THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION NO. 20803 of 2016

ORDER :

The present writ petition came to be filed seeking issuance of writ of mandamus declaring the action of the fourth respondent ie. Assistant Director of Mines and Geology, Guntur, insisting upon the petitioner for obtaining transit passes for transportation of finished products ie. Slabs and tiles from the petitioner unit as illegal and arbitrary.

The averments in the affidavit filed in support of the writ petition would show that after obtaining permission from all the concerned the petitioner used to purchase raw blocks from the licencees with valid dispatch permits issued by the office of the fourth respondent, process the raw blocks and sold the finished, cut and polished granite slabs and tiles. After completion of the same, the petitioner used to obtain necessary way bills from the Commercial Tax Department for transportation of the same. While things stood thus, a show-cause notice dated 23.09.2015 came to be issued stating that about 210409 square feet of polished granite slabs was being transported from July, 2014 to April, 2015 from the petitioner's unit without seigniorage charges. Hence, the petitioner was asked to pay seigniorage fee on the said quantity of slabs and tiles sold during the said period. Pursuant there to, the petitioner approached the office of the fourth respondent and produced the record showing that the person from whom he purchased raw blocks suffered payment of seigniorage fee and also the manner in which the said slabs were being cut and processed. Not being satisfied with the explanation given, the fourth respondent issued demand notice on 07.12.2015 directing the petitioner to pay the seigniorage fee on the finished products along with five times penalty. On receipt of the said demand, the petitioner paid a sum of Rs.3,45,282/- under protest. It is now averred that the fourth respondent is not permitting the petitioner to transport the finished products on the ground that the petitioner has to obtain transit passes under Andhra Pradesh Mineral Dealers Rules, 2000 (for short "the Rules, 2000) after payment of necessary fees. Challenging the action of the fourth respondent in insisting the petitioner to produce transit passes for transportation of the finished goods, the present writ petition came to be filed.

The fourth respondent filed counter denying the averments in the affidavit filed in support of the writ petition. It is stated that the petitioner is a dealer of Andhra Pradesh Mineral Dealer Rules, 2000 and the petitioner has to maintain correct and intelligible accounts of ores and minerals procured, processed and transported to different destinations in Form-E, but the petitioner is indulged in un-authorised transportation of their consignments of processed granite by submitting false data and thereby caused loss of revenue to the State Exchequer, while submitting correct accounts to the Commercial Tax Department as per their sale invoices. It is also stated that the petitioner misused the Form-E issued by the Assistant Director of Mines and Geology, Ongole, as such the petitioner is liable to pay seigniorage fee together with 5 times penalty.

Heard Smt. N.Shoba, learned counsel appearing for the petitioner and the Government Pleader for Mines and Geology.

Learned counsel for the petitioner mainly submits that in view of the judgment of this Court in ***Noval Granites Ltd. And others v. Government of A.P. and others***[1] absolutely there is no necessity for the petitioner to obtain any transit passes for transportation of the finished goods, but the same is opposed by the learned Government

Pleader for Mines and Geology contending that if really no such permission is needed there is absolutely no necessity for the petitioner to get himself registered under the Rules, 2000. In any event it is contended that the petitioner has to explain the source of purchase of the raw material before converting the raw material into the finished product and also at the time when the transportation of the raw material is intercepted. It is further contended that in view of Rule 26 (3) (ii) of the Andhra Pradesh Minor Mineral Concession Rules, 1966 (for short "the Rules, 1966), the petitioner has to pay the seigniorage fee along with five times penalty. The said argument which is advanced before the Court finds place in the counter.

Though it has been strenuously argued by the Government Pleader for Mines and Geology with regard to payment of seigniorage fee in respect of finished products also , the issue is no more *res integra* in view of the judgment of this Court in **Novel Granites (1 supra),** wherein, this Court after thorough examination of the provisions of the Rules and taking into consideration the various judgments of this Court and the Apex Court, held as under:

> " From the detailed discussion undertaken above, the conclusion is irresistible that the explanation to Rule 2 (h) by which the processed mineral and final products are treated as 'Minera' is ultra vires the rule making power of the State Government and the same is accordingly struck down. Consequently, the definition of 'Dealer' in Rule 2 (1) (d) shall be read down as to exclude the persons, who undertake manufacturing/processing activity using mineral as raw material. It is, however, made clear that the State Government and its officials authorized for this purpose shall be free to inspect and check any premises or 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 and/or dead rent."

From the above, it is clear that this Court has held that treating the processed mineral and final product as a mineral is ultra vires the rule making power of the State and the definition of dealer in Rule 2 (1) (d) has been read down so as to exclude the persons, who undertake manufacturing or processing activity using the mineral as raw material. However, this Court held that it is always open to the Government and its officials to inspect any premises or any factory where the mineral is stored before it is processed and exercise their 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 or dead rent.

It is not in dispute that this judgment has not been stayed by appellate Court or the Apex Court. No contra view is taken by any of the Courts is placed before this Court. Since the case on hand is identical to the case referred to above, the writ petition is allowed. No order as to costs.

Miscellaneous petitions, pending, if any, shall stand closed in the light of this final order. No costs.

JUSTICE C. PRAVEEN KUMAR

19.07.2016
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[1] (2010) 1 ALD 812