

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
(Through Video Conferencing)**

Appeal No. 03/2022/EZ

In the matter of:

Dayanidhi Ventures Pvt. Ltd.
Through its Director Sri Sandeep Goel,
S/o Balkishan Goel,
3A, Block-A, Subham Park View,
RGB College, Guwahati,
District-Kamrup (M), Assam,
Pin – 781025,

...Appellant(s)

Versus

1. Meghalaya State Pollution Control Board,
Through Chairman,
ARDEN, Lumpynggad, Shillong,
Meghalaya – 793014,
2. State of Meghalaya,
Through Secretary to the Govt. of Meghalaya,
Forest and Environment Department,
Secretariat Building, Additional Secretariat,
Room No. 101, Shillong, Meghalaya,
Pin – 793001,
3. Deputy Commissioner,
Ri-bhoi District, Nongph, Meghalaya,
Pin – 793102,

...Respondent(s)

Date of hearing: 22.02.2022

**CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER**

For Appellant(s) : Mr. B.P. Todi, Sr. Advocate a/w
Mr. Ankukmani Nath, Advocate

ORDER

1. Heard Mr. B. P. Todi, learned Senior Counsel assisted by Mr. Ankumani Nath, learned Counsel for the Appellant.

2. This Appeal has been filed by the Appellant, seeking quashing of the demand notice dated 13.10.2021 (Annexure-7 page no. 30 of the paper book) to the Appeal, whereby a sum of Rs. 1,74,75,00/- (Rupees One Crore Seventy Four Lakhs Seventy Five Thousand only) has been imposed upon the Appellant as Environmental Compensation by the Meghalaya State Pollution Control Board.
3. The Appellant is also seeking quashing of the seizure notice dated 20.01.2022.
4. A perusal of the impugned order dated 13.10.2021, shows that a physical inspection was conducted by a Committee on the site of the Appellant's stone crusher unit on 02.03.2020 wherein the unit of the Appellant was found operational and that no requisite permission for operating the same was provided to the inspecting team at the site.
5. Thereafter, on 24.11.2020 a show cause notice was issued to the Appellant's unit, (Annexure-4 page no. 23 of the paper book) to the Appeal, to which he submitted reply on 31.08.2021 (Annexure-5 page no. 24 of the paper book) to the Appeal, denying the allegations made in the show cause notice and stating that the stone crusher unit of the Appellant was granted Consent to Establish on 19.06.2020 (Annexure-2 page no. 19 of the paper book) to the Appeal, and Consent to Operate was granted on 21.09.2020 (Annexure-3 page no.21 of the paper book) to the Appeal.
6. The learned Senior Counsel, therefore, submits that in the face of the documents i.e., the Consent to Establish and Consent to Operate, the stone crushing unit of the Appellant cannot be said to be illegally operating its stone crushing business.

7. However, when we put a question to the learned Senior Counsel as to whether the unit has the requisite Environmental Clearance, the learned Senior Counsel submitted that Environmental Clearance under the Environment Impact Assessment Notification, 2006, as amended from time to time, is not required for a stone crushing unit.
8. The learned Senior Counsel also stated that the unit of the Appellant was not engaged in the business of mining of stone but was purchasing stone from the open market. However, no documents in the form of receipts have been filed to confirm these statements that the unit of the Appellant was purchasing stone from the open market. This fact is also not averred in the reply to the show cause notice dated 24.11.2020 nor is it averred in any paragraphs of the memo of Appeal.
9. The question, therefore, would be where is this stone being processed from for purposes of crushing and whether if at all what the Appellant is saying is correct then whether the seller of the stone is in possession of Environmental Clearance to carry out legitimate and legal mining activity as per the EIA Notification 2006. If not, the Appellant would render himself an abettor of the illegal mining activities of the so called seller of the stone and thereby invite the rigours of the Public Money Laundering Act, 2002.
10. Section 3 of the Prevention of Money-Laundering Act, 2002, reads as under:-

“3. Offence of money-laundering- Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected [proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming] it is untainted property shall be guilty of offence of money-laundering.”

11. Section 4 of the Act which prescribes the punishment for money-laundering, reads as under:-

“4. Punishment for money-laundering- Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Provided that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words “which may extend to seven years”, the words “which may extend to ten years” had been substituted.”

12. Section 43 of the Prevention of Money-Laundering Act, 2002, reads as under:-

“43. Special Courts.— (1) The Central Government, in consultation with the Chief Justice of the High Court, shall, for trial of offence punishable under section 4, by notification, designate one or more Courts of Session as Special Court or Special Courts or such area or areas or for such case or class or group of cases as may be specified in the notification.

(2) While trying an offence under this Act, a Special Court shall also try an offence, other than an offence referred to in subsection (1), with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

13. Section 44 of the Prevention of Money-Laundering Act, 2002, reads as under:-

44. Offences triable by Special Courts.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),— 1 [(a) an offence punishable under section 4 and any scheduled offence connected to the offence under that section shall be triable by the Special Court constituted for the area in which the offence has been committed: Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence; or]; (b) a Special Court may, 2 *** upon a complaint made by an authority authorised in this behalf under this Act take 3 [cognizance of offence under section 3, without the accused being committed to it for trial]; 4 [Provided that after conclusion of investigation, if no offence of money-laundering is made out requiring filing of such complaint, the said authority shall submit a closure report before the Special Court; or]

5 [(c) if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money-laundering under sub-clause (b), it shall, on an application by the authority authorised to file a complaint under this Act, commit the case relating to the scheduled offence to the Special Court and the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed. (d) a Special Court while trying the scheduled offence or the offence of money-laundering shall hold trial in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) as it applies to a trial before a Court of Session.]”

(2) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 (2 of 1974) and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to “Magistrate” in that section includes also a reference to a “Special Court” designated under section 43.

14. Paragraphs 25, 26 & 27 of the Schedule of the Prevention of Money-Laundering Act, 2002, read as under:-

PARAGRAPH 25

OFFENCES UNDER THE ENVIRONMENT PROTECTION ACT, 1986

(29 OF 1986)

<i>Section</i>	<i>Description of offence</i>
15 read with section 7	Penalty for discharging environmental pollutants, etc., in excess of prescribed standards.
15 read with section 8	Penalty for handling hazardous substances without complying with procedural safeguards.

PARAGRAPH 26

OFFENCES UNDER THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974 (6 OF

1974)

<i>Section</i>	<i>Description of offence</i>
41 (2)	Penalty for pollution of stream or well.
43	Penalty for contravention of provisions of section 24.

PARAGRAPH 27

OFFENCES UNDER THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981 (14

OF 1981)

<i>Section</i>	<i>Description of offence</i>
37	Failure to comply with the provisions for operating industrial plant.

15. A conjoint reading of Sections 3, 4 and Sections 43 and 44 of the Prevention of Money-Laundering Act, 2002 and paragraphs 25, 26 and 27 of the Schedule thereto would show that if air, water, ground and environment pollution is caused in an area, not only the person causing environmental pollution but any person indirectly or knowingly aiding or assisting such act would also be liable for causing illegal financial gain to such violator.
16. Since none of these factors have either been averred in the memo of Appeal or find mention in the impugned order of the Meghalaya State Pollution Control Board dated 24.11.2020 or find mention in the reply of the Appellant dated 31.08.2021 or in the impugned order dated 13.10.2021, we deem it appropriate that these points should be considered by the Meghalaya State Pollution Control Board for which the Appellant will have liberty to file his fresh reply to the show cause notice dated 24.11.2020 and the Meghalaya State Pollution Control Board shall thereafter examine the reply of the Appellant in its entirety, keeping in mind the points raised by us in this order.
17. We accordingly dispose of this Appeal and grant liberty to the Appellant to file fresh reply to the show cause notice dated 24.11.2020 within fifteen days. From the date of receipt of such reply from the Appellant, the Meghalaya State Pollution Control Board shall consider the same on merit, keeping in mind the observations made hereinabove, and pass appropriate order in accordance with law within a further one month.
18. There shall be no order as to costs.

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B. Amit Sthalekar, JM

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Saibal Dasgupta, EM

February 22, 2022
Appeal No.03/2022/EZ
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