IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 23897 of 2021

Jindal Stainless Limited ….. ***Petitioner***

Mr. B.Das, Adv.

Vs.

Union of India and others ….. ***Opposite Parties***

Mr. P.P.Mohanty, AGA

Mr.P.K.Parhi,DSGI.

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE G. SATAPATHY

ORDER

26.09.2022

Order No. 10.

This matter is taken up through hybrid mode.

2. Heard Mr. Biswajit Das, learned counsel for the petitioner and Mr. P.P.Mohanty, learned Addl. Government Advocate.

3. The petitioner has filed this writ petition to quash the order dated 11.12.2020 passed by opposite party No.2 and consequential demand letters dated 10.06.2022, 03.11.2011 and 15.02.2022 issued by opposite party No.3.

4. Mr. B. Das, learned counsel for the petitioner contended that admittedly the petitioner is liable to pay royalty in view of the provisions contained under Section-9 of the Mines & Minerals (Development and Regulation) Act, 1957 (for short "MMDR Act, 1957). It is contended that Rule-64-B of the Mineral Concession Rules, 1960 (for short "MCR 1960) deals with charging of royalty in case of minerals subjected to processing. Therefore, Section-9 of the MMDR Act, 1957 read with Rule-64-B of the MCR, 1960 empowers the authority to raise the demand of royalty in case of minerals subjected to processing and as and when such demand was raised, the same has been paid. But fact remains, on the basis of audit report, now demand has been made by the authority vide

letters 10.06.2022, 03.11.2011 and 15.02.2022 and, as such, the petitioner has been called upon to pay the differential royalty for removal of the minerals and also consumption thereof. As such, the petitioner is not liable to pay such demand. It is contended that the demand has been made without any application of mind and, therefore, he seeks for quashing of the same. It is further contended that the Revisional Authority, while deciding the question, has not taken into consideration the same in proper perspective, rather misinterpreted Rule-64-B stating that it is only applicable in case of Iron Ore and not in case of any other minerals. As such, looking at the provisions contained in Rule-64-B, which is with regard to charging of royalty in case of minerals subjected to processing, the demand order has been pased. It is also contended that once the petitioner paid the royalty as per the demand made by the authority, subsequently the differential royalty which has been demanded by the authority on the basis of audit report, cannot sustain in the eye of law and the same should be quashed. It is further contended that the authority has raised demand relying upon the judgment of the apex Court in the case of ***Mideast Integrated Steel Limited*** (supra), but the same is not applicable to the case of the petitioner in view of the fact that the said judgment is under challenge before the apex Court.

5. Mr. P.P. Mohanty, learned Addl. Government Advocate submits that in view of the judgment of the Apex Court in the case of ***State of Orissa and others Vrs. Steel Authority of India Limited*** reported in (1998) 6 SCC 476, the differential of royalty is payable by the petitioner. Therefore, the petitioner cannot escape from payment of differential royalty, as demanded by the

authority vide letters dated 10.06.2022, 03.11.2011 and 15.02.2022. It is further contended that the processing of ores amounts to consumption and, therefore, the lessee-manufacturer is liable to pay royalty on the entire mineral extracted by it and not only on the net quantity of mineral obtained after processing. Consequentially, the demand has been raised on the basis of total processing of minerals. Therefore, even if the petitioner paid the royalty, as and when demanded by the authority, but now it is liable to pay differential royalty, as has been demanded by the authority in the impugned letters and, as such, he supported the order dated 11.12.2020 passed by the Revisional Authority. Consequentially, he seeks for dismissal of the writ petition.

6. Having heard learned counsel for the parties and after going through on record, this Court finds that undisputedly the petitioner has consumed or extracted minerals, i.e., chromite ore for a period of twenty years after the lease was granted on 24.05.1999 and the same was given effect to from 04.01.2002. The quantity of fed to the COB plant was higher than the royalty recovered from concentrate. As there was substantial loss of government revenue, the same is payable on account of royalty. Accordingly, the DDM, being the competent authority, calculated the loss of royalty by taking the factors of input minerals fed into the beneficiation plant and output minerals recovered there from at prevailing rate of ad valorem royalty declared by the IBM in the issue of monthly statistics of mineral production and taking into consideration the same, passed the order impugned raising the demand as differential royalty. But fact remains, as has been stated by learned counsel for the petitioner, because of audit observation, the

differential royalty has been charged. On perusal of the order impugned, it appears that the revisional authority has committed gross error apparent on the face of the record stating that so far as applicability of Rule-64-B of the Rules is concerned, the same itself is only applicable to iron ores and not in case of any other minerals, is itself an outcome of non-application of mind.

7. For better appreciation, Rule-64-B, is extracted hereunder:-

> *"64-B. **Charging of royalty in case of minerals subjected to processing** – (1) in case processing of run-of-mine is carried out within the leased area, then, royalty shall be chargeable on the processed mineral removed from the leased area.*
>
> *(2) In case run-of-mine mineral is removed from the leased area to a processing plant which is located outside the leased area, then, royalty shall be chargeable on the unprocessed run-of-mine mineral and not on the processed product."*

On perusal of the aforementioned rules, it is made clear that the said rule has got universal application of all minerals and, as such, it is a charging provisions to Section-9 where royalty are demanded from the lessee. Apart from the same, the additional demand of royalty has been raised by the State relying upon the judgments of the apex Court ***State of Orissa and others Vrs. Steel Authority of India Limited*** reported in (1998) 6 SCC 476 and ***Mideast Integrated Steel Limited v. State of Odisha***, 2015 SCC OnLine Ori, 189. But fact remains, while making such demand, the opposite parties have not taken into consideration the applicability of the judgments of the apex Court in Civil Appeal No.3693-94 of 1998, where the apex Court observed that removal from the seam in the mine and extracting the same through the pit's mouth to the surface satisfy the requirement of Section 9 in order to give rise to liability for royalty. As it appears, the petitioner does not dispute that it is not liable to pay the royalty and, as such, it has paid the royalty. But only dispute rests on the payment of differential royalty, as has been demanded by the authority. As such, demand has been raised on the basis of prevailing Rules, 1998 and after amendment such Rule is no more in existence. Therefore, the demand so raised by the authority, cannot be sustained in the eye of law.

8. In the above premises, this Court is of the considered view that the Revisional Authority has not taken into consideration the above aspect in proper perspective and, thereby, the order so passed by the revisional authority on 11.12.2020 cannot sustain in the eye of law and the same is liable to be quashed and is hereby quashed. The matter is remitted back to the revisional authority to hear the same afresh as per the materials available on record and pass appropriate order by giving due opportunity of hearing to all the parties.

9. With the aforesaid observation and direction, the writ petition, stands disposed of.

Issue urgent certified copy as per rules.

(DR. B.R. SARANGI)
JUDGE

(G. SATAPATHY)
JUDGE

Ashok/Kishore