

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 4TH DAY OF AUGUST 2015/13TH SRAVANA, 1937

WP(C).No. 19614 of 2007 (I)

PETITIONER(S) :

- 1. M/S.KAVERI CHEMICALS (PVT) LTD.,
THIRUMOOLAPURAM, THIRUVALLA, PATHANAMTHITTA DISTRICT,
REPRESENTED BY ITS MANAGING DIRECTOR,
MR.ABRAHAM MATHEWS.**
- 2. M.AMEENAMMAL,
'MANJU', KMC XXIV/101 (KC VII/448), OLAYIL PALACE WARD,
THEVALLY P.O., KOLLAM.**
- 3. MRS.REHIYANETH,
K.K. BUILDING SUPPLIERS, OACHIRA P.O,
KOLLAM DISTRICT.**

BY ADV. SRI.JOBI JOSE KONDODY

RESPONDENT(S) :

- 1. UNION OF INDIA,
REPRESENTED BY ITS SECRETARY,
MINISTRY OF STEELS AND MINES (DEPARTMENT OF MINES),
NEW DELHI.**
- 2. THE DIRECTOR,
MINING AND GEOLOGY DEPARTMENT, PATTOM, PALACE P.O,
KESAVADASAPURAM, THIRUVANANTHAPURAM.**
- 3. THE GEOLOGIST,
MINING AND GEOLOGY DISTRICT OFFICE, 'KESAVANIKETHAN',
ASRAMAM, KOLLAM, KOLLAM DISTRICT.**
- 4. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, INDUSTRIES DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.**

**R1 BY ADV. SRI.P.PARAMESWARAN NAIR, A.S.G
R2 TO R4 BY GOVERNMENT PLEADER SRI.S.JAMAL.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 04-08-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXHIBIT P1: TRUE COPY OF THE APPROVAL AND NO OBJECTION CERTIFICATE ISSUED BY THE MINISTRY OF MINES NEW DELHI DATED 13.07.1995 TO THE 1ST RESPONDENT.
- EXHIBIT P2: TRUE COPY OF THE GO GRANTING THE MINING LEAST TO THE 1ST PETITIONER TO MINE BAUXITE DATED 05.02.1996.
- EXHIBIT P3: TRUE COPY OF THE MINING LEASE ISSUED TO THE 2ND PETITIONER BY THE STATE GOVERNMENT DATED 25.11.1997.
- EXHIBIT P4: TRUE COPY OF THE MINING LEASE ISSUED TO THE 3RD PETITIONER BY THE STATE GOVERNMENT.
- EXHIBIT P5: TRUE COPY OF THE DEMAND NOTICE DATED 07.06.2004 ISSUED TO THE 1ST PETITIONER BY THE 2ND RESPONDENT.
- EXHIBIT P6: TRUE COPY OF THE DEMAND NOTICE DATED 06.05.2004 ISSUED BY THE 2ND RESPONDENT TO THE 2ND PETITIONER.
- EXHIBIT P7: TRUE COPY OF THE LETTER DATED 24.04.2004 ISSUED BY THE 3RD RESPONDENT TO THE 1ST PETITIONER DIRECTING THAT THE ROYALTY WAS ENHANCED WITH RETROSPECTIVE EFFECT.
- EXHIBIT P8: TRUE COPY OF THE NOTIFICATION PUBLISHED BY THE 1ST RESPONDENT DATED 12.09.2000.
- EXHIBIT P9: TRUE COPY OF THE REPRESENTATION FILED BY THE 1ST PETITIONER BEFORE THE 4TH RESPONDENT UNDER RULE 27(O) OF THE MINERAL CONCESSION RULES DATED 14.11.2005.
- EXHIBIT P10: TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE 1ST RESPONDENT IN W.P.(C).NO.7767 OF 2005 DATED 06.07.2006.
- EXHIBIT P11: TRUE COPY OF THE JUDGMENT DATED 13.02.2006 IN W.P.(C).NO.7767 OF 2005 OF THIS HONOURABLE COURT.
- EXHIBIT P12: TRUE COPY OF THE ORDER DATED 24.11.2006 BY THE 4TH RESPONDENT TO THE PETITIONER.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

K. VINOD CHANDRAN, J.

W.P.(C) No. 19614 of 2007 (I)

Dated this the 4th day of August, 2015

J U D G M E N T

The petitioners are before this Court claiming that the royalty on the mining of Bauxite, a major raw material for production of Aluminum Sulphate; the activity engaged in by the 1st petitioner has been revised retrospectively. The petitioners challenge the same and in an earlier writ petition conceded to the consideration of a statutory representation under Rule 27(o) of the Mineral Concession Rules, 1960. The petitioners also had a contention that there could be no retrospectivity of the enhancement of the rates.

2. Admittedly, the Central Government published a notification dated 12.9.2000 produced at Ext.P8, enhancing the royalty payable for Bauxite from Rs.41/- to 0.35% of London Metal Exchange Aluminum metal price chargeable on the contained Aluminum metal in the ore produced.

3. The specific contention of the petitioner is that the notification was intimated to the petitioner only on 12.03.2004. Subsequently, on 14.10.2004, the Central Government issued another notification bringing back the rate of royalty for Bauxite, as was in existence earlier and directed an enhanced royalty at the rate of 20% of the sale price ad valorem basis, for those dispatched for use, other than Alumina and Aluminum metal extraction and for export.

4. The first contention that there can be no retrospective demand made, is bad insofar as the notification itself being published by Central Government on 12.09.2000. Hence, till the said notification was amended by a later one, the royalty payable would be under that notification. A subsequent revision cannot be relied on to contend that the Government never intended to enhance the rate as per the impugned notification. The contention of retrospectivity is not on the ground of the notification

having imposed any enhancement for any period prior to the issuance of the notification. The contention is only with respect to the intimation being later, which cannot be addressed by this Court in a petition under Article 226 of the Constitution of India.

5. The relief sought for at the earlier instance is for disposal of an alleged statutory application under sub clause (o) of Rule 27 of the Mineral Concession Rules, 1960. The proviso is extracted hereunder.

“(o) in respect of any mineral which in relation to its use for certain purposes is classified as a major mineral and in relation to its use for other purposes as a minor mineral, the lessee who holds a lease for extraction of such mineral under these rules whether or not it is specified as a major mineral in the lease deed, shall not use or sell the mineral or deal with it in whatsoever manner or knowingly allow any one to use or sell the mineral or deal with it in whatsoever manner as a minor mineral;

Provided that if on an application made to it in this behalf by the lessee, the State Government is satisfied that having regard to the inferior quality of such mineral, it cannot be used for any of the purposes by reason of which use it can be called a major mineral or that there is no market for such mineral as a major mineral, the State Government may by order permit the lessee to dispose of the mineral in such quantity and in such manner as may be specified therein as a minor mineral;"

6. The representation filed is exhibited at Ext.P9. But for the mere assertion that there is no high grade Bauxite available in Kerala which is suitable for extracting Aluminum, nothing is produced to substantiate the said contention. Sub clause (o) of Rule 27 confers the authority on the State Government to permit marketing of a mineral as minor mineral if the conditions therein are satisfied. Only if such permission is granted, could there be an exemption from the duty notified. There is nothing even

indicative in the representation to arrive at such a finding by the State Government; much less any sustainable material.

In such circumstance, the writ petition is found to be devoid of merit and the same is dismissed.

Sd/-
K.VINOD CHANDRAN,
JUDGE