other than captive mines of a cement industry	50 p.	60p.	61p.	75p.	40%
(ii)	For cement industries including its captive mines	10p.	12p.	13p.	18p.	10.5%
(iii)	For industries receiving electricity at low tension tariff	4p.	3p.	4p.	4p.	4% (out of 75NP) 3.5% (excess of 75NP)
(iv)	For other	5p.	8p.	9p.	12p.	8%
(v)	For non-Industrial purposes	15p.	18p.	19p.	19p.	15%

Appellant's mine to which the Mines Act, 1952 applies, as well as the processing plant which have been registered as 'factory' have been subjected to a uniform duty under the entry relating to 'mines other than captive mines of cement industry' in the Table contained in Section 3 of the Act.

The appellant states that the Act as it originally stood, subjected all factories whether they were independent, or associated with mines, to the same rate of duty. The Act was amended by Amending Act No. 21 of 1978. After such amendment, the Table Under Section 3 prescribed the 'duty' at the rate of 2 paise per unit in regard to factories. In regard to consumers for trade, commerce and business purposes, the rate of duty was 12 paise per unit. Thus, the Act No. 21 of 1978 prescribed a lower rate of duty for factories when compared to commercial establishments. The Act was again amended by Amending Act No. 21 of 1986 drastically changing the rate of duty, as also the classification. It prescribed a lower rate of duty for non-domestic and commercial purposes at the rate of 15 parse per unit, when compared to certain classes of industries. It classified Factories into four kinds of industries, for levy of different rates of duty, namely, (i) mines other than captive mines of cement industries, (ii) Cement industries including its captive mines, (iii) industries receiving electricity at the low tension tariff, and (iv) other industries. An extended definition of the word 'mine' was also added.

The appellant is aggrieved by the said extended 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. The appellant contends that the extended definition of 'mine' in Explanation (b) contained in the Table under Section 3 results in dissimilar treatment to similar subjects, by prescribing different rates for different factories. It was contended that the definition has the effect of categorizing factories registered under the Factories Act 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. It was also submitted that classification of factories into two categories based on their proximity or otherwise to a mine is unreasonable and irrational having no connection with the

A object sought to be achieved by the Act. The nature of sale, supply and consumption of electrical energy to both classes of factories is in all respects similar and there is no reasonable justification to prescribe a higher rate of duty to factories adjacent to a mine by including them under the extended B definition of 'mine' in the absence of a further definition of the expression 'adjacent to the mines' is vague and ambiguous leading to discriminatory treatment by the Authorities implementing the Act and, therefore, invalid. Lastly, it was contended that its processing plant, that is, the Primary Crusher, C the Secondary Crusher, the Ball Mill, the Concentrator Plant, the Tailing Pumps, the Intake well and the water treatment plant is not situated 'adjacent' to its mine and therefore could not be treated as 'mine' for the purpose of levy of electricity duty.

Feeling aggrieved by the extended definition of 'mine' in D Explanation (b) to Section 3 of the Act and feeling aggrieved by the inclusion of its 'Processing factory' within the 'mine' for purposes of levy of electricity duty, the appellant filed the writ petition on 19.7.1988 before the High Court for the following reliefs:

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(a) to declare the provisions of Section 3 of the M.P. Electricity Duty Act, 1949, that is the entry in the Table (Part B), relating to 'mines other than captive mines of cement industry' and the Explanation (b) defining 'mine' as unconstitutional.

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(b) as a consequence, to direct the respondents to treat the petitioner's processing unit (Primary Crusher, the Secondary Crusher, the Ball Mill, the Concentrator Plant, the Tailing Pumps, the Intake Well and the Water Treatment Plant), as not included under the definition of 'mine' but included in the G category of 'non-domestic and commercial establishments' for purposes of imposition of electricity duty at the lower rate prescribed as 12 paise/15 paise per unit based on its consumption; and

H (c) to direct the refund of the excess duty collected.

Another writ petition i.e. M.P. No.3827 of 1993 was filed. This petition reiterated the grounds raised in M.P. No. 2821 of 1988. It was filed seeking the following reliefs, as a demand was issued by claiming Rs.78,58,877/- towards electricity duty in respect of electricity consumed by it:

(i) to declare that the provisions of M.P. Electricity Duty (Amendment)Act, 1986 in so far as it defines 'mine' so as to include the factories in the mines is *ultra vires* Articles 14 and 19 of the Constitution.

(ii) to quash the demand notice dated 30.11.1992 demanding Rs.78,58,877/- as arrears of electricity duty

(iii) a direction to respondents to treat the factories of the appellant as 'other industries' classified under Part B of the Table under Section 3 of the Act and accordingly charge electricity duty at the rate of 12 paise per unit.

As a revenue recovery notice was issued under Section 146 of the M.P. Land Revenue Code demanding payment of Rs.78,58,877/- as arrears of electricity duty, without considering the representation given by it in regard to the earlier demand dated 30.11.1992, writ petition WP 3103 of 1994 was filed seeking the following reliefs:

(i) to declare the provisions of the M.P. Electricity Duty (Amendment) Act, 1986 in so far as it defines 'mine' so as to include factories in the 'mines' as ultra vires Articles 14 and 19 of the Constitution of India.

(ii) to quash the demand notice issued under the M.P. Land Revenue Code.

(iii) to direct the respondents to treat the factory of the appellants as 'other industries' as classified in the Table under Section 3 of the Act and charge electricity duty at the rate of 12 paise per unit.

A (iv) to declare that the plants of the appellants are not liable to pay duty the rate applicable to 'mines'.

It is to be noted that earlier a Division Bench of the High Court by a common order dated 8.10.1997 dismissed the writ petitions filed by the appellant relying on a decision of this Court B in *State of M.P. v. Birla Jute Manufacturing Company Ltd.* (1995 (4) SCC 603). The said judgment was set aside by this Court in *Hindustan Copper Ltd. v. State of M.P. and Ors.* (2004 (12) SCC 408) and the matter was remitted to the High Court.

C According to the High Court following questions arose for consideration:

"(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 D 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 E 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 F adjacent 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 G practiced discrimination."

The High Court answered the questions by holding that the writ petitions were without merit.

H 4. In support of the appeal, learned counsel for the

appellant submitted that the real issues were not considered by the High Court and the questions formulated for determination did not cover the actual issues and disputes involved.

5. Learned counsel for the respondents on the other hand submitted that the basic issues were formulated by the High Court for determination.

6. 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. The Explanation defines 'mines' as follows:

> ""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 a mine and used for crushing, processing, treating or transporting the mineral."

7. It was submitted that the entry relating to mines refers to processing, treating or transporting the mineral. According to 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 the points 3 and 4 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

A Explanation to Part B of the Act applies even though manufacturing process is involved to bring it into existence".

8. Since this basic question has not been decided by the B High Court, we set aside the impugned judgment and remit the matter to it for fresh consideration of the above question. The parties shall be permitted to place materials in support of their respective stands within a month from today. Since the matter is pending since long it would be appropriate for the High Court to dispose of the matter early, preferably within four months C from the date of receipt of this order. In the meantime, the appellant is directed to pay the current dues, but there shall be no recovery of arrears relating to interest, if any. The appeal is allowed.

D R.P. Appeal allowed.