THE HON'BLE SRI JUSTICE A.V. SESHA SAI

WRIT PETITION No.16001 of 2012

ORDER:

The challenge in the present writ petition is to the action of the respondents in seizing the lorry bearing
No.GJ-1-CU-1117 along with finished product of Black granite slabs and demand of seigniorage fee on the finished product.

Heard Smt.N. Shobha, learned counsel for the petitioner and learned Government Pleader for Mines and Geology for respondents, apart from perusing the material available before this Court.

According to the petitioner, the petitioner is engaged in the business of selling the finished products of cut and polished black granite slabs purchased from cutting and polishing units and does not undertake purchase of any raw material nor it does the activity of processing and manufacture of polished tiles and it purchases black granite slabs which are ready for dispatch and sells them to the shops. It is further pleaded that in this process, petitioner purchased 2910 Sq. feet of finished products from various parties and it sold the same to M/s.Bhumi Granite and Marbles and when the same was under the process of transportation through Ravi Road Lines through lorry bearing No.GJ-1-CU-1117, accompanied by relevant documents, the said vehicle was intercepted at Narkatpalli on 25-05-2012 by the Assistant Director of Mines and Geology, Nalgonda and the Assistant Director of Mines and Geology detained the vehicle along with material and demanded to deposit seigniorage fee on the finished product of black granite slabs and handed over the same to the custody of the Station House Officer, Narkatpalli.

In the above background, challenging the action of the respondents in detaining the vehicle along with the material, the present writ petition came to be filed. This Court on
30-05-2012 passed an interim order, directing release of the vehicle together

with goods on deposit of Rs.25,000/- by the petitioner. A counter-affidavit is filed by the 3rd respondent, denying the allegations and averments made in the affidavit filed in support of the writ petition and in the direction of justifying the impugned action.

It is contended by the learned counsel for the petitioner that the action under challenge is highly illegal, arbitrary, unreasonable, violative of Articles 14 and 19(1)(g) of the Constitution of India and opposed to the very spirit and object of the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 and A.P. Minor Mineral Concession Rules, 1966 and without jurisdiction. It is also contended that the petitioner is dealing with sale of finished products and respondents have no jurisdiction to resort to impugned action; that the vehicle was accompanied by relevant documents such as credit invoice of the petitioner's shop, way bills issued by Commercial Taxes Department (AP VAR), bill issued by Ravi Road Lines; that the question of payment of seigniorage fee on finished product does not arise; that no show cause notice was given and the impugned action is contrary to the law laid down in the judgment in the case of ***Novel Granites Limited and others v. Government of A.P. and others*** reported in (2010 (1) ALD 812) and contrary to the circular issued by the Director of Mines and Geology, dated 30-10-2008.

On the contrary, it is contended by the learned Government Pleader for Mines and Geology that there is no illegality nor there is any procedural infirmity in the impugned action as such writ petition is not maintainable and the petitioner is not entitled for any relief from this Court under Article 226 of the Constitution of India. It is further submitted by learned Government Pleader that the impugned action is as per Rule 26(3)(ii) of the A.P. Minor Mineral Concession Rules, 1966. It is further submitted that since the petitioner failed to produce the documentary evidence of having paid seigniorage fee to the Government for the mineral under transportation, the impugned action is perfectly justified.

From the material available before this Court, it is very much evident that the only issue which requires to be examined in this case is whether the impugned action on the part of the respondents in detaining the vehicle along with goods is permissible as per law?

In this context it may be appropriate to refer to the judgment of this Court reported in ***Novel Granites Limited and others v. Government of A.P. and others***, wherein this Court at paragraph No.48, 49, 50 and 53 held as under:

> *"48. From the above perspective, if we examine the explanation to the definition of 'Mineral' in Rule 3(h), it is clear that the State Government far too expanded the scope of the definition of mineral by including in its definition processed mineral and final product emerging out of such process. While it is very much doubtful whether even the Parliament would have made any such rule without amending the definition of mineral in Section 3(a), in my view, surely the State Government is not competent to stretch the definition of 'Mineral' to the extreme extent of subjecting the processed and finished product derived from the mineral to the regulatory control by including the same in the definition of 'Mineral'.*
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> *49. The contention of the learned Special Government Pleader that the purpose of including the processed mineral within the definition of Rule 2(h) was to prevent illegal exploitation of mineral, is without any merit. The object of delegating rule making power under Section 23-C being confined to arrest of illicit mining, transport and storage, there is no necessity to stretch the regulatory arm beyond these stages and interfere with processing and manufacturing activities. In fact, to prevent illegal mining, there is no need to make rules covering such activities, because no lessee can operate quarry and extract mineral clandestinely, without the knowledge of the departmental officials. Similarly, the mineral extracted cannot be transported and stored without the lessee or the purchaser obtaining necessary permits. If there is effective check and control at these three stages, there is no necessity whatsoever for the State Government or its officers to exercise control over the processed or finished product to find out whether royalty and dead rent were paid in respect of the mineral before it is processed. In **Tej Bahadur Dube (3 supra)** the Supreme Court rejected a similar contention and set aside the conviction of the persons, who transported the sandalwood pieces without a transit permit.*
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> *50. The contention of the learned Special Government Pleader that the State Government merely explained what is implicit in the definition of 'Mineral' in Section 3(a) of the Act is difficult to be countenanced. There is nothing in the definition of 'Mineral' contained in the Act from which it can be inferred that the processed and finished product derived from mineral also falls in the said definition. There is therefore nothing implicit in the said definition in the Act, to justify the State Government to broaden the scope of the definition of 'Mineral' in purported exercise of its rule making power. As rightly pointed out by the learned counsel for the petitioners, a delegate cannot add to, amend or vary the definition contained in the parent Act.*
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> *… … …*

53. 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 'Mineral' is ultravires 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."

It is also important to note in this context that the Director of Mines and Geology, in terms of the above reported judgment issued circular bearing Memo No.20728/MD/90, dated 30-09-2013 and the said memo reads as under:

"The attention of all the Assistant Director of Mines and Geology/Deputy Director of Mines and Geology/Joint Director of Mines and Geology is invited to the subject and reference cited.

The Government Pleader for Ind. & Com. Hon'ble High Court has informed that the Hon'ble High Court passed the orders on the W.P.No.27094/2013 filed by M/s.Siva Sai Granites, Guntur stating that the Hon'ble High Court has pointed out that the issue regarding seizure of finished products has already been decided by the Hon'ble High Court in W.P.No.5871/01 and batch by judgment dated 13-10-2008.

As per the said judgment, the finished products of Granite cannot be seized and it is open to the authorities to inspect the source of the finished products in the factory where the raw material is processed to enquire as to whether mineral revenue has been paid on the raw material. The said judgment has been reported in 2010(1) ALD 812.

Further, the Government Pleader informed that the matter has to be communicated to all the officials concerned so that the finished products of granite is not seized during transportation.

Therefore, all the officials are hereby, directed to follow the judgment of Hon'ble High Court mentioned above, while dealing with finished granite products."

In view of the law laid down in the above referred judgment and in view of the instructions issued by the Director of Mines and Geology in the above referred circular memo, the impugned action cannot be sustained in the eye of law.

For the aforesaid reasons, the writ petition is allowed, declaring the action of respondents in seizing the lorry bearing No.GJ-1-CU-1117 along with finished product of Black granite slabs and demanding seigniorage fee on the finished product. Consequently, the amount of Rs.25,000/- (Rupees twenty five thousand) deposited by the petitioner herein in terms of the interim order, dated 30-05-2012 in the present writ petition shall be refunded to the petitioner within a period of three (3) months from the date of receipt of a copy of this order.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. There shall be no order as to costs.

A.V. SESHA SAI, J

January 27, 2016

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