

BEFORE THE HON'BLE DIRECTOR OF MINES & GEOLOGY :
GOVERNMENT OF ANDHRA PRADESH : AT HYDERABAD

APPEAL NO. _____ OF 2009

Between:

M/s. Mehta & Modi Homes, rep. by its
Managing Partner, Sri Soham Modi
5-4-187/3 & 4, II Floor, Soham Mansion,
M.G. Road, Secunderabad – 500 003

..Petitioner

AND

The Assistant Director of Mines & Geology,
Hyderabad

..Respondent

APPEAL FILED UNDER 35 OF A.P.M.M.C. RULES, 1966 THE DEMAND NOTICE
NO.6892/CVS/2008, DT.24-01-2009

1. It is submitted that M/s. Mehta & Modi Ventures which is the Sister concern of M/s. Modi Properties & Investment Private Limited is the developer of Project Silver Oak Bungalows, Phase I & II. Demand notice is issued in the name of M/s. Modi Properties & Investment Private Limited is not involved in the development of Project. And it is the M/s. Mehta & Modi Homes which had undertaken the work of development of Project Silver Oak Bungalows Phase I & II. Hence M/s. Mehta & Modi Homes had submitted explanation to the Show Cause Notice and the present appeal is preferred by M/s. Mehta & Modi Homes questioning Demand Notice.
2. The venture developing of construction of Duplex Bungalows by name Silver Oak Bungalows in Sy.No.35 to 39 & 291 of Cherlapally Village, Hyderabad is taken up by the Petitioner. Assistant Director of Mines and Geology Vigilance had visited the site along with his staff and made casual inquiries. No measurements were taken. All the queries were answered and details also were furnished. Petitioner was in receipt of Notice No.12/CCW/RR/07 dt.19-07-2007 issued by Assistant Director of Mines and Geology (Vigilance) to furnish the details of Minor Minerals i.e., Metal, Sand and Cement Bricks used in the construction work along with documentary evidence of having paid the seigniorage fee.
 - i. Metal 9935 M³
 - ii. River Sand 9255 M³
 - iii. Cement Bricks 2.5 lakh nos.

3. On receipt of notice reply is furnished in detail that entire Project Construction is RCC work Project undertaken by using ready-mix concrete from the registered reputed firms such as__

1. RMC. Ready Mix (India) Pvt. Ltd.,
2. Grasim Industries Limited.
3. IJM Concrete Products Pvt. Ltd.,

A statement is also furnished for 1601 M³ Ready Mix Concrete consumed in the project supplied by the above companies. The proof of their supply which has bills and delivery challans also were enclosed, and that the companies have information that the material supplied has suffered seigniorage fee. There is no utilization of Bricks in the Project solid cement blocks are prepared by the Petitioner themselves with their own machinery said Cement Blocks as used for construction. The total quantity of sand used upto the said date was only 3775 M³ and the way bills purchased of Sand were also enclosed. Likewise a small quantity of metal is used for columns, chajjas and lentils, the total consumption of 20 mm metal for the said purpose was 950 M³ way bills were enclosed to that effect there was nothing further which was utilized by the Petitioner. Petitioner also has informed that they will provide detail calculation alongwith structural plan and working of drawing to estimate the bill of quantities.

4. In spite of production of entire documents utilized in the construction as instructed to the Vigilance Officer Show Cause Notice is issued by the Assistant Director of Mines and Geology in Show Cause Notice No.6892/CVS/2007, dt.30-08-2008, why action should not be taken for collection of seigniorage fee with 5 times penalty amounting to Rs.33,38,052/- Under Rule 26(3)(ii) of A.P. Minor Mineral Concession Rules, 1966 on the following material;

S. No	Name of the Mineral	Differential Quantity	Normal S. Fee	5 times penalty	Total
1	Metal	7681.00 M ³	3,45,645	17,28,225	20,73,870
2	River Sand	5852.68 M ³	2,10,697	10,53,485	12,64,182
			5,56,342	27,81,710	33,38,052

5. On receipt of show cause notice a detailed explanation is furnished that all details are furnished to the Vigilance Officer and nothing is traced by Assistant Director of Mines

and Geology from the records, purchase of said minerals beyond those produced by the company and when once the bills, way bills, purchase orders and delivery challans are produced they are sufficient proof of payment of seigniorage fee. In case of any doubt it is the duty of the Department to clarify with the said companies by issuing a notice to them as all the minerals supplied by them has suffered payment of seigniorage fee.

6. While reiterating the submissions, along with explanation detailed estimate of the total quantity of mineral consumed at site for the all works done, working drawings and structural plans for a typical bungalow for verification. It was also mentioned in the explanation that they are willing to provide any other details if called for.
7. The total estimate of concrete of RMC is 1600 M³ and at the time of notice by the Vigilance about 80% of work alone was completed therefore the quantity completed 1600 M³ which very well corresponds to this Ready Mix Concrete purchased. The estimate of site mix concrete for entire project is 1954 M³ and of which 80% work alone was completed (i.e., 1563 M³). The quantity of metal consumed for 1563 M³ site mix concrete is 950 M³ (80% of CC) which corresponds to the details of 950 M³ purchased. The details of which are provided. Sand consumed to be produced, 1954 M³ of Site Mix Concrete is 782 M³ (40% of CC). As per the estimate the total consumption of sand for entire project of bricks work and plastering of 2,171 M³ and at the time of notice 80% of the brick work, plastering, was completed corresponding to consumption of 1,737 M³ of sand. Therefore the total consumption of sand for brick work and plastering, site mix concrete and road work is $1737 + 782 + 78 = 2597$ M³ which corresponds to the sand purchased. The details of which were submitted. Petitioner requested for personal hearing to explain the details of purchase.
8. In spite of furnishing of detailed explanation on 10-11-2008 along with evidences without considering the explanation Demand Notice No. 6892/CVS/2008 dated 24.01.2009 received on 12.02.2009 is issued by Assistant Director of Mines and Geology the said demand is assailed in the Appeal for the following among other grounds;

G R O U N D S O F A P P E A L

- A. The Demand Notice issued by the Asst. Director of Mines & Geology is arbitrary, illegal and contrary to probabilities of case.

- B. The Demand raised by Assistant Director of Mines and Geology is total non application of mind and independent exercise. The arrival as to what is the basis for issuance of is not made known to the Petitioner. Assistant Director of Mines and Geology should have conducted independent inspection take measurements assess the quantities and only then can issue notice, without calling for the estimate record of the petitioner no assessment can be made by the Asst. Director of Mines & Geology.
- C. Assistant Director of Mines and Geology has erred in issuing the demand notice without their making an estimate of independent quantities of Minor Mineral consumed. There cannot be an estimate on a general assumption based on some unrelated project in Visakhapatnam. Without taking any measurements at site no notice is sustainable on a casual enquiry at the site. Estimate is prepared by the petitioner, if the same is considered there is nothing that need to be paid by the petitioner. The estimate prepared is by an authorized engineer.
- D. Assistant Director of Mines and Geology ought to have issued notices to the companies mentioned by the petitioner who have supplied, ready mix without issuing notices to the supplier, and issuance of notice to the petitioner is unsustainable. The assumed estimate of Assistant Director of Mines and Geology is under an assumption that entire construction is completed. But when the site was inspected only part of construction was completed without ascertaining the percentage of work completed. A notice on a completed construction is liable to be struck down. The Department shall take measurement at site verify the records in terms of the measurement made and then only there be any assessment of evasion, which is the proper method.
- E. Assistant Director of Mines and Geology cannot brush aside the documentary evidence furnished by the petitioner the Demand Notice issued with the same quantities as in the show cause notice.
- F. The Assistant Director of Mines and Geology ought to have considered the detailed calculations, estimates and plans produced by the petitioner. There is no mention of consideration or discarding it in the Demand Notice. Assistant Director of Mines and Geology ought to have issued the basis of arrival of issuance of a notice at least when petitioner has requested.

- G. Assistant Director of Mines and Geology failed to consider that petitioner is a construction company and is not indulged in buying and selling of minerals to attract the provisions of Rule 26(3)(ii) of A.P. Minor Mineral Concession Rules, 1966. Petitioner cannot produce any proof of payment of seigniorage fee for minerals not consumed.
- H. As long as the estimate submitted by the petitioner is not said by the Department as incorrect and furnish its estimation as to its arrival neither a show cause notice can be issued nor a demand can be raised. Hence Assistant Director of Mines and Geology is bound to consider the estimate furnished by the petitioner as long as they do not estimate the same by conducting inspection.
- I. When time and again petitioner has been representing that it has utilized only ready mix supplied by the companies duty is to cost upon the Assistant Director of Mines and Geology to your notice to said companies as regards to payment of seigniorage fee. This cannot be a notice on the petitioner.
- J. Seigniorage fee shall be paid at detrimental point of time at the pits mouth, when mineral is removed and transported and not time and again. Petitioner is not a lessee, and it has maintained its record and has been submitting purchase and payments to the Department.
- K. The full bench of Hon'ble High Court in L. Venkateswara Rao Vs. Singareni Collieries Ltd. reported in 1993(3) ALT Page No.199 was held as follows;

“As to the nature of proof to be produced by an user on consumer in token of having paid the seigniorage fee due to the government, no hard and fast rule can be laid. Normally, if a user or consumer produces a genuine bill from a lessee of a quarry who raised the minor minerals or an authorized dealer of the minor minerals, in token of having purchased the minerals from such lessee or authorized dealer, it shall be considered to be sufficient proof of payment of seigniorage fee due to the Government”

Other grounds if any will be urged at the time of hearing.

In view of the facts and circumstances of the case it is prayed that this Hon'ble Appellate Authority may be pleased to call for the records in Demand Notice No.6892/CVS/2008 dt.24-01-2009 of the Assistant Director of Mines and Geology and set aside the same in the interest of justice.

It is further prayed that the Hon'ble Appellate Authority may be pleased to stay all further proceedings in pursuant to Demand Notice No.6892/CVS/2008, dt.24-01-2009 of the Assistant Director of Mines and Geology pending disposal of the above Appeal in the interest of justice.

Hyderabad

Dt.26-03-2009

Deponent

Counsel for the Petitioner

FORM – J
(Should be submitted in triplicate)
Application for Appeal / Revision Under Rule 35 or 35-A
(See Rule 35-C)

1. Name & Address of Individual(s), : M/s. Mehta & Modi Homes
Firm or Company, applying. Managing Partner Sri Soham Modi
5-4-187/3 & 4, II Floor, Soham Mansion,
M.G. Road, Secunderabad – 500 003
2. Profession of Individual(s) : Business.
Firm or Company.
3. Number and Date of Order of : DEMAND Notice No.6892/CVS/2008
the ADMG/DDM&G/DMG. dt.24-01-2009 of ADMG Hyderabad
against which the Appeal/
Revision application is filed
(Copy attached)
4. Minor Mineral or Minor Minerals : Minor Mineral
for which the Revision Application
is filed.
5. Details of the area in respect of :
which the Revision Application
is filed. (A map or plan of the area (s)
to be attached.
6. Whether application fee has been : Challan No. , dt.
Deposited in the manner
Prescribed in Sub-Rule 35-B read
With Rule 35-C(i) if so, the Treasury
Receipt in original should be attached.
7. Whether the appeal/revision : Yes
Application has been filed within
Time specified in Rule 35/35-A,
If not, the reason for not
Presenting it within the prescribed
Limits as provided for in rules.
8. Name & complete address of the :
Party / parties impleaded, under
Rule 35-C of A.P.M.M.C. Rules, 1966.
9. Number of copies of petitions/ : Triplicate
Applications attached (Rule 35-C(4)
A.P.M.M.C. Rules, 1966).
10. Grounds of Appeal / Revision. : Enclosed in Separate Sheet

11. If the appeal / revision appl. : Vakalath.
has been filed by the holder or
Power of Attorney, the Power of
Attorney, the Power of Attorney to
be attached.

HYDERABAD.

Dt.26-03-2009

SIGNATURE OF THE APPLICANT