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GUMAN SINGH

v.

STATE OF RAJASTHAN AND ORS.

SEPTEMBER 6, 1996

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[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Rajasthan Mineral Concession Rules, 1986 :

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Rules 38, 18(1)(b) and Schedule-I—Assessment and determination of the royalty due from an assessee—Assessment of—Non-furnishing of returns by assessee—Circular indicating uniform policy in the best judgment assessment—Minimum weight assessed at 150% of similar vehicles carrying the maximum safe weight—Random check of weighment—Assessment made on that basis—Held : The Circular does not run counter to the statutory rules—Assessment is different from prosecution for contravention—Uniform procedure as laid down in the Circular followed just fair and reasonable—No interference called for.

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C)
No. 16869 of 1996.

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From the Judgment and Order dated 29.1.96 of the Rajasthan High Court in D.B.C.S.A. No. 864 of 1994.

Mahabir Singh for the Petitioner.

The following Order of the Court was delivered :

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This special leave petition arises from the judgment and order of the High Court of Rajasthan, Jaipur Bench made on February 29, 1996 in C.A. No. 864/94. Admittedly, the petitioner is a lessee winnover in respect of the miner mineral viz. Sand Stone at Benthali, District Tonk. Since he had not submitted proper returns as per the Rajasthan Mineral Concession Rules, 1986 (for short, the 'Rules'), the Assessing Authority made best judgment assessment under Rule 38(3) of the Rules. When it was challenged, the High Court upheld the same. It has been found that the assessment and determination of the royalty due from an assessee during the assessment made by the Assessing Authority after the return in respect of that year was filed by the petitioner as required under terms and conditions of the

lease. The petitioner was asked to produce the evidence; on his failure to do so, a random check was conducted by the Assessing Authority on December 24, 1985 and it was found that one of the trucks going to Kota contained approximately 12 metric tonnes of minerals. On the basis of the said weighment and in the absence of any slips of the actual weighment carried in the vehicle, the Assessing Authority came to the conclusion and made the assessment in terms of the circular issued by the Government on October 17, 1987.

Shri Mahabir Singh, learned counsel appearing for the petitioner, contended that the circular cannot run counter to Rules. In the Rules, assessment has to be made as per Rule 38 read with Rule 18(1)(b) and Schedule I. The assessment of more than 100% cannot be assessed by the authority. We find no force in the contention.

It is true that the Schedule regulates the payment at the rates of the royalty required to be paid. The circular indicates only uniform policy in the best judgment assessment. It is provided in clause 2(a) that the minerals from the mines carried for local use and the roads or the significant ways are not bitumens, the minimum weight should be assessed at 150% of similar vehicles carrying the maximum safe weight. Normally, the assessing officials can make assessment on the base of the circular for more weight under the power vested in them. As it would indicate, it does not prescribe rate of payment of the royalty, but prescribed the mode of assessment of the total quantum of the minerals carried by the licensee under the Rules; but they failed to produce slips of the actual weighment from the mouth of the mines. On his failure to do so, an opportunity has been given; the weighment check was made at random. On the basis thereof, he assessed 150% as indicated in the circular. The method can be adopted only when the person has avoided payment of the royalty and avoidance of correct and true weighment of the minerals winover and carried away by the licensee. Under these circumstances, we do not think that the circular runs counter to the statutory rules. It is true that the penalty by way of punishment has been provided in the Rules for contravention. The assessment is different from the prosecution for contravention. In making the assessment, in particular when best judgment assessment is sought to be made, uniform instructions have been given in the above Circular by the Government to make the best judgment assessment so that there may not be any difference in the procedure to be adopted by different assessing authorities and

A uniform basis provided is always just, fair and reasonable so that the Assessing Authority will have a uniform and satisfied principle or procedure in that behalf.

Accordingly, we do not find any illegality in the order passed by the High Court warranting interference.

B The special leave petition is accordingly dismissed.

G.N.

Petition dismissed.