THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLR SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO.2682 OF 2016

ORDER: {Per the Hon'ble Sri Justice Ramesh Ranganathan}

The action of the second and third respondents in detaining polished granite slabs, being transported in vehicle bearing No.KA-39-9389, is questioned in this Writ Petition as being arbitrary and illegal.

The petitioner claims to be an agriculturist and a resident of K.Raju Palem Village, Martur Mandal, Prakasam District. It is his case that he purchased polished granite slabs worth Rs.1,17,000/- from local traders at Martur Village, Prakasam District and was transporting the said granite slabs for construction of a residential house for his occupation. During transportation of the goods from Martur to K.Raju Palem Village, the vehicle was intercepted by the third respondent at Martur, and the driver was directed to produce proof of payment of royalty on the raw material from which the polished granite slabs, under transportation, were manufactured. On the ground that the driver failed to produce the royalty slips, the third respondent is said to have demanded payment of penalty and, as penalty was not paid, the goods along with the vehicle were detained.

The letter dated 24.01.2016 addressed by the Assistant Director of Mines and Geology, Ongole to the Station House Officer, Martur records that the vehicle was carrying mineral without royalty paid transit form/transit pass, issued by the competent authority of Mines & Geology Department as required under Rule 34 of the A.P. Minor Mineral Concession Rules, 1966, as proof of payment of seigniorage fee/royalty; and, hence, penalty has to be paid under Rule 26 of the AP MMC Rules, 1966. The Station House Officer was requested to keep the vehicle, along with the goods, in safe custody. While the petitioner claimed that he was transporting 2463 square feet of polished granite slabs valued at Rs.47.50 ps per square feet, the respondents contended that the quantity being transported was far higher. As such this Court, by order dated 05.02.2016, directed Joint Verification to be made by officials of the Mines & Geology and Commercial Tax departments and, pursuant thereto, a Joint Inspection report dated 23.02.2016 has been submitted which also contains the signature of the petitioner. The Joint Inspector Report discloses that the total quantity of slabs being transported was 5969.56 square feet, and not 2463 square feet as claimed by the petitioner.

Sri P.Girish Kumar, learned counsel for the petitioner, would submit that the petitioner is ready and willing to pay tax on the value of the goods determined pursuant to the joint inspection. Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes, would submit that, if the petitioner pays tax at the prescribed rate on the entire quantity of 5969.56 square feet, the second respondent would release the goods forthwith.

Rule 34 of the A.P. Minor and Mineral Concession Rules, 1966, as referred to in the proceedings of the Assistant Director of Mines & Geology dated 24.01.2016, has no application as it only prohibits minor minerals being dispatched by a manufacturer without a valid permit being issued by the Assistant Director or an officer authorised by him. It is not in dispute that the goods in transit were finished goods i.e., polished granite slabs and not minor minerals. Learned Government Pleader for Mines & Geology would submit that, even if Rule 34 is held not to be applicable, Rule 26(3)(ii) enables the respondents to impose penalty for failure of any person, in charge of a processed mineral, to produce documentary proof in token of having paid mineral revenue thereupon. Sri P.Girish Kumar, learned counsel for the respondents, on the other hand, would place reliance on the judgment of this Court in **Siva Sai Granites, Guntur v. Government of Andhra Pradesh** (judgment in W.P.No.27094 of 2013 dated 19.09.2013) to submit that the respondents cannot seize finished granite slabs.

Rule 26 of the A.P. Minor and Minerals Concession Rules, 1966 prescribes the penalty for unauthorised quarrying. Under Sub Rule (1) thereof, if any person carries on quarrying operations or transports minor minerals in contravention of the Rules, he is liable to pay, as penalty, such enhanced seigniorage fee, together with the assessments, as may be as imposed by an Officer nominated by the Director of Mines and Geology. Rule 26(1) is attracted only for transportation of minor minerals, and not finished products or processed mineral. Rule 26(2) stipulates that, whenever any person raises or transports minor minerals without any lawful authority, such minerals may be seized by an officer nominated by the Director of Mines and Geology in this behalf in addition to imposition of penalty under sub-rule (1). Rule 26(2) also relates only to transportation of minor minerals, and not finished goods or processed mineral.

Rule 26(3)(i) stipulates that, for the purpose of ascertaining the position of payment of mineral revenue due to the Government, or for any other purpose under these rules, the person authorised, under sub-rule (2), may (a) enter and inspect any premises; (b) survey and take measurements; (c) weigh, measure or take measurements of stocks of minerals; (d) examine any document, book, register or record in the possession or power of any person having the control of, or connected with, any mineral including processed mineral, and place marks of identification thereon and take extracts from or make copies of such document, book, register or record, and (e) order the production of any such document, book, register, record as is referred to in clause (d).

Rule 26(3)(i) confers power of entry and inspection, survey, to take measurements, weightment, examination of books, registers etc for the purpose of ascertaining payment of mineral revenue due to the Government or for any other purpose. Rule 26(3)(1) is applicable only to manufacturers who consume or use minor mineral for production of finished goods or processed mineral. As noted hereinabove while clause (d) of Rule 26(3)(1) confers power on the authorised person to examine any register in the possession of a person having control of, or connected with, any minor mineral including any processed mineral, clause (e), in addition, enables the authorised person to order production of such documents, books, registers, records as is referred to in clause (d).

The consequences, of failure to produce documentary proof of the documents referred to in clause (e) of Rule 26(3)(i), are stipulated in Rule 26 (3) (ii). While Rule 26(3)(ii) no doubt enables the authorities to levy five times the normal seigniorage fee as penalty, in addition to the seigniorage fee, if no documentary proof is produced in token of having paid the mineral revenue due to the Government by the person who used or consumed or is in possession of any mineral including processed mineral, the said sub-rule cannot be read in isolation, but should read in conjunction with clause (i) of Rule 26(3). Clause (ii) of Rule 26(3) provides for the consequences of failure to produce the document directed to be produced under Rule 26(3)(i) (e). It is evident, therefore, that Rule 26(3) in its entirety, including Rule 26 (3) (ii), applies only to a person who uses mineral for manufacturing finished goods or who processes the minor mineral, and not a person who purchases manufactured or finished goods from a manufacturer.

Reliance placed by the learned Government Pleader on the Division Bench judgment of this Court in **Udaya Bhanu Lime Village Industries Association and others v. Director of Mines and Geology, A.P., Hyderabad and others**[1] is misplaced. In **Udaya Bhanu Lime Village Industries Association**[1], the petitioners claimed that they had purchased products in bulk from lime quarries or from manufacturers of lime; and, in turn, had sold them in bulk. The Division Bench, after taking note of the earlier judgment of the Full Bench of this Court, in W.P.No.9776 of 1993 dated 25.02.1996 wherein the validity of Rule 26(3) of the A.P. Minor Mineral Concession Rules, 1966 was upheld, observed that the object of introducing Rule 26(3) was to ensure that the State is not deprived of the fee which was due to it; and it was the duty of the petitioner, who was dealing in lime, lime stone, waste lime powder, construction lime, cem powder etc., to satisfy the authorities as to from whom they had purchased the said products, and whether the sellers/manufacturers of the said products had already paid the mineral revenue due to the Government. The question whether the person who transports finished goods, having purchased them from a manufacturer who has used the minor minerals, is also required to submit documentary proof of having been paid mineral revenue, did not arise for consideration therein.

In **L.Venkateswara Rao v. Singareni Collieries Co., Ltd[2],** on which also reliance is placed by the learned Government Pleader, the contractors, who executed civil works entrusted to them by Singareni Collieries Co., Ltd, invoked the jurisdiction of this Court aggrieved by the action of Singareni Collieries Company Limited in insisting that the petitioners produce documentary evidence of having paid seignorage fees to the Government for the minor mineral used by them in execution of the work and, on their failure to do so, to have deducted seignorage fees from the bills payable to them. It is in this context that a Full Bench of this Court observed:-

> "………..Rule 26 authorises levy of penalty on any person who carries on quarrying operations or transports minor minerals in contravention of the rules, apart from seizure of the minor minerals raised or transported without any lawful authority. **Clause (ii) of sub-rule (3) of Rule 26, in particular, authorises the levy of penalty on any user or consumer of minor mineral or any person who is found in possession of minor mineral including a processed mineral and who is not in a position to satisfy the concerned authority that in respect of such mineral, the seigniorage fee had already been paid.** We will test the validity of this provision at a later stage. **In all these cases, the respondent company is treated as the user or consumer of the specified minor minerals and on the ground that it had not produced documentary proof in token of having paid mineral revenue due to the Government in respect of minerals used or consumed by it, it had been served with a demand notice to pay the penalty of five times the normal seigniorage fee. We are not impressed with the argument of the learned counsel for the petitioners that the user or consumer of the minor mineral mentioned in clause (ii) of sub-rule (3) of Rule 26 means no other than the lessee or the permit holder who has used or consumed minor mineral as the raw material and it does not include the respondent company. Obviously, in order to effectively check the unauthorised quarrying of minor minerals and to ensure that the State Government is not deprived of the mineral revenue, sub-rule (3) of Rule 26 has been inserted by G.O.Ms.No.243 Industries and Commerce Department, dated**

May 8, 1986. For achieving the said object, the State Government has inserted sub-rule (3) in Rule 26 imposing an obligation on any person, other than the lessee or the transporter, who uses or consumers or is in possession of any minor mineral, to produce the documentary evidence in token of having paid the mineral revenue due to the Government. There is no dispute that the respondent company is the consumer of minor minerals in question. If it does not satisfy the concerned authority that the seigniorage fee on the minor mineral consumed by it has already been paid, it can be subjected to levy of penalty upto five times the normal seigniorage fee, in addition to the seigniorage fee leviable under the rules. Therefore, in view of the statutory liability imposed on the respondent company and in order to protect its own interest from being subjected to penalty, it has to necessarily insist upon the petitioners who use minor minerals in the civil works entrusted to them, for the production of documentary proof in token of having paid the mineral revenue due to the Government in respect of the minor minerals used by them……" (emphasis supplied)

In **Siva Sai Granites** (judgment in W.P.No.27094 of 2013 dated 19.09.2013), reliance on which is placed on behalf of the petitioners, a learned Judge of this Court, relying on the earlier judgment in **Novel Granites v. State of Andhra Pradesh**[3]**,** observed that the State Government and its officials were free to inspect and check any premises of a factory/industry where the mineral is stored before it is processed/manufactured, and exercise the power of seizure of mineral before it is processed and converted into a finished product, if it is found that such mineral has not suffered royalty/dead rent; the action of the respondents in insisting on persons, transporting finished products of granite, to show proof of raw granite having suffered seignorage fee, and in seizing lorries in the absence of such proof, was illegal; and, at best, the respondents could check the premises of the manufacturer of the finished product of granite as mentioned in the judgment rendered in **Novel Granites**[2].

While a person who has purchased finished goods/processed mineral, and is transporting it for his/her own consumption, could possibly be asked to disclose the source from which he had purchased the finished product/processed mineral, he cannot be called upon to produce proof of payment of mineral revenue as what he is transporting is not the minor mineral on which royalty is required to be paid. Such disclosure of the source from which he had purchased the finished products would enable the authorities concerned, in turn, to ascertain from the person who sold the finished products to the petitioner, whether he had used minor minerals in production/manufacture of the finished product, and if so, to ascertain whether mineral revenue had been paid thereupon. The contention of the learned Government Pleader that the respondents are entitled to insist on documentary proof being furnished, of mineral revenue having been paid, by such a person, therefore necessitates rejection.

While Sri P.Girish Kumar, learned counsel for the respondents, would contend, relying on the proviso to Rule 51 of the Rules, that the respondents cannot demand even tax let alone penalty, Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes, would rely on Section 45(7)(a) of the Act to contend that the respondents have the power to levy penalty also. Ends of justice would be met if the third respondent is directed to accord permission for release of the goods, and the vehicle in which it is carried, immediately upon the petitioner furnishing satisfactory proof of the source from which he had bought these finished granite slabs. The second respondent shall, on the petitioner furnishing proof of payment of tax on the entire value of the goods i.e., 5,969.56 square feet, release the goods forthwith. It is made clear that, in case the second respondent were to initiate penalty proceedings, it is always open to the petitioner to raise all such contentions, in their defence, as is available to him in law.

The Writ Petition stands disposed of accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, J)

(M.SATYANARAYANA MURTHY, J)

24th February 2016

RRB

---

[1] **2002(2) ALD 375 (DB)**

[2] **1993(3) ALT 199 (F.B.)**

[3] **2010 (1) ALD 812**