

SMT SHOBA.N
ADVOCATE

2-2-647/77-A,
SRINIVASANAGAR COLONY
NEAR AYYAPPA SWAMY TEMPLE
BAGH AMBERPET
HYDERABAD - 13

Ph.No.040 2742 5156

DT.10-03-2010

LEGAL OPINION ASKED AS REGARDS TO CIRCULAR OF DMG

Ref: Circular in Memo.No.20728/MD/90, dt.09-02-2009 issued by
Govt. of Andhra Pradesh

**

I have gone through the circular, it is true that they enlarged a definition of rule 2(h) of Mineral Dealers Rules, 2000 is struck down as ultra-vires Rule making power as follows;

"processed mineral and final products cannot be treated as mineral as defined in Section 3(a) - State Government not justified in broadening scope of definition of 'mineral' in purported exercise of its rule making power - A delegate cannot add to, amend or vary definition contained in parent Act - Dealers Rules 2000 by which processed mineral and final products treated as 'mineral', struck down as being ultra vires the rule making power of State Government - Consequently, definition of 'dealer' in Rule 2(1)(d) to be read down as to exclude persons, who undertake manufacturing / processing activity using mineral as raw material - (A.P. Mineral Dealers Rules 2000, Rules 2(1)(h), 2(1)(d) (as amended by G.O.Ms.No.330, dt.14-06-2001); A.P. Minor Mineral Concession Rules, 1966, Rule 26".

Mines and Minerals (Development & Regulation) Act, 1957 – Sections 23-C, 2 and 3(a) – Rule making power of State under Section 23-C – Scope and parameters of – Three stages, namely, excavation, transport and storage, which alone find mention in Section 23-C, confine area of rule making power only to control illicit mining, storage and transportation of mineral – Confining rule making power to pre-processed stage of mineral, in conformity with definition of mineral in Section 3(a) – State Government is demanded of power to make law covering areas, which are governed by Act – [Constitution of India, Seventh Schedule List I Entry 54, List II Entry 23]

A.P. Mineral Dealers Rules 2000 – Rules 2(l)(h) Explanation, 2(1)(d) (as amended by G.O.Ms.No.330, dt.14-06-2001) – Legality and validity of – Explanation to Rule 2(h) by which processed mineral and final products treated as 'mineral', struck down as being ultra vires the rule making power of State Government – Consequently, definition of 'dealer in Rule 2(l) (d) to be read down as to exclude persons, who undertake manufacturing / processing activity using mineral as raw material – See, Mines and Minerals (Development and Regulation) Act, 1957, Sections 3(a) and 23-C.

However when you are holding mineral in possession for manufacture of final product you will have to produce the documentary evidence as regards to your purchase of mineral either from lessee or from the dealer. Any purchase of Mineral shall be accompanied by the waybill issued. Way bill is proof of payment of seigniorage fee by the lessee. Full-bench of Hon'ble High Court in L. Venkateswara Rao Vs. Singareni Collieries 1993(3) ALT 199, held as follows;

"A.P. Minor Mineral Concession Rules, 1966, Rule 26(3)(ii) – Introduced by G.O.Ms.No.243, Industries and Commerce Department,

dt.08-05-1986 – Not ultra vires the powers of State Government – Not arbitrary or unreasonable – Contractors (petitioners) entrusted with civil works by Singareni Collieries Co., Ltd., (respondent company) are bound by terms of agreements entered into by them with the company – As per clause 7 of the agreements, contractors are bound to produce documentary proof in token of payment of seigniorage fee to the State Government in respect of minor minerals used by them in the execution of works entrusted to them – Levy and collection of seigniorage fee from user or consumer – Valid – Deduction of seigniorage fee by respondent company in respect of minor minerals consumed by it from bills payable to contractors for payment to State Government in the absence of production of proof of payment of such fee by them as per clause 7 of agreement in order to avoid levy of penalty under the Statute – Valid – Production of bill by user or consumer from a lessee of quarry or authorized dealer be considered to be sufficient proof – Penalty of five times the normal seigniorage fee not unreasonable – Power under Rule 26(3)(ii) be exercised within a reasonable period which depends upon the facts and circumstances of each case – Seigniorage fee is payable by lessee or permit holder or transporter or user or consumer or by any person in possession of minor mineral –Submission of Government Pleader on behalf of State Government that the Rule is intended to be used only against bulk users or consumers and not against petty or small consumers recorded".

Hence interms of this exercise the power of inspection and enquiry. As and when inspected as regards to use of minor mineral in your manufacture you will have to produce the evidence. Full bench has held that even the purchase bill is documentary evidence.

Now the rules are amended vide G.O.Ms.No.104, dt.15-05-2009 in terms of the said G.O. the penalty clause is only one time penalty in addition to one time seigniorage fee. And it is not 5 times penalty.


It is true that in terms of Rule 26(3)(iii) any person who used or consumed or in position of any mineral including the processed mineral shall be liable to produce the documentary evidence of purchase of minor minerals. It means to say that your processed mineral is manufactured utilizing minor minerals the evidence asked for is only to the extent of your purchaser have holding / utilization minor mineral.

The conclusion of Judgment as regards to A.P. Mineral Dealers Rule 2000 is that you need not obtain a dealers licence for sale of processed manufactured products utilizing minor mineral. The state Government has preferred appeal against the said judgment. Judgment is not suspended Writ Appeal is posted for hearing which is pending on the file of High Court of Andhra Pradesh (Division Bench)

CONCLUSION:

Hence, you will have to produce the documentary evidence to the extent of Minor Minerals utilized in your process.

Judgment applies to existing and pending appeals also.



SMT SHOBA.N
ADVOCATE