

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS.4616-4617 OF 2009**

VASANT CHEMICALS LIMITED **....Appellant**

VERSUS

**THE MANAGING DIRECTOR, HYDERABAD
METROPOLITAN WATER SUPPLY AND
SEWERAGE BOARD AND OTHERS** **...Respondents**

With

CIVIL APPEAL NOS.4618-4619 OF 2009

VASANT CHEMICALS LIMITED **....Appellant**

VERSUS

**M. D., HYDERABAD METRO W.S. &
S. BOARD & OTHERS** **...Respondents**

J U D G M E N T

R. BANUMATHI, J.

These appeals arise out of the judgment dated 29.10.2003 passed in the Writ Petition Nos.4917 and 5044 of 2000 and order dated 29.12.2003 passed in review petition by the High Court of Andhra Pradesh at Hyderabad dismissing the writ petitions as well as the review petitions holding that the levy of sewerage cess levied on the appellant by the respondent-Board is in accordance with Section 55 of the Hyderabad Metropolitan Water Supply and

Sewerage Act, 1989 (HMWS&S Act) and Clause 16 of the agreement entered into between the appellant and the Board.

2. The facts giving rise to these appeals are that the appellant-M/s Vasant Chemicals Limited which is an amalgamation of three companies is engaged in the manufacture and export of dye intermediates and other organic chemicals in their units at Jeedimetla Industrial Estate, Ranga Reddy District, Hyderabad. The effluents of the appellant industry and other industries were not of acceptable standards to be let into the sewer line of the Board and required treatment and therefore, the industrial units in Jeedimetla Estate decided to establish the Common Effluent Treatment Plant (CETP). Hence, under the joint efforts of all the chemical units and other industries including the appellant, a company was formed namely M/s Jeedimetla Effluents Treatment Limited (JETL) in the year 1987 to get the effluents treated at their own cost to bring the quality of the effluents to an acceptable level. The appellant and the other industrial units made investment by way of shares in the said company towards its capital. According to the appellant, it has invested to the extent of more than 29% of the shares in JETL towards its equity.

3. After treating the effluents to sewer standards as prescribed under the Water (Prevention and Control of Pollution) Act, 1974 (*Water Act, 1974*) and the Environment (Protection) Act, 1986 (*Environment Act, 1986*) between 1988 and 1995, JETL was

discharging the treated waste water/effluents into the open drains/nalas in Jeedimetla Area. After discussion with Hyderabad Metropolitan Water Supply and Sewerage Board (HMWS&SB-the Board) and the Government of Andhra Pradesh and APPCB, a dedicated pipeline was laid from the premises of JETL to connect to the sewerage system of HMWS&SB which is located at a distance of about 10.38 kilometers at Balanagar at an estimated cost of Rs.346 lakhs. For the said dedicated pipeline, JETL paid an amount of Rs.75,00,000/- as its contribution and the balance amount was contributed by the Board and the Government of Andhra Pradesh. The pipeline became operational on 31.01.1998. As per the direction of APPCB, the industries in IDA Jeedimetla are discharging their industrial effluents to JETL, which in turn partially treat effluents and let into the dedicated pipeline connecting JETL and sewer line at Board's sewer at Kukatpalli, Balanagar and then carried to Sewerage Treatment Plant (STP) at Amberpet.

4. The appellant has obtained bulk water supply connection from the respondent-HMWS&S Board and the Board accorded sanction for supply of 36,200 gallons water per day @ Rs.12 per kilo litre to the appellant-Industry. An agreement was entered into by the appellant with the respondent-Board on 27.04.1995 stipulating the terms and conditions of supply of water and the payments required to be made in terms thereto. The agreement provides that HMWS&SB will supply water to the appellant industry

and water charges will be levied for the supply of water as per the agreement. Clause 16 of the agreement *inter alia* provided for payment of sewerage cess and that the appellant is liable to pay a sewerage cess in accordance with Section 55 of the HMWS&S Act. Clause 17 of the agreement obligates the appellant to avail the sewer facility provided by the HMWS&SB if the premises of the appellant is located at a distance of less than thirty-five meters from the sewer line of the HMWS&SB.

5. The appellant made representations between 1998 and February, 2000 stating that levy of sewerage cess was illegal and contrary to the provisions of HMWS&S Act as the appellant is not discharging its effluents into the sewerage system of the Board. According to the appellant, the Board insisted upon payment of the arrears and sought payment of the sewerage cess for the period January, 1998 to March, 2000 and sought certain amount towards water cess from 1st January, 1998 to February, 2000 *vide* two notices dated 25.01.2000. Aggrieved thereby, the appellant filed writ petitions in WP(C) No.4917/2000 and WP(C) No.5044/2000 challenging the notices levying of water cess and sewerage cess respectively. The writ petitions were dismissed by the High Court by the common judgment dated 29.10.2003 upholding the levy of sewerage cess by holding that such levy is in terms of Section 55 of HMWS&S Act. The High Court held that though the appellant's premises is not directly connected to the

sewer line of the Board, the industrial effluents of the appellant are being carried to JETL and after partial treatment at JETL, the same is let into the sewerage system of the Board. It was further observed that as per Section 55 of the HMWS&S Act, the occupier of the premises from where the sewerage or effluents are let into the sewer facility provided by the Board by any means, has to pay the sewerage cess irrespective of the fact that whether or not the area is served by sewerage system of the Board. The High Court pointed out that this statutory liability is incorporated in Clause 16 of the agreement as per which the appellant has to pay sewerage cess along with water cess @ 20% of the water charges. The High Court dismissed the writ petitions *vide* judgement dated 29.10.2003 holding that the demand notices are not arbitrary and that do not suffer from any legal infirmities.

6. The appellant filed review petitions being Review MP No.33154/2003 in WP(C) No.4917/2000 and Review MP No.33158/2003 in WP(C) No.5044/2000 before the High Court which came to be dismissed *vide* order dated 29.12.2003 on the ground that the judgment dated 29.10.2003 does not suffer from any error apparent on the face of the record.

7. Mr. V. Giri, learned senior counsel for the appellant submitted that since the premises of the appellant industry is situated in the area not served by the sewage system of the Board and in terms of proviso to Section 55 of the HMWS&S Act, no sewerage cess is

leviable. It was contended that since the appellant is covered under proviso to Section 55 of the HMWS&S Act, the statutory liability cannot be imposed on the appellant on the basis of Clause 16 of the agreement. Without prejudice to the above contentions, it was urged that under the agreement dated 31.08.2000 between the JETL and the Board, various charges are levied on JETL which are in effect sewerage cess and therefore, there cannot be double levy for the same service/same taxable event which is impermissible under the law. It was contended that the various documents produced and the contentions raised by the parties in the review petitions were not considered by the High Court and the High Court erred in dismissing the review petitions.

8. Reiterating the above submissions, on behalf of JETL, Mr. Guru Krishna Kumar, learned senior counsel submitted that under the agreement dated 31.08.2000, five different kinds of charges are levied on JETL by the Board namely:- (i) capital contribution (clause 4); (ii) sewerage connection charges (clause 4); (iii) charges towards maintenance of sewer line (clause 28); (iv) sewerage maintenance and sewerage treatment charges (clause 28); and (v) sewerage surcharge for effluents above a certain level (clause 29) and those charges though not christened as sewerage cess, they are in effect sewerage cess in terms of Section 55 of HMWS&S Act. It was further contended that various charges levied on JETL by virtue of the agreement dated 31.08.2000 correspond to

the sewerage cess under Section 55 of HMWS&S Act and levy of sewerage cess on the appellant for the same act of discharging of the same sewage, would therefore amount to a double levy on the industrial units.

9. On behalf of the respondent Board, learned senior counsel Mr. Gourab Banerji submitted that the appellant industry, obtaining bulk water supply from the Board and discharging sewage into the sewer line of the Board, is liable to pay sewerage cess under Section 55 of the HMWS&S Act. It was submitted that since after partial treatment at JETL, the effluents are let into the sewer line of the Board through which the effluents are carried to Sewerage Treatment Plant (STP) at Amberpet for further treatment, the appellant is connected to the sewerage system of the Board and is liable to pay sewerage cess under Section 55 of the HMWS&S Act. It was contended that Clause 16 of the agreement incorporates the levy under Section 55 of the HMWS&S Act and the Rules and Regulations thereunder and as per the terms of the agreement also, the appellants are liable to pay sewerage cess. Insofar as the plea of double taxation, it was submitted that the JETL was not a party to the writ petitions filed by the appellant and the subsequent writ petition in WP(C) No.17381/2004 filed by the JETL *inter alia* challenging the sewerage surcharge under various agreements was already dismissed for default by the High Court.

10. We have carefully considered the submissions and perused the impugned judgment and materials on record. The following points arise for determination in these appeals:-

- (i) Whether the appellant is right in contending that the appellant unit is not connected to the sewerage system of the Board and so the levy of sewerage cess on the appellant under Section 55 of HMWS&S Act is not sustainable?
- (ii) Whether the appellant is right in contending that since the appellant's unit is not served by a sewerage system of the Board, as per proviso to Section 55 of HMWS&S Act, no sewerage cess can be levied?
- (iii) Whether the charges collected from JETL under the agreement dated 31.08.2000 is in effect, sewerage cess in terms of Section 55 of HMWS&S Act, thereby amounting to double levy of sewerage cess/charge for the same service/same taxable amount?

Appellant's statutory liability to pay sewerage cess and Re: contention: Appellant is covered by the proviso to Section 55 of the Act

11. Section 55 of the HMWS&S Act contemplates levy of sewerage cess on the occupier of the premises from where the sewage or industrial effluents, as the case may be, are let into the sewer facility provided by the Board by any means whatsoever irrespective of fact whether or not the area is served by sewerage system of the Board. Section 55 of HMWS&S Act reads as under:-

“55. Charges towards the use of sewerage cess---

Every occupier of both domestic and non-domestic premises shall pay to the Board at the rate not exceeding thirty five percent of the bill charging for the water consumed or at such rate as may be prescribed by rules, to defray the capital cost of sewerage and sewage treatment works undertaken by the Board and the operation and maintenance of the sewerage system from time to time:

Provided that no such charges shall be levied in any premises situated in the areas which are not served by the sewerage system of the Board.”

12. Admittedly, the appellant industry has obtained sanction for bulk water supply connection from the Board for the supply of 36,200 gallons of water per day @ Rs.12/- per kilo litre for the manufacture of dye and other chemicals. In terms of the sanction of water supply to the appellant, an agreement was entered into with the respondent-Board on 27.04.1995 stipulating the conditions and the payments required to be made in terms thereto. The agreement provides for payment of sewerage cess in accordance with Section 55 of the HMWS&S Act. Clause 16 of the agreement mandates the Board to collect sewerage cess from the appellant-industry in terms of Section 55 of the HMWS&S Act. Clause 17 of the agreement makes it obligatory on the part of the appellant to avail the facility of the Board if it is located within thirty-five meters from the Board’s sewerage system. Clauses 16 and 17 read as under:-

“Clause 16. In accordance with the provisions of Section 55 of the HMWSSA Act, 1989, the consumer shall pay

sewerage cess along with water charges at the rate of 20% of the water charges or such other rates as may be prescribed and determined by the Board from time to time.

Clause 17. It shall be obligatory on the part of the consumer to avail the sewers facility provided by the Board if the premises of the consumers are located at a distance less than 35 metres away from the Board sewer line to any point of the boundary of the consumer premises.”

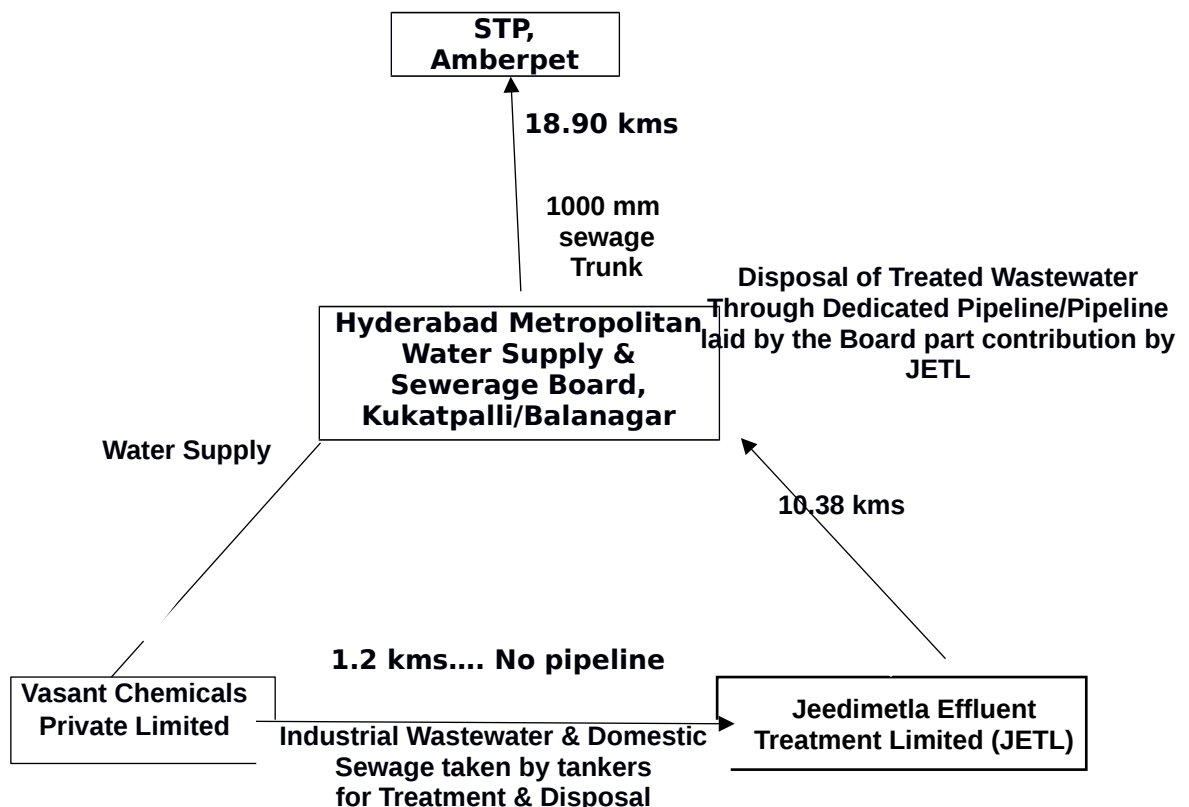
13. Appellant industry and other industrial units are producing chemicals, bulk pharmaceuticals and dye intermediates causing heavy pollution. In order to comply with the provisions of Water Act, 1974, the industrial effluents discharged by the appellant industry and others are to be treated otherwise the industrial units will be violating various laws governing the treatment and disposal of sewage including protection of environment. The issue pertaining to pollution, discharge of effluents in the State of Andhra Pradesh including the industrial region of Jeedimetla was the subject matter of a proceeding before this Hon’ble Court being Writ Petition (C) No.1056 of 1990, in the matter of *Indian Council for Enviro/legal Action and Others*. In the said proceedings, a joint action plan was proposed by the CPCB, New Delhi and APPCB and a common effluent treatment plant was ordered to be set up. As the industries were sending their untreated effluents into the sewer, directions were given that the A.P. Pollution Control Board would not accept the effluents unless these conform to the standards prescribed by the Board *vide Indian Council for Enviro Legal*

Action and others v. Union of India and others, (1998) 9 SCC 580. Similar problem arose in the case of ***World Saviors v. Union of India and others*** (1998) 9 SCC 247. In order to comply with the provisions of the Water Act, 1974 and the Environment Act, 1986 and in order to carry the industrial sewage to the Board's sewer trunk, a dedicated pipeline to the extent of 10.38 kilo meters from JETL to Kukatpally and Sanathnagar Main Line was laid. The cost of laying the pipeline is stated to be Rs.346 lakhs out of which contribution of the JETL was Rs.75 lakhs and the balance amount was contributed by the Board and the Government of Andhra Pradesh. This dedicated pipeline became operational from 31.01.1998. The pipeline from JETL to Balanagar is a dedicated pipeline used exclusively by the JETL. As per the agreement entered into with the Board, the management of the JETL pays the amount to the Board towards surcharge for discharging partially treated effluents from JETL into Board sewer and also for maintenance of the sewerage system. After the industrial effluents are partly treated at JETL, the industrial effluents are let into the dedicated pipeline belonging to the Board system at Balanagar and from there, the sewage is let into 1000 mm diameter sewage trunk main belonging to the Board through which the effluents are carried to Sewerage Treatment Plant (STP) at Amberpet.

14. "A 'trunk sewer' is one which bears the same relation to an entire sewer system that the trunk of a tree bears to its branches,

or the main stream of a river bears to its tributaries. It is sometimes called a 'trunk line sewer,' an 'intercepting sewer,' or a 'trunk line intercepting sewer'. "Ref: Environmental & Pollution laws in India by Justice T. S. Doabia (2nd Edition-2010) published by LexisNexis Butterworths Wadhwa, Volume 1 at page no.1054."

Graphic description of the sewerage connection is as under:-



15. As per Sec the following essential

ingredients are to be satisfied for levy of sewerage cess:-

1. There has to be an occupier domestic or non-domestic premise;
2. There should be consumption of water by such occupier;
3. The rate to be charged would be up to 35% of bill for water consumed or at such rate as may be prescribed by rules; and
4. The amount collected is towards:- (a) defraying capital cost of sewerage and sewerage treatment works

undertaken by the Board; and (b) for operation and maintenance of sewerage system from time to time.

16. The appellant being an occupier of a “non-domestic premise” having bulk water supply connection from the Board and “a consumer of water” and eventually discharging sewage effluents into the sewer line of the Board, the essential ingredients of Section 55 are thus satisfied. The levy of sewage cess by the respondent is a statutory levy which the appellant is liable to pay under Section 55 of HMWS&S Act. Clause 16 of the agreement provides for payment of sewerage cess in terms of Section 55 of the Act which *inter alia* stipulates that the appellant is required to pay sewerage cess in accordance with Section 55 of the Act. The sewerage cess of 35% levied by the Board for carrying the sewage of the acceptable quality through its transmission system is thus both statutory and in terms of the agreement between the appellant and JETL.

17. Contention of the appellant is that it is not liable to pay sewerage cess to the Board as it is not letting out the sewage effluents to the sewage system of the Board but is carrying the effluents in the tanker, lorries and letting it out in the effluent treatment of JETL and thus is not connected with the sewage line of the Board. Mr. V. Giri, learned senior counsel for the appellant contended that the appellant industry is not connected with sewerage system of the Board and therefore, levy of sewerage

cess under Section 55 of the HMWS&S Act is not sustainable. Drawing our attention to the finding of the High Court *“that there is no sewerage line of HMWS&SB connecting the appellant’s premises to the sewerage system of HMWS&SB.....”*, the learned senior counsel for the appellant submitted that since there is no sewer or drainage line connecting the appellant industry, proviso to Section 55 of the HMWS&S Act applies and no sewerage cess is leviable. It was further submitted that even assuming that the dedicated pipeline from JETL for carrying its treated effluents to the sewerage system of the Board at Balanagar is a *“sewerage system of the Board”* which is more than two kilo meters from the premises of the appellant industry, JETL is separately paying the surcharge and the appellant is not connected with the sewerage system and therefore, there cannot be levy of sewerage cess on the appellant under Section 55 of the HMWS&S Act.

18. As pointed out earlier, admittedly, the appellant has obtained bulk water supply connection from the Board for supply of 36,200 gallons of water per day @ Rs.12/- per kilo litre. It is also admitted that the appellant is discharging its industrial effluents into the Board sewer line. The appellant being an occupier of the premises who is consuming water and discharging sewage into the sewerage system of the Board, in terms of Section 55 of the HMWS&S Act, is liable to pay sewerage cess. Though the pipeline from JETL to Kukutpally/Balanagar is stated to be the dedicated pipeline, as

pointed out earlier, this was laid at the cost of Rs.346 lakhs, out of which, JETL has paid only Rs.75 lakhs. The rest of the cost was borne by the Board and the Government of Andhra Pradesh. It is pertinent to note that Clause 4 of the agreement dated 31.01.1998 between JETL and the Board categorically stipulates that the dedicated pipeline from JETL to Kukutpally/Balanagar belongs to the Board.

19. As per Section 54 of the Act, sewage which is likely to damage or interfere with the free maintenance of the sewerage system of the Board cannot be passed into the Board sewer and sewage treatment works. In terms of Section 54 of HMWS&S Act, Clause 19 is also incorporated in the agreement dated 27.04.1995 between the appellant industry and HMWS&SB. As per Clause 19 of the agreement, no effluents shall be discharged into the Board's sewerage system unless such effluents are treated in accordance with the provisions of the Water Act, 1974. Clause 19 reads as under:-

“19. No effluent shall be discharged into the Board sewer unless such effluent is treated in accordance with the provisions of Water (Prevention and Control of Pollution) Act, 1974 relating to discharge and disposal of industrial effluents and other objectionable effluents. Further, the treatment shall also conform to the IS specification laid down from time to time for disposal of effluent into the domestic sewer of the Board.”

Admittedly, JETL is neither a consumer of bulk water supply nor generating any sewage/industrial effluents of its own. The effluents of the appellant industry are not of acceptable standards for transmission system of the Board. Before the effluents of the appellant industry are to be let into the sewer line of the Board, the appellant industry has to get the effluents treated at its own cost to bring the quality of the effluents to an acceptable level. After getting partial treatment from JETL, the effluents are let into the said dedicated pipeline which belongs to the Board at Kukutpally/Balanagar and then they are let into 1000 mm diameter sewage trunk belonging to the Board through which the effluents are carried to Sewerage Treatment Plant (STP) at Amberpet measuring a distance of 18.90 kilometers. The length of the pipeline from JETL to Amberpet is 29.28 kilometers. Though the appellant's unit is not directly connected with the Board sewer line, the industrial effluents of the appellant unit partially treated at JETL are ultimately let into the Board sewer line which is finally carried to STP at Amberpet. In the light of this admitted factual position, the appellant is liable to pay sewerage cess under Section 55 of the Act. Proviso to Section 55 of the Act contemplates that the sewerage cess shall not be levied on the occupier of the premises if such premises is stated to be in an area which is not served by the sewerage system of the Board. The proviso implies that the occupier of such premises cannot use the Board sewer by any

means whatsoever. Therefore, the contention of the appellant that it is not liable to pay sewerage cess to the Board as it is not directly letting out sewage effluents into the sewage line of the Board and that it is carrying its effluents in the tanker, lorries and letting out in the effluent treatment plant of JETL and thus not connected with the sewage system of the Board, in our view, is wholly untenable. Since the sewage of the appellant is ultimately let into the sewer line of the Board, the appellant cannot contend that it is not covered under Section 55 of the Act and that it is covered under proviso to Section 55 of the Act.

20. Placing reliance upon ***Ultra Tech Cement Ltd. v. State of Maharashtra and another***, (2011) 13 SCC 497, learned senior counsel for the appellant contended that when a particular cess is leviable under an enactment and the said enactment exempts a specific class of persons from paying the said cess, the State Government cannot make the lessee liable to pay the said cess on the ground that the agreement was entered into under a different enactment. Placing reliance upon paras (12) and (20) of the said judgment, it was contended that there is no sewer or drainage line connecting the appellant's units or any other industry in Jeedimetla Effluent Treatment Limited to the sewerage system of HMWS&SB and neither the appellant nor other industries discharge their sewage into the sewer line of the Board and, therefore, the appellant's unit is covered under proviso to Section 55 of the

HMWS&S Act. The learned senior counsel further contended that any fiscal extraction is required to be constructed strictly in accordance with the provisions of the charging section and even if a clause for such payment is incorporated into the agreement as the agreement is subject to the provision of the relevant charging section.

21. The above argument proceeds on the presumptive footing as if the appellant's unit is covered under proviso to Section 55 of the HMWS&S Act. Proviso to Section 55 of HMWS&S Act states that no charge would be levied in any premises situated outside the sewage system/not served by the sewerage system of the Board. It has to be seen whether the appellant is right in contending that the appellant industry is not connected with the sewerage line of the Board and that no sewage of the appellant is let into the sewerage system of the Board and therefore, the appellant is covered under proviso to Section 55 of HMWS&S Act.

22. In the process of letting out effluents, two things are involved namely - (i) the treatment of industrial effluents to bring down the contents of the effluents to an agreed specification on one part; and (ii) the transmission of those partially treated industrial effluents through the sewerage system of the Board. Parties have entered into various agreements and there are three sets of agreements which are as under:-

S. No.	Parties	Date of Agreement
1.	M/s. Vasant Chemicals Ltd. and HMWS&S Board	27.04.1995
2.	M/s. Vasant Chemicals Ltd. and Jeedimetla Effluent Treatment Ltd. (JETL)	22.01.1996
3.	Jeedimetla Effluent Treatment Ltd. (JETL) and HMWS&S Board	31.01.1998 and 31.08.2000

23. Let us now consider the effect of the agreement between the appellant and JETL on the statutory liability of the appellant under Section 55 of the Act. The agreement between the appellant and JETL for partial treatment of appellant's industrial effluents is the internal contractual agreement between JETL and the appellant. The appellant unit is to treat and process the industrial effluents and bring them down to permissible standard limits in accordance with the provisions of Water Act, 1974 and Environment Act, 1986 relating to discharge and disposal of industrial effluents and other objectionable effluents into sewers before discharging of the effluents into the Board sewer. The treated effluents should also have to conform to the IS specification laid down from time to time for disposal of effluent into the domestic sewer of the Board. To discharge their contractual obligation in bringing the industrial effluents to permissible standard limits, the appellant unit entered into an agreement dated 22.01.1996 with JETL engaging it to treat its industrial effluents in accordance with the environmental laws in force. The appellant instead of treating the effluents at its

premises at its own cost engaged JETL for treating its effluents. Thus, for its convenience, the appellant unit has entered into an agreement with JETL for treating its effluents and the charges paid by them to JETL are towards the treatment of effluents and bring it to permissible standards. Therefore, the function of JETL is that of an intermediary with whose assistance, the appellant is discharging its statutory obligation.

24. Admittedly, the appellant's industrial effluents are carried to JETL in closed tankers and after partial treatment at JETL, let into the Board's sewer line. Admittedly, the effluents of the appellant's unit are not of acceptable standards for transmission through the sewer line of the Board and therefore, the appellant's industry and other industries have to get the effluents treated at their own cost to bring the quality of the effluents to an acceptable level by treating the same to some extent. The sewerage cess of 35% levied by the Board is for carrying the sewerage of acceptable quality through its sewer line and further treating it at STP at Amberpet.

25. The sewerage cess aims to recover the cost of treating the effluents of strength stronger than domestic sewage and to make the effluents of acceptable quality. In addition to partial treatment at JETL, the effluents require further treatment and their transmission to Sewer Treatment Plant (STP) at Amberpet situated

at 18.90 kms from Bala Nagar which requires huge finance. The maintenance of sewer line is highly essential for proper transmission of the effluents from JETL to Board's sewer system at Amberpet where the Board brings down the industrial effluents to the tolerance limits. It requires huge amount to maintain the STP treatment of industrial effluents. Further, it requires high demand of energy, STP personnel to operate and maintain the system, skilled and unskilled workers for proper maintenance of the plant. The respondent-Board unless it collects sewerage cess and other charges cannot meet the heavy expenditure on the operation and maintenance of sewerage system. The liability of the appellant to pay sewerage cess to the Board arises from the Statute and also by way of an agreement which was agreed upon by the appellant. There is no merit in the contention of the appellant unit that its liability has ended upon transferring the industrial effluents to the respondent-JETL and that it is not connected to the Board's sewer line. As discussed earlier, the partially treated effluents of the appellant's unit are ultimately let into the sewer line provided by the Board which is being carried to Amberpet STP for further treatment and discharge. After partial treatment at JETL, when appellant's effluents are let into the Board's sewage system, the appellant is not justified in contending that it is not connected to the sewer line of the Board and hence, covered under the proviso to Section 55 of the Act.

26. It is well-settled that the normal function of a proviso is to except something out of the enactment. While considering the interpretation of the proviso, in ***Romesh Kumar Sharma v. Union of India and others***, (2006) 6 SCC 510, this Court held as under:-

“12. “10. The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. As was stated in *Mullins v. Treasurer of Surrey* (1880) 5 QBD 170 (referred to in *Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subbash Chandra Yograj Sinha* AIR 1961 SC 1596 and *Calcutta Tramways Co. Ltd. v. Corpn. of Calcutta* AIR 1965 SC 1728, when one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso. The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined to that case. It is a qualification of the preceding enactment which is expressed in terms too general to be quite accurate. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily, a proviso is not interpreted as stating a general rule. ‘If the language of the enacting part of the statute does not contain the provisions which are said to occur in it you cannot derive these provisions by implication from a proviso. ...’ said Lord Watson in *West Derby Union v. Metropolitan Life Assurance Society* 1897 AC 647. Normally, a proviso does not travel beyond the provision to which it is a proviso. It carves out

an exception to the main provision to which it has been enacted as a proviso and to no other.....”

27. The sewerage cess levied under Section 55 of the HMWS&S Act is a statutory levy on the appellant as it satisfies the essential requirements of Section 55 of the Act. The agreement/contract between the appellant’s unit and JETL does not take away the appellant from the network of the Board’s sewer line and its “*use and treatment of sewerage*” of the Board’s sewerage system. Where the appellant’s effluents are being eventually sent to the Board’s sewer, the contention of the appellant that its premises are not served with a sewer line by the Board defies logic and runs contrary to the object of the Act. The appellant, being an occupier of non-domestic premises, is consuming the water provided by the Board, generating the industrial effluents and using the Board’s sewer to release them after partial treatment. In such an admitted position, the appellant cannot escape from the statutory levy by taking a technical approach and interpreting the proviso as a general rule where it is merely a qualifying one. As the appellant eventually lets out its effluents to the Board’s sewerage system, the appellant is not right in contending that it is covered under proviso to Section 55 of the Act.

28. **Re: Contention - Levy of double taxation:-** Learned senior counsel for the appellant contended that even assuming that the dedicated pipeline of JETL which connects to the sewerage

system of the Board at Balanagar is construed to be “Sewer”, any levy of sewerage cess is applicable only to JETL and JETL under its agreement with HMWS&SB, is paying surcharges and sewerage charges to HMWS&SB by collecting the said amount from the appellants and other industries for the said taxable event. It was submitted that under Section 55 of HMWS&S Act, the sewerage cess is collected for the – (i) to defray capital cost of sewerage; (ii) for sewage treatment works undertaken by the Board; and (iii) for operation and maintenance of the sewerage system. It is contended that under its agreement dated 31.08.2000 with the Board, JETL is paying various charges like - (i) sewerage connection charges; (ii) charges towards maintenance of sewer line; (iii) sewerage maintenance and water treatment charges; and (iv) sewerage surcharge for effluents above a certain level. It was contended that various charges paid by JETL to the Board is in essence “sewerage cess”, though it is collected under different head “*sewerage surcharge*”.

29. Taking us through Clause 4 of the agreement with Board dated 31.08.2000, Mr. Guru Krishna Kumar, learned senior counsel appearing for JETL submitted that under agreement dated 31.08.2000, various charges are collected and it additionally provides for levy of surcharge also. It is contended that even though these charges may not be christened as a sewerage cess, they are in effect correspond to the essentials of “sewerage cess”

in Section 55 and a levy of cess from the appellant for the same act of disposal of the sewage would therefore amount to a double levy on the industrial units. The learned senior counsel submitted that sewerage cess cannot be exacted from the appellant because it is already been paid by JETL. It was urged that various charges levied on JETL are excessive arbitrary apart from the fact that there is a double levy.

30. As rightly contended by learned senior counsel for the respondent-Board, the plea of double payment of sewerage cess was never raised in the writ petition filed by the appellant; but it was raised by way of oral submission before the High Court and thereafter, by way of review petition. The plea of double levy was rightly rejected by the High Court *inter alia* holding that “*even assuming for a moment that the petitioner-company is paying some amounts to the JETL, it cannot be said that it is towards sewerage cess*”.

31. As pointed out by the learned senior counsel for the respondent-Board, JETL never sought to implead itself as a party respondent in the writ petition filed by the Board. It is also pertinent to point out that one Mr. G.K.B. Chowdary who was then the Managing Director of the appellant-group of companies, was also the Managing Director of JETL. It passes one’s comprehension as to why JETL whose Managing Director is the same as the

Managing Director of the appellant Group of Companies had not taken any step to get themselves impleaded in the writ petition before the High Court and raise the plea of double taxation.

32. In the Supreme Court, notice was ordered on 07.07.2004 and permitted the appellant to implead JETL as party respondent. It was thereafter, JETL filed writ petition in WP(C) No.17381/2004 (24.09.2004) *inter alia* for various reliefs:- (i) That clauses 28 and 29 of the agreement dated 10.06.2003 between the petitioner company Jeedimetla Effluent Treatment Limited and HMWS&SB as shylockin and unconscionable, usurious, exorbitant, unconstitutional, ultra vires the powers of the HMWS&SB; and (ii) That the action of the HMWS&SB in collecting various charges under Clause 4 of the agreement and other charges levied upon JETL. The said writ petition that kept pending for many years came to be dismissed by the High Court's order dated 21.12.2015 for non-prosecution. JETL has also filed WP(C) No.20117/2017 challenging the enhancement of sewerage surcharge and the said writ petition is also said to have been dismissed on 25.06.2014.

33. Since, elaborate arguments were advanced regarding "excessive and arbitrary levy on JETL" as well as the plea of "double levy of sewerage cess", we have also considered the matter on merits. Based on three sets of agreements between the parties, there are three kinds of payments as under:-

- a) Payment of sewerage cess by the appellant to the Board in terms of Section 55 of the HMWS&S Act and Clause 16 of the agreement dated 27.04.1995;
- b) Payment of treatment and processing service charges by the appellant unit to JETL as stipulated in Clause 19 of the agreement between the appellant and JETL dated 01.04.2000; and
- c) Various charges paid by JETL to the Board pursuant to the agreement dated 31.08.2000 and the earlier agreements.

So far as the payment by the appellant unit to the Board, it is the statutory liability of payment of sewerage cess in terms of Section 55 of HMWS&S Act and Clause 16 of the agreement which obligates the appellant unit to pay the sewerage cess in terms of Section 55 of the HMWS&S Act. The appellant having bulk water supply connection from the Board and being “consumer of water” and discharging sewage/effluents into the sewer line of the Board, the payment of sewerage cess by the appellant unit is the statutory liability under Section 55 of the HMWS&S Act and Clause 16 of the agreement.

34. Insofar as the charges paid by the appellant to JETL for the treatment and processing of its effluents, it is purely contractual pursuant to the agreement entered into between the appellant unit and JETL dated 01.04.2000 and the earlier agreement dated 22.01.1996. As pointed out earlier, the appellant unit is obligated to treat and process the industrial effluents and bring them down to permissible standard limits in accordance with the provisions of

the Water Act, 1974 and Environment Act, 1986 before they are let into the sewer line of the Board. To discharge its statutory as well as contractual obligation, the appellant unit has entered into agreement with JETL for the treatment and processing of appellant's effluents before being let into Board's sewer line. Payment of charges by the appellant to JETL is purely contractual between the parties and the same cannot be considered to be in deference to the statutory cess/statutory charge which can only be levied by the Board. In this regard, the High Court has rightly observed that assuming that the appellant is paying some amount to JETL, the same cannot be termed as "sewerage cess".

35. So far as payment of charges by JETL to the respondent Board, the same is governed by the terms and conditions of the agreement between JETL and the Board dated 31.08.2000. JETL's contention is two fold: - (i) levy of various charges under the agreement is arbitrary and exorbitant; and (ii) double levy of sewerage cess. The gist of the terms and conditions of the contract dated 31.08.2000 between JETL and the Board and various charges levied are as under:-

1. Clause 4 specifically stipulated that JETL shall be charged towards overall proportionate sewerage maintenance and sewerage treatment charges being incurred by the Board from time to time on the overall sewerage system of the Board;

2. In terms of Clause 4, the Board has levied sewerage connection charges @ Rs.4/- per litre for the discharge into the Board sewer (6 equal installments of Rs.23.34 lakhs each by 10th of each month) – Total Rs.140.04 lakhs;
 3. Clause 18 stipulates that no treated effluent shall be discharged by JETL unless the same is treated in accordance with the provisions of the Water and the Air Acts and the various upper limits of the parameters of the treated industrial effluents shall be within the permissible standard limits prescribed; Further, Clauses 22 to 24 give the Board the right to reject effluents of JETL if they are not found to be consistent with the prescribed parameters;
 4. In terms of Clause 28, an amount of rupees one lakh per month is to be paid by JETL towards maintenance of the sewer line. Additionally, JETL has to pay sewerage maintenance and sewerage treatment charges @ Rs.6 per thousand litres of treated effluents;
 5. Further, as per Clause 29, a surcharge was also levied on JETL for permitting industrial effluents beyond the limits prescribed on two important parameters viz. Chemical Oxygen Demand (COD) and Total Dissolved Solids (TDS); Each parameter/COD and TDS will be considered independent for levy the surcharge.
36. In terms of Rule 4 of Sewerage Rules, the Board shall charge on the applicants seeking to discharge the trade or industrial effluents etc. Rule 4 reads as under:-

“Sewerage and Industrial Effluents-

4. The Board shall charge on applicants seeking to discharge their trade or industrial effluents, sullage drain, sewer (other than storm sewer or combined sewer) of a private party, State Government, Central Government, or

local body or local authority, into Board sewers, towards the special treatment cost of such sewage and the charges shall be as fixed by the Board from time to time, depending upon the nature of such sewage and cost of treatment involved to bring the same within tolerance limits of effluent standards etc. The installation and maintenance of required meters for measuring the volume of effluents shall be insisted at the cost of the applicants, by the board.”

Subject to the provisions of Water Act, 1974 and Environment Act, 1986 and subject to the restrictions of Section 54 of HMWS&S Act and in terms of Rule 4 and other terms and conditions, Board has the right to permit the ‘*applicants*’ seeking to discharge their trade or industrial effluents into the Board’s sewer system and Sewerage Treatment Plant subject to the imposition of costs. The treatment for letting the trade or industrial effluents into the Board’s sewer shall be subject to such terms and conditions and in such form of agreement as may be prescribed in the regulations made by the Board in accordance with these rules. Having entered into the agreement with the Board on 31.08.2000 and on prior dates, JETL cannot turn around and challenge the terms and conditions imposed upon it by virtue of the agreement.

37. So far as the various payments made by JETL to the Board, levy is in terms of Rule 4 of the Sewerage Rules and as per the contract and is purely contractual between JETL and the respondent Board for letting partially treated the industrial

effluents of the appellant and other units into the Board's sewer. Likewise, charges paid by JETL to the Board cannot be said to be in lieu of the sewerage cess that the appellant unit is liable to pay which is a statutory liability. It is pertinent to note that many industries about fifty units, apart from the appellant unit, discharge their effluents to the CETP/JETL. The agreement dated 31.08.2000 and the earlier agreements between JETL and the Board are purely contractual consciously entered into between the parties.

38. JETL lets partially treated effluents into the Board's sewerage system for further treatment. As discussed earlier, for further treatment of sewerage, the effluents are to be taken to Sewerage Treatment Plant (STP) at Amberpet which is situated at the distance of 18.90 kilometres from Balanagar. It requires huge amount for transmission of the effluents to Board's sewer system at Amberpet where the Board brings down the industrial effluents to tolerance limits. As pointed out earlier, the treatment of industrial effluents requires high demand of energy, personnel to operate the system and skilled workers for maintenance of the plant. Unless the Board collects sewerage charge/sewerage surcharge, the Board cannot meet the heavy expenditure on the operation and maintenance of sewerage system. Various other members of JETL who discharge sewage into JETL which is ultimately let into Board sewer line, may or may not be consumers of water supply by the Board. That apart, members of JETL may

have their own source of water supply or they may supplement the supply of water from the Board through different sources either by extraction of ground water or supply through tankers which cannot be quantified by the Board. In pursuance of the provisions of the HMWS&S Act and the Sewerage Rules and pursuant to the agreement dated 31.08.2000, the charges are levied on JETL who in turn collects the charges from its member industrial units who discharge their effluents into JETL. Therefore, the payments made by JETL to the Board and the charges in turn collected by JETL from the appellant and other member units, cannot absolve the appellant unit from its statutory liability to pay the sewerage cess. We find no merit in the contention that there is double levy of sewerage cess.

39. Levy of sewerage cess being a statutory levy in terms of Section 55 of HMWS&S Act and Clause 16 of the agreement which incorporates the statutory levy under Section 55 of HMWS&S Act, the learned Single Judge and the Division Bench rightly recorded concurrent findings upholding the levy. Observing that the appellant being occupier of the premises, though not directly connected to the sewer line of the Board, is ultimately letting into the sewerage system of the Board after partial treatment at JETL, the High Court was right in holding that the levy of sewerage cess is in accordance with Section 55 of HMWS&S Act. The payment of sewerage surcharges and the other charges by JETL cannot take

away the statutory liability of sewerage cess levied on the occupier of the premises who consumes water and lets out the sewage into the Board sewer system. The payment of sewerage surcharge and other charges by JETL to the respondent-Board will not amount to double levy and the High Court rightly dismissed the writ petitions and also the review petitions filed by the appellant. The impugned order does not suffer from any infirmity warranting interference.

40. In the result, these appeals are dismissed. The arrears of sewerage cess, if any, to be paid by the appellant within a period of eight weeks from today with 6% interest with effect from the date cess fell due. If the arrears are not paid within the stipulated period of eight weeks, it shall carry interest at the rate of 12% thereafter.

.....J.
[R. BANUMATHI]

.....J.
[INDIRA BANERJEE]

**New Delhi;
February 13, 2019**