REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE/ORIGINAL JURISDICTION

CIVIL APPEAL NOS.4056-4064 OF 1999

MINERAL AREA DEVELOPMENT AUTHORITY & ANOTHER ...APPELLANTS

VERSUS

STEEL AUTHORITY OF INDIA & ANOTHER ETC. ...RESPONDENTS

WITH

CIVIL APPEAL NO.7937 OF 2019

WRIT PETITION (CIVIL) NO.512 OF 2018

CIVIL APPEAL NO.7938 OF 2019

CIVIL APPEAL NO.7936 OF 2019

CIVIL APPEAL NO.6221 OF 2008

CIVIL APPEAL NO.5250 OF 2019

WRIT PETITION (CIVIL) NO.729 OF 2019

WRIT PETITION (CIVIL) NO.1029 OF 2019

SPECIAL LEAVE PETITION (CIVIL) NO.16028 OF 2021

CIVIL APPEAL NO.4286 OF 2023

CIVIL APPEAL NO.5682 OF 2007

CIVIL APPEAL NO.1295 OF 2008

CIVIL APPEAL NO.874 OF 2013

CIVIL APPEAL NOS.8269-8271 OF 2013

CIVIL APPEAL NO.8268 OF 2013

CIVIL APPEAL NO.8267 OF 2013

CIVIL APPEAL NO.6135 OF 2013

CIVIL APPEAL NO.8272 OF 2013

CIVIL APPEAL NO.9458 OF 2013

SPECIAL LEAVE PETITION (CIVIL) NO.18600 OF 2013

CIVIL APPEAL NO.4332 OF 2013

CIVIL APPEAL NO.5329 OF 2002

CIVIL APPEAL NO.4993 OF 2006

CIVIL APPEAL NO.8273 OF 2013

CIVIL APPEAL NO.8274 OF 2013

CIVIL APPEAL NO.3869 OF 2014

CIVIL APPEAL NO.2632 OF 2013

CIVIL APPEAL NO.14685 OF 2015

CIVIL APPEAL NO.6784 OF 2014

WRIT PETITION (CIVIL) NO.376 OF 2015

CIVIL APPEAL NO.10082 OF 2016

CIVIL APPEAL NO.886 OF 2017

CIVIL APPEAL NO.4588 OF 2017

CIVIL APPEAL NO.205 OF 2017

CIVIL APPEAL NOS.5728-5729 OF 2018

CIVIL APPEAL NOS.4722-4724 OF 1999

CIVIL APPEAL NO.5333 OF 2002

CIVIL APPEAL NOS.5335-5336 OF 2002

CIVIL APPEAL NO.5332 OF 2002

CIVIL APPEAL NO.1352 OF 2005

CIVIL APPEAL NO.1883 OF 2006

TRANSFER PETITION (CIVIL) NO.722 OF 2006

CIVIL APPEAL NO.4745 OF 2006

CIVIL APPEAL NO.4990 OF 2006

CIVIL APPEAL NO.5599 OF 2006

CIVIL APPEAL NO.5649 OF 2006

CIVIL APPEAL NO.378 OF 2007

CIVIL APPEAL NO.665 OF 2007

CIVIL APPEAL NO.1180 OF 2007

TRANSFER PETITION (CIVIL) NO.481 OF 2007

TRANSFER PETITION (CIVIL) NO.906 OF 2007

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SPECIAL LEAVE PETITION (CIVIL) NO.26160 OF 2008

J U D G M E N T

NAGARATHNA, J.

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I have perused the comprehensive opinion authored by Hon'ble the Chief Justice of India Dr Dhananjaya Y Chandrachud on the questions referred to this nine-judge Bench. I respectfully dissent with the said opinion and express my reasons therefor.

1.1 The sum and substance of all the questions referred to this Bench could be crystallised to the short point for consideration, namely, whether royalty as envisaged under Section 9 of the Mines and Minerals (Development and Regulation) Act, 1957 (for short "MMDR Act, 1957") is a tax or an exaction. At this stage itself, it must be made clear that the concept of royalty is being considered from the perspective of Section 9 of the MMDR Act, 1957 and not from any other context. My short answer is that viewed from the statutory framework of the MMDR Act, 1957 passed by the Parliament on the strength of Entry 54 – List I of the Seventh Schedule of the Constitution of India and having regard to Section 2 of the said Act, royalty is in the nature of a "tax" or an "exaction". Further, Section 9 of the MMDR Act, 1957 is a limitation within the

meaning of Entry 50 – List II of the Seventh Schedule of the Constitution and the States have no legislative competence to levy any other tax, impost or fee on the exercise of mineral rights. Entry 49 – List II is also not applicable to mineral bearing lands. Therefore, ***India Cement Limited vs. State of Tamil Nadu, (1990) 1 SCC 12 : AIR 1990 SC 85, ("India Cement")***, has been correctly decided by a seven-judge Bench of this Court and that the majority judgment in ***State of West Bengal vs. Kesoram Industries Limited, (2004) 10 SCC 201 ("Kesoram"),*** is incorrect and therefore, ought to be overruled. I propose to discuss in detail the reasons for the aforesaid view.

2. The genesis of this controversy insofar as the reference to the nine-judge Bench is concerned, emanates from the judgment of the seven-judge Bench of this Court in ***India Cement***. The said judgment authored by Sabyasachi Mukharji, J. (as His Lordship then was) held that royalty is a tax and therefore, any levy of a tax/cess on royalty is impermissible in law, having regard to the constitutional framework, particularly the relevant Entries of List I and II of the Seventh Schedule to

the Constitution of India. The said dictum of the seven-judge Bench was doubted in ***Kesoram,*** by a majority of the five-judge Bench (Sinha, J. dissenting). The majority judgment was penned by Lahoti, J. (as His Lordship then was). Consequently, the judgment of a two-judge Bench in ***State of Madhya Pradesh vs. Mahalaxmi Fabric Mills Ltd., 1995 Supp (1) SCC 642 ("Mahalaxmi Fabric Mills")*** following ***India Cement*** was overruled and it was observed that the matter required consideration by a larger Bench.

3. A similar view was expressed by a three-judge Bench in ***Mineral Area Development Authority vs. Steel Authority of India, (2011) 4 SCC 450***, ***("Mineral Area Development Authority")*** wherein this Court was of the view that the matter has to be considered by a Bench of nine Judges and hence, the following questions of law were raised:

> "1. Whether "royalty" determined under Sections 9/15(3) of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957, as amended) is in the nature of tax?
>
> 2. Can the State Legislature while levying a tax on land under List II Entry 49 of the Seventh Schedule of the Constitution adopt a measure of tax based on the value of the produce of land? If yes, then would the constitutional

position be any different insofar as the tax on land is imposed on mining land on account of List II Entry 50 and its interrelation with List I Entry 54?

3. What is the meaning of the expression "Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development" within the meaning of Schedule VII List II Entry 50 of the Constitution of India? Does the Mines and Minerals (Development and Regulation) Act, 1957 contain any provision which operates as a limitation on the field of legislation prescribed in List II Entry 50 of the Seventh Schedule of the Constitution of India? In particular, whether Section 9 of the aforementioned Act denudes or limits the scope of List II Entry 50?

4. What is the true nature of royalty/dead rent payable on minerals produced/mined/extracted from mines?

5. Whether the majority decision in *State of W.B.* v. *Kesoram Industries Ltd.* [(2004) 10 SCC 201] could be read as departing from the law laid down in the *seven-Judge Bench* decision in *India Cement Ltd.* v. *State of T.N.* [(1990) 1 SCC 12] ?

6. Whether "taxes on lands and buildings" in List II Entry 49 of the Seventh Schedule to the Constitution contemplate a tax levied directly on the land as a unit having definite relationship with the land?

7. What is the scope of the expression "taxes on mineral rights" in List II Entry 50 of the Seventh Schedule to the Constitution?

8. Whether the expression "subject to any limitations imposed by Parliament by law relating to mineral development" in List II Entry 50 refers to the subject-matter in List I Entry 54 of the Seventh Schedule to the Constitution?

9. Whether List II Entry 50 read with List I Entry 54 of the Seventh Schedule to the Constitution constitute an exception to the general scheme of entries relating to taxation being distinct from other entries in all the three

Lists of the Seventh Schedule to the Constitution as enunciated in *M.P.V. Sundararamier & Co.* v. *State of A.P.* [AIR 1958 SC 468 : 1958 SCR 1422] [AIR p. 494 : SCR at p. 1481 (bottom)]?

10. Whether in view of the declaration under Section 2 of the Mines and Minerals (Development and Regulation) Act, 1957 made in terms of List I Entry 54 of the Seventh Schedule to the Constitution and the provisions of the said Act, the State Legislature is denuded of its power under List II Entry 23 and/or List II Entry 50?

11. What is the effect of the expression "… subject to any limitations imposed by Parliament by law relating to mineral development" on the taxing power of the State Legislature in List II Entry 50, particularly in view of its uniqueness in the sense that it is the only entry in all the entries in the three Lists (Lists I, II and III) where the taxing power of the State Legislature has been subjected to "any limitations imposed by Parliament by law relating to mineral development"?."

That is how the questions have been placed for consideration of this nine-judge Bench.

4. His Lordship, the Chief Justice of India, while holding that royalty is not a tax, has overruled the following dicta of this Court: ***(i) India Cement; (ii) Orissa Cement Limited vs. State of Orissa, 1991 Supp (1) SCC 430 ("Orissa Cement"); (iii) Mahalaxmi Fabric Mills; (iv) Saurashtra Cement & Chemicals Industries Ltd. vs. Union of India***, ***(2001) 1 SCC 91***, ***("Saurashtra Cement"),*** and ***(v) State of Orissa vs.***

Mahanadi Coalfields Ltd., 1995 Supp. (2) SCC 686 ("Mahanadi Coalfields"). While coming to the aforesaid conclusion, three significant judgments of this Court in ***Hingir-Rampur Coal Co. Ltd. vs. State of Orissa, (1961) 2 SCR 537 ("Hingir-Rampur"); State of Orissa vs. M.A. Tulloch, (1964) 4 SCR 461 ("M.A. Tulloch")*** and ***Baijnath Kedia vs. State of Bihar, (1969) 3 SCC 838 ("Baijnath Kedia")*** have been discussed.

5. Since the Entries under discussion are in their respective Lists of the Seventh Schedule of the Constitution, it would be unnecessary to refer to them as being part of "the Seventh Schedule of the Constitution" in the following discussion.

6. On enumerating the questions for opinion of this nine-judge Bench, five issues have been encapsulated in paragraph 5 of the judgment of the learned Chief Justice of India which read as under:

> "5. During the course of the hearing, counsel for the petitioners and respondents agreed that the main questions that fall for determination by this Court could be reframed in the following terms:

a. What is the true nature of royalty determined under Section 9 read with Section 15(1) of the MMDR Act? Whether royalty is in the nature of tax.

b. What is the scope of Entry 50 of List II of the Seventh Schedule? What is the ambit of the limitations imposable by Parliament in exercise of its legislative powers under Entry 54 of List I? Does Section 9, or any other provision of the MMDR Act, contain any limitation with respect to the field in Entry 50 of List II?

c. Whether the expression "subject to any limitations imposed by Parliament by law relating to mineral development" in Entry 50 of List II *pro tanto* subjects the entry to Entry 54 List I, which is a non-taxing general entry? Consequently, is there any departure from the general scheme of distribution of legislative powers as enunciated in ***M.P.V. Sundararamier*** (supra)?

d. What is the scope of Entry 49 of List II and whether it covers a tax which involves a measure based on the value of the produce of land? Would the constitutional position be any different *qua* mining land on account of Entry 50 of List II read with Entry 54 of List I?

e. Whether Entry 50 of List II is a specific entry in relation to Entry 49 of List II, and would consequently subtract mining land from the scope of Entry 49 of List II?"

7. As the learned Chief Justice has recorded the submissions of the respective parties in detail, I need not be repetitive except highlighting the fact that the learned senior counsel and counsel for the appellants have contended that "royalty is not a

tax" while the learned senior counsel and counsel for the respondents including the Attorney General and Solicitor General for the Union of India have submitted that "royalty is a tax or an exaction" and therefore, the States are denuded of their power to levy any other levy, impost, tax or cess on royalty. Therefore, the question which arises is, whether, payment made for exercise of mineral rights being royalty, is a tax or an exaction.

Constitutional Framework:

8. Article 265 of the Constitution mandates that no tax shall be levied or collected except by authority of law. Article 366 is a definition clause and it states that in the Constitution, unless the context otherwise requires, the expressions mentioned therein have the meanings thereby respectively assigned to them. For the purpose of this case, Article 366(28) is relevant and the same reads as under:

> "(28) "taxation" includes the imposition of any tax or impost, whether general or local or special and "tax" shall be construed accordingly."

The aforesaid definition of 'taxation' is not exhaustive but inclusive in nature to include not only any tax in the usual understanding of the said expression or tax *stricto senso* but also any levy akin to a tax. There can be no cavil to the proposition that before any tax or impost could be levied or collected, it must have the authority of law *vide* Article 265.

8.1 Article 246 of the Constitution deals with distribution of legislative powers between the Parliament and State Legislatures. It reads as under:

> **"246. Subject-matter of laws made by Parliament and by the Legislatures of States.—**(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List 1 in the Seventh Schedule (in this Constitution referred to as the "Union List").
>
> (2) Notwithstanding anything in clause (3), Parliament and subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").
>
> (3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the 'State List').
>
> (4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a

State notwithstanding that such matter is a matter enumerated in the State List."

With regard to the allocation of subjects under the three Lists, it may be useful to refer to the Devolution rules drawn under the Government of India Act, 1919 and thereafter, to the Government of India Act, 1935 which are the precursors to the distribution of legislative powers between the Union and the States as per the three Lists of the Seventh Schedule. Some of the salient aspects concerning the distribution of the legislative powers between Parliament and State Legislature as per the three Lists in the backdrop of provisions could be alluded to. Article 246 of the Constitution deals with the distribution of legislative powers between the Union and the States. The said Article has to be read along with the three Lists, namely, the Union List, the State List and the Concurrent List. The taxing powers of the Union as well as the States are also demarcated as separate Entries in the Union List as well as the State List i.e. List I and List II respectively. The Entries in the Lists are fields of legislative powers conferred under Article 246 of the Constitution. In other words, the Entries define the areas of

legislative competence of the Union and the State Legislature. (*vide:* ***State of Karnataka vs. State of Meghalaya, (2023) 4 SCC 416 para 56), ("State of Karnataka").***

8.2 The legislative power to impose a tax or impost can be traced to either List I - Union List or List II - State List. List III - Concurrent List which gives powers to both Union as well as the States to legislate does not contain any taxation Entry. Entry 47 - List III states that fees in respect of any of the matters in that List but not including fees taken in any Court could be levied and collected by an authority of law either by the Union or the State Legislature. Similarly, Entry 66 - List II states that fees in respect of any of the matters in List II but not including fees taken in any Court could be collected by the State Legislature. In a similar vein, Entry 96 - List I gives power to levy fee in respect of subjects enumerated in List I but not including fees taken in any Court. It is nobody's case that royalty is a fee and therefore no further discussion on that aspect is necessary. However, the conundrum to be unravelled by this nine-judge Bench is, whether royalty is a tax or a levy

akin to a tax or an exaction in the context of exercise of mineral rights.

8.3 In order to understand the foundation of this controversy, it is necessary to consider Article 246 of the Constitution and the relevant Entries of the two Lists *vis-à-vis* regulation of mines and mineral development, as the controversy has arisen in this particular context, which can be usefully extracted as under:

> **"List I – Union List**
>
> > **Entry 54** : Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.
>
> **List II – State List**
>
> > **Entry 23** : Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.
> >
> > xxx xxx xxx
> >
> > **Entry 49** : Taxes on lands and buildings.
> >
> > **Entry 50** : Taxes on mineral rights subject to any limitation imposed by Parliament by law relating to mineral development."

Interpretation of Legislative Entries:

8.4 On the aspect of interpretation of legislative Entries in the three Lists, the following principles are apposite as discussed in ***State of Karnataka.***

8.4.1 The power to legislate which is dealt with under Article 246 has to be read in conjunction with the Entries in the three Lists which define the respective areas of legislative competence of the Union and State Legislatures. While interpreting these Entries, they should not be viewed in a narrow or myopic manner but by giving the widest scope to their meaning, particularly, when the *vires* of a provision of a statue is assailed. In such circumstances, a liberal construction must be given to the Entry by looking at the substance of the legislation and not its mere form. However, while interpreting the Entries in the case of an apparent conflict, every attempt must be made by the Court to harmonise or reconcile them. Where there is an apparent overlapping between two Entries, the doctrine of pith and substance is applied to find out the true character of the enactment and the Entry within which it would fall. The

doctrine of pith and substance, in short, means, if an enactment substantially falls within the powers expressly conferred by the Constitution upon the legislature which enacted it, the same cannot be held to be invalid merely because it incidentally encroaches on matters assigned to another legislature. Also, in a situation where there is overlapping, the doctrine has to be applied to determine to which Entry, a piece of legislation could be related. In order to examine the true character of enactment or a provision thereof, due regard must be had to the enactment as a whole and to its scope and objects. It is said that the question of invasion into another legislative territory has to be determined by substance and not by degree.

8.4.2 In case of any conflict between Entries in List I and List II, the power of Parliament to legislate under List I will supersede when, on an interpretation, the two powers cannot be reconciled. But if a legislation in pith and substance falls within any of the Entries of List II, the State Legislature's competence cannot be questioned on the ground that the field

is covered by Union list or the Concurrent list *vide* ***Prafulla Kumar Mukherjee vs. Bank of Commerce, Khulna, AIR 1947 P.C. 60 ("Prafulla Kumar Mukherjee")***. According to the pith and substance rule, if a law is in its pith and substance within the competence of the Legislature which has made it, it will not be invalid because it incidentally touches upon the subject lying within the competence of another Legislature *vide* ***State of Bombay vs. FN Balsara, AIR 1951 SC 318 ("FN Balsara").***

8.4.3 Once the legislation is found to be 'with respect to' the legislative Entry in question, unless there are other constitutional prohibitions, the power would be unfettered. It would also extend to all ancillary and subsidiary matters which can fairly and reasonably be said to be comprehended in that topic or category of legislation (*vide* ***United Provinces vs. Atiqa Begum, AIR 1941 FC 16 ("Atiqa Begum")).***

8.4.4 Another important aspect while construing the Entries in the respective Lists is that every attempt should be made to harmonise the contents of the Entries so that interpretation of

one Entry should not render the entire content of another Entry nugatory (*vide* ***Calcutta Gas Company vs. State of West Bengal, AIR 1962 SC 1044 ("Calcutta Gas Company")***. This is especially so when some of the Entries in a different List or in the same List may overlap or may appear to be in direct conflict with each other. In such a situation, a duty is cast on the Court to reconcile the Entries and bring about a harmonious construction. Thus, an effort must be made to give effect to both Entries and thereby arrive at a reconciliation or harmonious construction of the same. In other words, a construction which would reduce one of the Entries nugatory or a dead letter, is not to be followed.

8.4.5 The sequitur to the aforesaid discussion is that if the Legislature passes a law which is beyond its legislative competence, it is a nullity *ab-initio*. The Legislation is rendered null and void for want of jurisdiction or legislative competence *vide* ***RMDC vs Union of India, AIR 1957 SC 628 ("RMDC")***.

8.4.6 In short, the Entries in the different Lists should be read together without giving a narrow meaning to any of them.

The powers of the Union and the State Legislatures are expressed in precise and definite terms. Hence, there can be no broader interpretation given to one Entry than to the other. Even where an Entry is worded in wide terms, it cannot be so interpreted as to negate or override another Entry or make another Entry meaningless. In case of an apparent conflict between different Entries, it is the duty of the Court to reconcile them in the first instance. In case of an apparent overlapping between two Entries, the doctrine of pith and substance has to be applied to find out the true nature of a legislation and the Entry within which it would fall. Where one Entry is made "subject to" another Entry, all that it means is that out of the scope of the former Entry, a field of legislation covered by the latter Entry has been reserved to be specially dealt with by the appropriate legislature. When one item is general and another specific, the latter will exclude the former on a subject of legislation. If, however, they cannot be fairly reconciled, the power enumerated in List II must give way to List I.

8.4.7 On a close perusal of the Entries in the three Lists, it is discerned that the Constitution has divided the topics of legislation into the following three broad categories:

(*i*) Entries enabling laws to be made;
(*ii*) Entries enabling taxes to be imposed; and
(*iii*) Entries enabling fees and stamp duties to be collected.

Thus, the Entries on levy of taxes are specifically mentioned. Therefore, as such, there cannot be a conflict of taxation power of the Union and the State. Thus, in substance the taxing power can be derived only from a specific taxing Entry in an appropriate List. Such a power has to be determined by the nature of the tax and not the measure or machinery set up by the statute.

8.5 Entry 54 - List I read with Entry 23 - List II deals with regulation of mines and mineral development. Since both the Entries deal with regulation of mines and mineral development and they are in List I and List II, Entry 23 - List II expressly states that any regulation of mines and mineral development is subject to the provisions of List I with respect to regulation and

development under the control of the Union (i.e. Entry 54 - List I).

8.6 However, what is pertinent to be considered in this case is, Entry 50 - List II in juxtaposition with Entry 54 - List I. As already noted, Entry 50 - List II is a taxation Entry which empowers a State Legislature to impose tax on mineral rights. However, this power of the State Government is not an absolute power inasmuch as Entry 50 - List II itself states that the power of the State Legislature to impose tax on mineral right is "subject to any limitations imposed by Parliament by law relating to mineral development". In other words, if there is any limitation imposed by the Parliament by law relating to mineral development then that would have an impact on the legislative competence of the State Legislature to impose a tax on mineral rights. The key expressions of Entry 50 - List II are "taxes on mineral rights" and "subject to any limitations imposed by the Parliament by any law on mineral development". Thus, the Parliament can impose any limitation on the State's right to impose a tax on mineral rights by way of a law relating to

mineral development. Thus, while Entry 50 - List II speaks of taxes on mineral rights and is a taxation Entry empowering States to impose taxes on mineral rights, the same is not unbridled or absolute but is subject to any limitation to be imposed by Parliament by law relating to mineral development. In other words, if Parliament intends to regulate mineral development in the country, it can do so by a law made as per Entry 54 - List I and to that extent the taxation Entry in Entry 50 - List II could be limited and the State's right to impose a tax on mineral rights by a law would be affected. Thus, a taxation Entry in Entry 50 - List II can be affected by Entry 54 - List I in the interest of mineral development by Parliament imposing a limitation on the State's right to tax mineral rights. In other words, if the Union has by a law taken control of, *inter alia,* mineral development with the Parliament passing a law, then the State's power to impose any tax on mineral rights would, to that extent, be denuded, if the Parliamentary or Central law creates a limitation to impose such a tax, if it relates to mineral

development. It is in the above backdrop that the controversy must be considered.

8.7 Exercise of mineral rights have to be consistent with mineral development in the country, which would embrace, *inter alia,* uniformity in mineral development throughout the country having regard to several factors which would otherwise come in the way of such development. Hence, the framers of the Constitution introduced Entry 50 - List I enabling a limitation being imposed on Entry 50 - List II although that is a taxation Entry giving powers to the States to impose taxes on mineral rights. It is subject to any limitation imposed by Parliament under Entry 54 - List I.

8.8 The golden thread which runs through Entry 54 - List I and Entry 23 - List II is that the Entries deal with regulation of mines and mineral development. Thus, any aspect of regulation of mines and mineral development taken under the control of the Union by a declaration made by the Parliament by a law, denudes the State Legislature of its legislative competence to pass any law to that extent. If a Parliamentary law such as

MMDR Act, 1957 is enacted and deals with certain aspects of mineral development, to that extent the State Legislature would be denuded of its competence to pass any law on the said aspect. The legislative competence vested with the State Legislature is, therefore, not an absolute one but is subject to a Parliamentary law enacted as per Entry 54 - List I dealing with mineral development.

9. The precise question before this Court being, whether, imposition of royalty envisaged under Section 9 of the MMDR Act 1957, which is a parliamentary legislation passed by virtue of Entry 54 - List I, acts as a limitation imposed by Parliament by law relating to mineral development and therefore, the State Legislature is denuded of its powers to impose any other tax or impost on mineral rights. Whether royalty, which is paid by a lessee to a lessor i.e. the State while exercising mineral rights is a limitation imposed on State's power to impose any other impost, cess or tax on exercise of mineral rights while undertaking a mining operation and extracting minerals by a lessee, is the precise question to be answered in the context of

the constitutional framework, the parliamentary law, namely, the MMDR Act, 1957 and the judgments of this Court.

Scheme of the MMDR Act, 1957:

10. Having analysed the relevant constitutional Entries which have a bearing on the controversy, it is necessary to refer to the scheme of and salient provisions of the MMDR Act, 1957 which has been enacted by Parliament pursuant to Entry 54 - List I. This is apparent on a reading of Section 2 of the said Act which reads as under:

> "**2. Declaration as to the expediency of Union control,—** It is hereby declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent hereinafter provided."

The expression in Entry 54 - List I "to the extent to which" is also significant inasmuch as Section 2 of the MMDR Act, 1957 also uses the expression "to the extent hereinafter provided". The two expressions have the same content and are consistent with each other.

10.1 The MMDR Act, 1957 which is a successor to MMRD Act, 1948, can be briefly considered by referring to various provisions of the Act. The Preamble of the MMDR Act, 1957 states that the Act is to provide "for the development and regulation of mines and minerals under the control of the Union". Earlier, it read as "for regulation of mines and the development of minerals" but by Section 2 (Act 38 of 1999), the above amendment was made.

10.2 The relevant provisions of the MMDR Act, 1957 could be adverted to at this stage. The expression 'minerals' in Section 3(a)(d) includes all minerals except mineral oils. Section 3(e) defines 'minor minerals' to mean building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the official gazette, declare to be a minor mineral. 'Notified minerals' is defined under Section 3(ea) to mean any mineral specified in the Fourth Schedule, such as, bauxite, iron ore, limestone, manganese ore. Further, 'mineral concession' is defined in Section 3(ae) of the

said Act to mean either a reconnaissance permit, prospecting licence, mining lease, composite licence or a combination of any of these and the expression "concession" shall be construed accordingly. Section 3(c) defines "mining lease" to mean a lease granted for the purpose of undertaking mining operations and includes a sub-lease granted for such purpose. Section 3(d) defines "mining operations" to mean any operation undertaken for the purpose of winning any mineral. Section 3(h) defines "prospecting operations" to mean any operations undertaken for the purpose of exploring, locating or proving mineral deposits. Section 3(ha) defines "reconnaissance operations" to mean any operation undertaken for preliminary prospecting of a mineral through regional, aerial, geophysical or geochemical surveys and geological mapping, but does not include pitting, trenching, drilling (except drilling of boreholes on a grid specified from time to time by the Central Government) or sub-surface excavation.

10.3 It is observed that the MMDR Act, 1957 specifies the twin purposes of the Act, namely, (1) the regulation of mines,

and (2) the development of minerals, both under the control of the Union. Sections 4 to 10 of the Central Act form a group headed 'General Restrictions on Undertaking Prospecting and Mining Operations' and relate to the rules and regulations under which prospecting licences and mining leases might be granted; the period for which they may be granted or renewed; the royalties and fees that would be payable on them etc. The next group of Sections, namely, Sections 10 to 12 deal with the procedure for obtaining prospecting licences or mining leases in respect of land in which minerals vest in the Government. Sections 13 to 17 are grouped under a caption which reads - "Rules for regulating the grant of Prospecting Licences and Mining Leases". Section 13 empowers the Central Government, by notification, to make rules for regulating the grant of prospecting licences and mining leases in respect of minerals and for purposes connected therewith. Sub-section (2) specifies in particular the matters for which such rules may provide and among them is (i) the fixing and collection of fees for mineral concession, surface rent, security deposit, fines, other fees or

charges and (ii) the time within which and the manner in which the dead rent or royalty shall be payable, and rules regarding prospecting licences and mining leases.

10.4 Section 18 deals with the mineral development. Section 18(1) states that it shall be the duty of the Central Government to take all such steps as may be necessary for the conservation and development of minerals in India and for that purpose the Central Government may, by notification in the Official Gazette, make such rules as it thinks fit. Section 18(2) talks of rules providing for the development of mineral resources in any area. Section 25 provides for the recovery of any rent, royalty, tax or other sum due to the Government under this Act or the rules made thereunder and that they are to be recovered in the same manner as arrears of land revenue.

10.5 Section 9 of the MMDR Act, 1957 with which we are concerned deals with royalty while Section 9A deals with dead rent. The said provisions can be usefully extracted as under:

"**9. Royalties in respect of mining leases.**—(1) The holder of a mining lease granted before the commencement of this Act shall, notwithstanding anything contained in the instrument of lease or in any law in force at such commencement, pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area after such commencement, at the rate for the time being specified in the Second Schedule in respect of that mineral.

(2) The holder of a mining lease granted on or after the commencement of this Act shall pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area at the rate for the time being specified in the Second Schedule in respect of that mineral.

(2A) The holder of a mining lease, whether granted before or after the commencement of the Mines and Minerals (Regulation and Development) Amendment Act, 1972 shall not be liable to pay any royalty in respect of any coal consumed by a workman engaged in a colliery provided that such consumption by the workman does not exceed one-third of a tonne per month.

(3) The Central Government may, by notification in the Official Gazette, amend the Second Schedule so as to enhance or reduce the rate at which royalty shall be payable in respect of any mineral with effect from such date as may be specified in the notification:

Provided that the Central Government shall not enhance the rate of royalty in respect of any mineral more than once during any period of three years.

9A. Dead rent to be paid by the lessee.—(1) The holder of a mining lease, whether granted before or after the commencement of the Mines and Minerals (Regulation and Development) Amendment Act, 1972, shall notwithstanding anything contained in the instrument of lease or in any other law for the lime being in force, pay to the State Government, every year, dead rent at such rate, as may be

specified, for the time being, in the Third Schedule, for all the areas included in the instrument of lease:

Provided that where the holder of such mining lease becomes liable, under section 9, to pay royalty for any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area, he shall be liable to pay either such royalty, or the dead rent in respect of that area, whichever is greater.

(2) The Central Government may, by notification in the Official Gazette, amend the Third Schedule so as to enhance or reduce the rate at which the dead rent shall be payable in respect of any area covered by a mining lease and such enhancement or reduction shall take effect from such date as may be specified in the notification:

Provided that the Central Government shall not enhance the rate of the dead rent in respect of any such area more than once during any period of three years."

Section 9 speaks of royalty to be paid by a holder of a mining lease while Section 9A deals with dead rent to be paid by a lessee. Dead rent is payable by a lessee, when the lessee - a holder of a mining lease, becomes liable to pay under Section 9 royalty of any mineral removed or consumed by him. The holder of a mining lease conducts mining operations for the purpose of winning any mineral. Thus, a mining operation is an exercise of a mineral right and therefore, is covered under the provisions of the MMDR Act, 1957 and particularly having regard to Section 2 thereof, as a declaration has been made by

the Union to take under its control the regulation of the mines and minerals development, which is expedient in public interest. Reconnaissance, prospecting operations or mining operations are all aspects which are taken under the control of the Union, in view of the declaration under Section 2 of the MMDR Act, 1957.

10.5.1 For the exercise of mineral rights, royalty has to be paid by the holder of the mining lease in terms of Section 9 or dead rent in terms of Section 9A of the said Act, as per the conditions mentioned therein. Royalty is paid in exercise of a mineral right as a consideration for conducting a mining operation, which is undertaken for the purpose of winning any mineral. A mining lease is granted only for the purpose of undertaking a mining operation. Therefore, royalty has to be paid by the holder of a mining lease to the lessor who executes the lease deed i.e. the State Government. For this reason, Section 25 states that any rent, royalty, tax, fee or other sum due to the Government under the Act or the Rules made thereunder or under the terms and conditions of any mineral

concession shall be recovered in the same manner as arrears of land revenue.

10.6 By way of abundant caution, Section 25 of the said Act uses the expression "rent, royalty, tax, fee or other sum" due to the Government under the provisions of the said Act.

Section 25 of the said Act reads as under:

> **"25. Recovery of certain sums as arrears of land revenue.—** (1) Any rent, royally, tax, fee or other sum due to the Government under this Act or the rules made thereunder or under the terms and conditions of any mineral concession may, on a certificate of such officer as may be specified by the State Government in this behalf by general or special order, be recovered in the same manner as an arrear of land revenue.
>
> (2) Any rent, royalty, tax, fee or other sum due to the Government either under this Act or any rule made thereunder or under the terms and conditions of any mineral concession may, on a certificate of such officer as may be specified by the State Government in this behalf by general or special order, be recovered in the same manner as if it were an arrear of land revenue and every such sum which becomes due to the Government after the commencement of the Mines and Minerals (Regulation and Development) Amendment Act, 1972, together with the interest due thereon shall be a first charge on the assets of the holder of the mineral concession, as the case may be."

10.7 Under the scheme of the Act, royalty shall be payable in respect of mining leases. The statutory basis for the same may

be found in Section 9 of the Act, which prescribes that royalty shall be payable by holders of mining lease, whether such lease be granted before or after commencement of the Act. The event that triggers payment of royalty is the removal and/or consumption of mineral. The rates of royalty are prescribed under the second schedule to the Act and are generally expressed as a percentage of the average sale price of the respective mineral, and the same is to be paid on *ad valorem* basis. It is clarified at this juncture that the payment of royalty in respect of mining leases, shall be notwithstanding any stipulation contained under the instrument of lease or any other law in force at the time of execution of the lease.

10.8 Section 9A of the Act provides that the holder of a mining lease shall pay dead rent to the State Government, annually, at such rate specified in the third schedule to the Act. Dead rent is to be paid for such area included in the instrument of lease. However, since the holder of a mining lease is also liable to pay royalty under Section 9 of the Act, it is clarified under Section 9A that the liability shall be limited to

either dead rent or royalty, whichever is greater. Since royalty is payable on *ad valorem* basis, the holder of a mining lease would be liable to pay the same only depending on the value of the mineral won/removed/consumed. That is, when mining activity is not conducted, liability of royalty would be nil. However, dead rent is payable for such area covered under the instrument of lease, on an annual basis, regardless of whether any mining activity is undertaken on such land. The Third Schedule to the Act prescribes the dead rent payable per hectare, per annum. The amount of dead rent payable also depends upon the nature of the minerals available on the land in question - medium value minerals, high value minerals or precious metals and stones. The Act also prescribes the manner in which rent and royalty payable, may be recovered. Section 25 of the Act provides that any sum due to the Government under the provisions of the Act, including rent and royalty, may, on a certificate of such officer as may be specified by the State Government in this behalf by general or special order, be recovered in the same manner as arrears of land revenue.

10.8.1 Section 13(1) of the Act enables the Central Government to make rules for regulating the grant of mineral concession in respect of minerals and for purposes connected therewith. Without prejudice to the generality of the power prescribed under Section 13(1), Section 13(2) lists the specific subjects that may be regulated by framing Rules. Section 13(2)(e) enables the Central Government to make rules to prescribe the authority by which mineral concession *in respect of land in which the minerals vest in the Government* may be granted. Section 13(2)(f) on the other hand, relates to the rule making power to prescribe the procedure for obtaining a mineral concession *in respect of any land in which the minerals vest in a person other than the Government*, and the terms on which and conditions subject to which such a permit, license or lease may be granted or renewed.

10.8.2 In exercise of the rule-making power under Section 13 of the Act, the Central Government has enacted the Mineral Concession Rules, 1960, to provide, *inter-alia,* for the procedure for obtaining mineral concessions in respect of various

categories of lands, the terms on which and conditions subject to which such a permit, license or lease may be granted or renewed.

10.8.3 Chapter IV of the Rules governs all matters connected with grant of mining leases in respect of land in which minerals vest in the Government. Applications for mining lease is to be made to the State Government in the manner prescribed under Rule 22. Rule 22(4) prescribes the manner in which the State Government is to act upon receipt of an application for grant of mining license. First, the State Government is required to take a decision as to the precise area for the said purpose and communicate such decision to the applicant. On receipt of communication from the State Government of the precise area to be granted, the applicant shall submit a mining plan within a period of six months or such other period as may be allowed by the State Government, to the Central Government for its approval. Thereafter, the applicant shall submit the mining plan, duly approved by the Central Government or by an officer duly authorised by the

Central Government, to the State Government to grant mining lease over that area. The procedure for approval of mining plans, by the Central or State Government, as the case may be, has been detailed under Rule 22BB.

10.8.4 Rule 31 provides that where, on an application for the grant of a mining lease, an order has been made for the grant of such lease, a lease deed in Form K is required to be executed by the State Government within six months of the order granting lease. The State Government may, after giving an opportunity of being heard and for reasons to be recorded in writing and communicated to the applicant, also refuse, in the manner specified under Rule 26, to grant a mining lease over whole or part of the area applied for.

10.8.5 Rule 27 prescribes the general conditions to which mining leases, in respect of land in which minerals vest in the Government, shall be subject to. The relevant portion of said Rule is extracted hereinunder for easy reference:

"**27. Conditions :-** (1) Every mining lease shall be subject to the following conditions :-

xxx xxx xxx

(c) the lessee shall pay, for every year, except the first year of the lease, such yearly dead rent at the rates specified in the Third Schedule of the Act and if the lease permits the working of more than one mineral in the same area the State Government shall not charge separate dead rent in respect of each mineral:

Provided that the lessee shall be liable to pay the dead rent or royalty in respect of each mineral whichever be higher in amount but not both;

(d) the lessee shall also pay, for the surface area used by him for the purposes of mining operations, surface rent and water rate at such rate, not exceeding the land revenue, water and cesses assessable on the land, as may be specified by the state Government in the lease;

xxx xxx xxx

(t) the lessee shall pay to the occupier of the surface of the land such compensation as may become payable under these rules;

(u) the lessee shall comply with the Mineral Conservation and Development Rules framed under section 18;"

10.8.6 While the aforesaid provisions contained in Chapter IV relate to mining leases in respect of land in which minerals vest in the Government, Chapter V prescribes the procedure for obtaining a mining lease in respect of land in which minerals vest exclusively in a person other than the Government. Rule 45 pronounces the conditions of a mining lease. It is pertinent

to note that the said provision adopts the conditions prescribed under clauses (b) to (l) and (p) to (u) of sub-rule (1) of Rule 27 which relate to mining leases in respect of land in which minerals vest in the Government, and makes the said conditions applicable to mining leases in respect of land in which minerals vest exclusively in a person other than the Government, with the modification that in clauses (c) and (d) for the words "State Government" the word "lessor" shall be substituted. Further, in addition to the aforesaid conditions that are statutorily prescribed, Rule 45 (iii) permits the parties to set down and mutually agree upon such other conditions in the instrument of lease, so long as such additional conditions are not inconsistent with the provisions of the Act and the Rules. Rule 45 (iv) enjoins upon the lessor, the duty to give notice to the lessee requiring him to pay royalty due under Section 9 of the Act, on failure of the lessee to remit the same as required. Should the lessee not act upon such notice and duly make the payment of royalty within sixty days from the

date of receipt of notice, the lessor shall be bound to determine the lease.

10.8.7 Chapter VI pertains to grant of mining leases in respect of land in which the minerals vest partly in the Government and partly in private persons. Rule 53 provides that the provisions of Chapter IV shall apply to mining leases in respect of minerals which vest partly in the Government and partly in a private person as they apply in relation to the grant of prospecting licences and mining leases in respect of minerals which vest exclusively in the Government. The proviso to Rule 53 clarifies that the dead rent and royalty payable in respect of mineral which partly vest in the Government and partly in a private person shall be shared by the Government and by that person in proportion to the shares they have in the minerals.

10.8.8 The pertinent provisions prescribing the liability of a lessee to pay royalty and dead rent in respect of mining leases over different categories of lands as described under Chapters

IV, V and VI of the Rules, have been summarised and presented in the following tabular statement:

Sl. No.	***Category of land over which mining lease is granted:***	***Procedure for grant of lease and Conditions of mining lease prescribed under:***	***Liability to pay Royalty and Dead Rent prescribed under:***
1.	Mining lease in respect of land in which minerals vest in the Government	Chapter IV of the Rules: Rule 27 - Conditions	**Royalty:** Section 9 of the Act, r/w Second Schedule to the Act which prescribes the rate of royalty; Rule 27 (1) (c) and the proviso thereto; Part V of Form K of the Rules; **Dead Rent:** Section 9A of the Act, r/w Third Schedule to the Act which prescribes the amount of dead rent payable per hectare of land; Rule 27 (1) (c) and the proviso thereto; Part V of Form K of the Rules.

Sl. No.	***Category of land over which mining lease is granted:***	***Procedure for grant of lease and Conditions of mining lease prescribed under:***	***Liability to pay Royalty and Dead Rent prescribed under:***
			Surface rent: Payable in terms of Rule 27(1)(d), at the rate specified by the State Government in the lease.
2.	Mining lease in respect of land in which minerals vest exclusively in a person other than the Government	Chapter V of the Rules: Rule 45- Conditions of mining lease [Conditions stipulated under Rule 27 have been adopted with modification to substitute 'State Government' as appearing under Rule 27(1)(c) and (d) with the word 'lessor'.] In addition to the conditions statutorily prescribed,	**Royalty and Dead rent:** Royalty and dead rent are payable in terms of Section 9 and 9A of the Act, respectively, read with Rule 27 (1) (c) of the Rules. **Surface rent:** Payable in terms of Rule 27(1)(d), as substituted in terms of Rule 45, at the rate specified by the lessor in the lease.

Sl. No.	***Category of land over which mining lease is granted:***	***Procedure for grant of lease and Conditions of mining lease prescribed under:***	***Liability to pay Royalty and Dead Rent prescribed under:***
		Rule 45 (iii) permits the parties to set down and mutually agree upon such other conditions in the instrument of lease, so long as such additional conditions are not inconsistent with the provisions of the Act and the Rules.	
3.	Mining leases in respect of land in which the minerals vest partly in the Government and partly in private persons	Chapter VI of the Rules: The procedure and conditions prescribed under Chapter IV to apply *mutatis mutandis*	**<u>Royalty and Dead rent:</u>** Royalty and dead rent are payable in terms of Section 9 and 9A of the Act, respectively, read with Rule 27 (1) (c) of the Rules.

10.9 Section 9 of the MMDR Act, 1957 categorically deals with royalty. It has to be read with the Second Schedule which deals with rates of royalty in respect of minerals listed therein. Therefore, there can be no cavil that royalty is an aspect within the scope and ambit of the Parliamentary law which is intended to take under the control of the Union by a declaration (*vide* Section 2 of the said Act) *vis-à-vis* regulation of the mines and mineral development which is declared to be expedient in the public interest. When the imposition of royalty on a mining lease in terms of lease-deed as envisaged in Form-K of the MMDR Act, 1957 is considered in light of Entry 54 - List I read with Section 2 of the MMDR Act, 1957, it is clear that royalty is a matter coming under the control of the Union. If payment of royalty, which is a consideration for exercise of mineral rights is expressly covered under Section 9 of the MMDR Act, 1957, can the same be a basis for any other exaction by a State either by imposing another tax/cess based on royalty or by imposing any other tax on mineral bearing land? This is the question which has fallen for consideration in several cases before this Court as

well as before several High Courts. As noted above, royalty is a consideration imposed by a lessor on a lessee of a mining lease for the grant of the mining lease, which in sum and substance is a requisite consideration for exercise of a mineral right. Royalty and dead rent as envisaged under the scheme of Sections 9 and 9A of the MMDR Act, 1957 have been imposed by the Parliament in the interest of mineral development in the country. The fact that under Sections 9 as well as 9A, payment of royalty and dead rent as respectively envisaged as per the conditions stated in the said Sections, would clearly indicate that having regard to development of any particular mineral, the rate of royalty has been fixed under the Second Schedule to the MMDR Act, 1957. Therefore, it is in the interest of mineral development that a lessor is bound to collect royalty and dead rent from a lessee in terms of what is envisaged in Sections 9 and 9A read with Second Schedule to the Act. The payment of royalty is to the lessor which is the State which executes the lease deed in terms of the Form K of Mineral Concession Rules, 1960. Thus, having regard to the statutory scheme envisaged

under Sections 9 and 9A of the Act read with the Second Schedule to the MMDR Act, 1957, any exercise of mineral right by a lessee is subject to the payment of royalty to the State Government. The exaction of royalty is, therefore, statutory in nature.

10.10 In ***Govind Saran Ganga Saran vs. Commissioner of Sales Tax, (1985) Supp SCC 205 ("Govind Saran Ganga Saran"),*** the components which enter into the concept of tax were discussed by this Court in paragraph 6 which reads as under:

> "6. The components which enter into the concept of a tax are well known. The first is the character of the imposition known by its nature which prescribes the taxable event attracting the levy, the second is a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax, the third is the rate at which the tax is imposed, and the fourth is the measure or value to which the rate will be applied for computing the tax liability. If those components are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law. Any uncertainty or vagueness in the legislative scheme defining any of those components of the levy will be fatal to its validity."

The four components could be understood as:

(i) the character of the tax which is determined by its nature which prescribes the taxable event attracting the levy;

(ii) a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax;

(iii) rate at which the tax is imposed; and

(iv) the measure or value to which the tax will be applied for computing the taxing liability.

If the aforesaid components are applied to the present case, it is clear that –

(i) Section 9 of the MMDR Act, 1957 deals with payment of royalty in respect of any mineral removed or consumed;

(ii) by a holder of mining lease who is obliged to pay the royalty;

(iii) at the rate specified in the Second Schedule to MMDR Act, 1957; and

(iv) a percentage of the average sale price on *ad valorem* basis.

For instance, in respect of Iron Ore : (CLO, lumps, fines and concentrates all grades) fifteen per cent of average sale price on *ad valorem* basis.

Although, Section 9 of the MMDR Act, 1957 is not worded in the manner a charging section in a taxation statute is normally worded, nevertheless, its import must be understood in the sense of it being a taxation provision. For the aforesaid reasons, I hold that royalty is the nature of a tax or an exaction.

I now move on to the judgments of this Court as well as High Courts on the nature of exaction in the form of royalty under the provisions of the MMDR Act, 1957 as the controversy centres around various decisions of this Court and certain High Courts.

Hingir-Rampur:

11. In ***Hingir-Rampur***, a Constitution Bench of this Court presided over by P.B. Gajendragadkar, J. was considering the validity of the Orissa Mining Areas Development Fund Act, 1952 (hereinafter referred to as, "Act of 1952"). In December,

1952, the State of Orissa passed the Act of 1952. In pursuance of the rule-making power conferred on it by the impugned Act, respondent No.1 purported to make the rules called the Orissa Mining Areas Development Act Rules, 1955 (hereinafter referred to as, "1955 Rules"). The liability for the payment of cess under the impugned Act was notified against the first petitioner's Rampur colliery therein. Since a demand was made for the payment of cess, there was a challenge made to the same by filing the writ petition under Article 32 of the Constitution before this Court. According to the petitioners, cess levied under the impugned Act was not a fee but in substance a levy in the nature of a duty of excise on the coal produced at the first petitioner's Rampur Colliery, and as such was beyond the legislative competence of the Orissa legislature. Alternatively, it was urged that even if the levy imposed by the impugned Act is a fee relative to Entries 23 and 66 - List II, it would nevertheless be *ultra vires* having regard to the provisions of Entry 54 - List I read with Central Act 53 of 1948 (MMRD Act, 1948). According to the respondent-the State of Orissa, the levy imposed by the

impugned Act was a fee relatable to Entries 23 and 66 - List II and its validity was not affected either by Entry 54 read with Act 53 of 1948 or by Entry 52 read with Act 65 of 1951. In the alternative, it was contended that if the said levy is held to be a tax and not a fee, it would be a tax relatable to Entry 50 - List II and as such the legislative competence of the State legislature to impose the same cannot be successfully challenged.

11.1 The scheme of the impugned Act was considered in paragraph 15 of the judgment and it was observed by this Court that the object of the Act was for the purpose of development of mining areas in the State. That the method in which the fee is recovered is a matter of convenience that by itself cannot fix upon the levy the character of duty of excise though the method in which an impost is levied may be relevant in determining its character, its significance and effect. Therefore, it was observed that under the impugned Act, the mere fact that the levy imposed by the impugned Act had adopted the method of determining the rate of the levy with reference to the minerals produced by the mines would not by

itself make the levy a duty of excise. The method thus adopted may be relevant in considering the character of the impost but its effect must be weighed along with and in the light of the other relevant circumstances; where an impugned statute passed by a State legislature is relatable to an Entry in List II, it is not permissible to challenge its *vires* only on the ground that the method adopted by it for the recovery of the impost can be and is generally adopted in levying a duty of excise. Therefore, it was held that cess in question was neither a tax nor a duty of excise but a fee.

11.2 If the cess was held to be a fee relatable to Entries 23 and 66 - List II, its validity was still open to challenge because the legislative competence of the State Legislature under Entry 23 is subject to the provisions of List I with respect to regulation and development under the control of the Union.

11.3 According to this Court, on a combined reading of two Entries, namely, Entry 23 - List II and Entry 54 - List I, what emerged was that the jurisdiction of the State legislature under Entry 23 - List II is subject to the limitation imposed by the

latter part of the said Entry. If Parliament by its law has declared that regulation and development of mines should in public interest be under the control of Union, to the extent of such declaration the jurisdiction of the State Legislature is excluded. In other words, if a Central Act has been passed which contains a declaration by Parliament as required by Entry 54 - List I, and if the said declaration covers the field occupied by the impugned Act, the impugned Act would be *ultra vires*, not because of any repugnance between the two statutes but because the State legislature had no jurisdiction to pass the law. The limitation imposed by Entry 23 - List II is a limitation on the legislative competence of the State legislature itself and this position was not in dispute. It was urged that the field covered by the impugned Act was already covered by the Mines and Minerals (Regulation and Development) Act, 1948, (53 of 1948) and in view of the declaration made by Section 2 of the Act, the impugned Act was *ultra vires*. Section 2 of the said Act contained a declaration as to the expediency and control by the Central Government. This Court opined that if it was held

that this Act contained the declaration referred to in Entry 23 - List II, there would be no difficulty in holding that the declaration covered the field of conservation and development of minerals and the said field is indistinguishable from the field covered by the impugned Act. What Entry 23 - List II, provides is that the legislative competence of the State Legislature is subject to the provisions of List I with respect to regulation and development under the control of the Union, and Entry 54 - List I requires a declaration by Parliament by law that regulation and development of mines should be under the control of the Union in public interest, then it would not be competent of the State legislature to pass an Act in respect of the subject-matter covered by the said declaration. In such a case, the test must be whether the legislative declaration covers the field or not. It was observed that field covered by the impugned Act was covered by the Central Act 53 of 1948.

11.4 Wanchoo, J. (as His Lordship then was) gave a separate opinion in the said case by stating that cess levied on all extracted minerals from any mine in any mining area at a rate

not exceeding five per centum of the value of the minerals at the pit's mouth by the Orissa State legislature under Section 4 of the Act of 1952 (Act 27 of 1952) was a fee properly so called and not a duty of excise.

11.5 The next contention considered by Wanchoo, J. was that if the cess is not justified as a fee, it is a tax under Item 50 of List II. Item 50 List II provides for taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development. The question was as to what are taxes on mineral rights. It was held by Wanchoo, J. that taxes on mineral rights would be confined to taxes on leases of mineral rights and on premium or royalty. Taxes on such premium and royalty would be taxes on mineral rights while taxes on the minerals actually extracted would be duties of excise. Consequently, the writ petition was dismissed.

M.A. Tulloch:

12. In ***M.A. Tulloch***, also before a Constitution Bench, the question was with regard to the validity of the imposition of the Orissa Mining Areas Development Fund Act, 1952 (Orissa Act

27 of 1952) and cancellation of the notices of demand issued. The High Court had allowed the petition of the respondents therein by observing that the Orissa Act had been rendered ineffective or suppressed by a Central Act, namely, MMDR Act, 1957, w.e.f. 01.06.1958. Considering Entry 23 - List II and Entry 54 - List I, the High Court held that the Orissa Act ceased to be operative by reason of the withdrawal of legislative competence by force of the Entry in the State List being subject to the Parliamentary declaration and the law enacted by Parliament. Therefore, w.e.f. 01.06.1958 the Orissa Act was deemed to be non-existent as there was lack of power to enforce and realise the demands for the payment of the fee at the time when the demands were issued and were sought to be enforced. The correctness of this judgment was considered by a Constitution Bench of this Court.

12.1 It was observed that to the extent to which the Union Government had taken under "its control" "the regulation and development of minerals" so much was withdrawn from the ambit of the power of the State legislature under Entry 23 - List

II and the legislation of the State which had rested on the existence of power under that Entry would, to the extent of that "control", be superseded or be rendered ineffective. This was because there was a denudation of State legislative power by the declaration which Parliament was empowered to make and had made (*vide* Section 2 of MMDR Act, 1957). It was observed that the States would lose legislative competence only to the "extent to which regulation and development under the control of the Union had been declared by Parliament to be expedient in the public interest". The crucial enquiry had therefore to be directed to ascertain this "**extent**" for, beyond it, the legislative power of the State remained unimpaired.

12.2 Thus, the scheme of Orissa Act, which was a 1952 Act, was considered in juxtaposition of the MMDR Act, 1957, also called as 'Central Act'. The question considered was "whether the extent of control and regulation" provided by the Central Act took within its fold the area or the subject covered by the Orissa Act. The test was if the entire field of mineral development was taken over by the Central Act that would

include the provision of amenities to workmen employed in the mines which was necessary in order to stimulate or maintain the working of mines. The test was, therefore, if under power confirmed by Section 18(1) of the Central Government had made rules providing for the amenities for which provision was made by the Orissa Act and if the Central Government had imposed a fee to defray the expenses of the provision of these amenities, would such rules be held to be *ultra vires* the Central Act, particularly, when taken in conjunction with the matters for which rules could be made under Section 13 to which reference has been made.

12.3 The Court observed that in ***Hingir-Rampur*** case, the Orissa Act was a post-Constitution enactment (1952 Act), whereas the Central Act of 1948 was a pre-Constitution law and under Entry 54 - List I "Parliament" had not made the requisite declaration. The previously existing Central law was held not to be within the terms of Entry 54 - List I and therefore, the State enactment was held to continue to be operative. But later when the Central law i.e. MMDR Act, 1957

contains the requisite declaration by the Union Parliament under Entry 54 - List I and that Act covers the same field as the Act of 1948 (Central Act) in regard to mines and mineral development, it was observed that unless there were any material differences between the scope and ambit of the Central Act 53 of 1948 and that of the Act of 1957, the matter was concluded. Consequently, the writ petition was dismissed.

Baijnath Kedia:

13. A Constitution Bench of this Court had the occasion to consider the provisions of the MMDR Act, 1957 in light of the Bihar Land Reforms Act and the amendment thereto. In ***Baijnath Kedia***, it was the contention that amendment of Section 10 of the Bihar Land Reforms Act was *ultra vires* the Constitution and that Rule 20(2) did not legally entitle recovery of the dead rent, royalty, etc. as mentioned in the Schedules to the Bihar Minor Mineral Concession Rules, 1964. The dispute arose on account of the appellants therein receiving letters to the effect that in view of the amendment to Section 10 of the Bihar Land Reforms Act, 1950 and all leases for minor minerals

having stood statutorily substituted by the corresponding terms and conditions by the Bihar Minor Mineral Concession Rules, 1964, the rent and royalty etc. in respect of minor minerals in the State (irrespective of the date on which the lease was granted) were to be paid as per the aforesaid Rules with effect from 27.10.1964. The appellant therein denied their liability to pay. The State of Bihar submitted that the terms of the original lease having being validly altered by the operation of the second proviso to Section 10(2) of the Bihar Land Reforms Act, 1950 in addition to Section 10A of the said Act, the State Government was entitled to collect dead rent, royalty etc. from the lessees who had been granted lease so long as there was a lease subsisting on the date of the commencement of the amendment.

13.1 M. Hidayatullah, C.J. speaking for the Bench traced the history of the legislation on the subject of mines and minerals by referring to Entry 36 of the Federal Legislative - List I and Entry 23 of the Provincial Legislative - List II of the Seventh Schedule of the Government of India Act, 1935 and also made

reference to Entry 54 - List I - Union List, Entry 23 – List II - State List. That the Mines and Minerals (Regulation and Development) Act, 1948, ("MMRD Act, 1948") had a declaration under Section 2 to the same effect as the declaration under Section 2 of the MMDR Act, 1957. This Court held that once the MMDR Act, 1957 was enacted by the Parliament, the Union had taken all the powers to itself and had authorised the State Government to make Rules for the regulation of leases. By the declaration and the enactment of Section 15 of the MMDR Act, 1957, the whole of the field relating to minor minerals came within the jurisdiction of Parliament and no scope was left for the enactment of the second proviso to Section 10(2) in the Bihar Land Reforms Act. The enactment of the proviso was, therefore, without jurisdiction. Consequently, the appeals were allowed and the State of Bihar was restrained from enforcing the second proviso to Section 10(2) added to the Bihar Land Reforms (Amendment) Act, 1964.

HRS Murthy:

14. ***HRS Murthy vs. Collector of Chittoor, AIR 1965 SC 177 ("HRS Murthy")*** is also a decision of the Constitution Bench. In this case, the validity of notices of demand for the payment of land cess under the Madras District Boards Act, 1920 ('Madras Act', for short) and the legality of the procedure for the recovery of the amount of the said cess was questioned. The impugned notices made a demand also for education cess which was merely a proportion of the land-cess.

14.1 In the year 1953, the appellant's father therein had obtained a mining lease from the Government of Madras under which he was permitted to work and win iron ore in a tract of land in a village in Chittoor district. On separation of State of Andhra from State of Madras a demand was made upon the father of the appellant therein for the payment of land cess calculated in accordance with the provisions of Sections 78 and 79 of the aforesaid Act. The notices issued were questioned before the Madras High Court and thereafter by way of a Special Leave Petition the matter was heard by this Court along

with a Writ Petition also filed by the very same appellant. One of the contentions raised was with regard to the meaning of the expression royalty under Section 79(1) of the Madras Act. Did it include the royalty payable under a mining lease on the ore won by the lessee? On the meaning of the word, royalty, it was contended that the said expression under Section 79(1) of the Madras Act was something other than the return to the lessor or licensor and it connotes the payment made for the materials or minerals won from the land. The expression royalty under Section 79(1) of the said Act did not signify royalty as commonly understood but was confined to the rent payable for beneficial use of the surface of the land. This contention was rejected and it was observed that royalty which follows the expression lease-amount is something other than the return to the lessor or licensor for the use of the land surface and represents, as it normally connotes, the payment made for the materials or minerals won from the land.

14.2 The judgments in ***Hingir-Rampur*** and ***M.A. Tulloch*** were considered. It was observed that the power to impose the

cess was not available after the Central Acts of 1948 and 1957 came into force. It was contended that since the cess was payable only in the event of the mining lessee winning the mineral and no royalty was paid when no minerals were extracted, it was in effect a tax on the minerals won and, therefore, on mineral rights. However, this argument was not accepted. It was observed that when a question arises as to the precise head of legislative power under which a taxing statute has been passed, the subject for enquiry is, what in truth and substance, is the nature of the tax. It was observed that, no doubt, cess has a remote connection to the mineral won but that does not stamp it as a tax on either the extraction of minerals or on the mineral rights. The Court found it unnecessary for the purpose of this case to examine the question, as to what exactly is a tax on mineral rights seeing that such a tax is not leviable by Parliament but only by the State and the sole limitation on the State's power to levy the tax is that it must not interfere with a law made by Parliament as regards mineral development. It was observed that there was

no law enacted by Parliament which was contrary to the State power to levy the tax and in effect the cess under Sections 78 and 79 of the Madras Act was a "tax on lands" within Entry 49 - List II. In the circumstances, it was observed that the cess was lawfully imposed upon land and hence, the appeals and writ petitions were dismissed.

14.3 This Court, in ***India Cement*** held at para 34 that royalty is a tax and did not approve the dictum in ***HRS Murthy***. It is the above conclusion which was doubted by a five-judge Bench in ***Kesoram*** and other cases which has led to the constitution of this nine-judge Bench in order to consider the correctness of the aforesaid verdicts. Therefore, it is necessary to consider the facts and the reasoning in ***India Cement***.

India Cement:

15. In ***India Cement***, Section 115 of Madras Panchayats Act, 1958 as amended by the Madras Act, 1964 came up for consideration. The demand of a local cess on royalty on exercise of a mineral right was questioned. The appellant therein was engaged in mining operations and on execution of the lease

deed had paid royalties, dead rents and other amounts payable on the said deed. The imposition of the local cess was with retrospective effect along with local cess surcharge under Section 116 of the aforesaid Act. The contention of the appellant therein was that the cess on royalty could not be levied. According to the seven-judge Bench, the question which fell for consideration and determination was whether cess on royalty could be a valid levy imposed by the State of Tamil Nadu.

15.1 Under Section 115(1) of the amended Act a local cess at the rate of 45 paisa on every rupee of land revenue payable to the Government in respect of any land for every fasli was envisaged. An Explanation to the said Section was added and was deemed always to have been incorporated by the Tamil Nadu Panchayats (Amendment and Miscellaneous Provisions) Act, 1964 (Amending Act) which provided as under:

> "**Explanation**- In this section and in Section 116, "land revenue" means public revenue due on land and includes water cess payable to the Government for water supplied or used for the irrigation of land, royalty, lease amount or other sum payable to the Government in respect of land

held direct from the government on lease or licence, but does not include any other cess or the surcharge payable under Section 116, provided that land revenue remitted shall not be deemed to be land revenue payable for the purpose of this section."

(emphasis by me)

Sub-section 2 of Section 115 of the amended Act provided that the local cess shall be deemed to be a public revenue due on all the lands in respect of which a person is liable to pay local cess and all the buildings upon the said land and their products shall be regarded as security for the local cess. Section 116 of the amended Act reads as follows:

"116. Every panchayat union council may levy on every person liable to pay land revenue to the government in respect of any land in the panchayat union a local cess surcharge at such rate as may be considered suitable as an addition to the local cess levied in the panchayat development block under Section 115 provided that the rate of local cess surcharge so levied shall not exceed two rupees and fifty paise on every rupee of land revenue payable in respect of such land."

(emphasis by me)

15.2 A writ petition was filed in the Madras High Court by the appellant therein, which was dismissed by a learned Single Judge holding that cess levied under Section 115 of the amended Act was a tax on land and as such, fell under Entry

49 - List II-State List and was within the competence of the State legislature. Reliance was placed on a decision of this Court in ***HRS Murthy***. Against the order of the learned Single Judge, a writ appeal was filed before the Division Bench of the High Court, which was also dismissed by holding that local cess authorised by Section 115 of the amended Act "was not land revenue but is a charge on the land itself and Section 115 merely qualified the basis of quantum of the land revenue." The Division Bench of the Madras High Court held that the meaning of the Explanation added to Section 115 was that the cess was levied as a tax on land and was measured with reference to land revenue which also meant, royalty, lease amount etc., as mentioned in the Explanation. The Division Bench of the High Court also relied on the decision of this Court in ***HRS Murthy*** and held that it was not possible to accept the contention of the appellant therein that Section 115 of the said Act read with the Explanation contravened in any manner Section 9 of the MMDR Act, 1957.

15.3 In the said case, this Court at the outset observed that under the Second Schedule of the MMDR Act, 1957 rates have been provided with regard to the payments of royalty to the Government under the lease deed. Thus, there was an obligation on the lessee to pay rent and other charges mentioned under the clauses of the lease deed and all other Central and State Government dues "except demands for land revenue". The question which was framed by the seven-judge Bench of this Court was whether cess on royalty was a demand of land revenue or additional royalty.

15.4 As already noted, the aforesaid Explanation added to Section 115 of the said Act by virtue of the Amended Act was to include "royalty, lease amount and other sums payable to the government" in the definition of "land revenue" and also to validate the levy and collection of the cess and surcharge by giving the Explanation a retrospective effect. As a result, the said amendment was intended to bring royalty payable on a mining lease as per Section 9 of the MMDR Act, 1957 within the

Explanation which was the definition of "land revenue" applicable to Section 115 as well as Section 116 of the said Act.

15.5 This Court noted that the appellant, India Cement Limited, was paying royalty which was prescribed under the lease deed as fixed under MMDR Act, 1957 and as per the Rules made thereunder, the same being a Parliamentary Act by which the control of mines and minerals has been taken over by the Union. That the MMDR Act, 1957 is an Act for the regulation of mines and development of the minerals under the control of the Union of India. It was noted that Section 2 of the Act declares that it is expedient in the public interest that the Union of India should take under its control the regulation of mines and the development of the minerals to the extent provided in the Act. Section 9 of the MMDR Act, 1957 deals with payment of royalty in respect of mining leases. This Court observed that the MMDR Act, 1957 was passed by virtue of the power of the Parliament under Entry 54 - List I. Since the control of mines and the development of minerals were taken over by Parliament, the question whether the impugned levy or the impost by the State

Legislature, under the provision of the State Legislation referred to above, could be justified or sustained either under Entries 49, 50 or 45 - List II was considered. In paragraph 19 of ***India Cement***, this Court considered ***Guruswamy & Co., vs. State of Mysore, AIR 1967 SC 1512, ("Guruswamy")*** to indicate what a cess is. On analysing Sections 115 and 116 of the Madras legislation referred to above, this Court observed that the expression royalty in the Explanation could not be included in the definition of "land revenue" properly called or conventionally known, which is separate and distinct from royalty.

15.6 Reference was also made to the Judgments of the Mysore High Court in ***M/s Laxminarayana Mining Co., Bangalore vs. Taluk Development Board, AIR 1972 Mys 299 ("Laxminarayana Mining Co.")*** and Patna High Court in ***Laddu Mal vs. The State of Bihar, AIR 1965 Pat 491, ("Laddu Mal")*** and the Judgment of this Court in ***HRS Murthy.*** It was observed that in the latter case attention of this Court was not invited to the provisions of MMDR Act, 1957 and

Section 9 thereof and the Second Schedule to the said Act. Under the above provisions, there was a clear bar on the State legislature taxing royalty payable under Section 9 of the said Act so as to in effect amend the Second Schedule of the said Act. Therefore, it was held that tax on royalty can be a tax on land or called land revenue. Even if it is a tax, which falls within Entry 50 - List II it will be *ultra vires* the State legislative power in view of Section 9(3) read with Section 2 of MMDR Act, 1957, which is a Parliamentary law. In the above legislative background, this Court held that royalty was a tax or "land revenue" under the Explanation clause referred to above, which could not be the basis for levy of cess as, by that, cess on royalty payable would not be in consonance with what is stipulated under Section 9(3) of the MMDR Act, 1957 but would exceed the amount so stipulated which would not be within the legislative competence to levy in view of Section 2 of MMDR Act, 1957 read with Entry 50 - List I.

15.7 This Court further referred to the judgments of Rajasthan, Punjab, Gujarat and Orissa High Courts, which had

held that royalty is not a tax, namely, ***Bherulal vs. State of Rajasthan, AIR 1956 Rajasthan 161, ("Bherulal")***; ***Dr. Shanti Saroop vs. State of Punjab, AIR 1969 P & H 79, ("Dr. Shanti Saroop"); Saurashtra Cement and Chemical Industries Ltd. Ranavav vs. Union of India, AIR 1979 Guj 180 ("Saurashtra Cement and Chemical Industries");*** and ***Laxmi Narayan Agarwalla vs. State of Orissa, AIR 1983 Ori 210, ("Laxmi Narayan Agarwalla")*** but did not find it necessary to discuss the same in the view it was taking and having regard to there being no discussion of the constitutional provisions in the aforesaid cases.

15.8 The contention of the State of Tamil Nadu in ***India Cement*** was that the State has a right to tax minerals and that in Entry 50 - List II, there was no limitation to the taxing power of the State. This was not accepted and it was held that in view of Section 9(2) of the MMDR Act, 1957 the field was fully covered by the said Act which is a Central legislation. In paragraph 33, it was further observed that royalty is directly relatable only to the minerals extracted and on the principle

that the general provision is excluded by the special one, royalty would be relatable to Entry 50 - List II and not Entry 49 - List II. That as the field is covered by the Central legislation i.e. the MMDR Act, 1957, the impugned provisions of the State legislation cannot be upheld. Ultimately in paragraph 34 of the Judgment of this Court, it is observed as under:

> "**34.** In the aforesaid view of the matter, we are of the opinion that royalty is a tax, and as such a cess on royalty being a tax on royalty, is beyond the competence of the State legislature because Section 9 of the Central Act covers the field and the State legislature is denuded of its competence under Entry 23 of List II. In any event, we are of the opinion that cess on royalty cannot be sustained under Entry 49 of List II as being a tax on land. Royalty on mineral rights is not a tax on land but a payment for the user of land."

A reading of paragraph 34 would indicate as follows:

(i) Cess on royalty being a tax on royalty, is beyond the competence of the State legislature because Section 9 of the Central Act ie., MMDR Act, 1957, covers the field.

(ii) As a result, the State Legislature is denuded of its competence under Entry 50 - List II to impose any

cess on royalty which is collected under Section 9 of the MMDR Act, 1957.

(iii) Cess on royalty cannot be sustained under Entry 49 - List II as being a tax on land.

(iv) Royalty on mineral rights is not a tax on land but a payment for the user of land.

(v) However, under the Tamil Nadu legislation, royalty paid under the provisions of MMDR Act, 1957 was construed to be "land revenue" on which cess was levied, which was beyond the competence of the State Government as royalty is paid by a holder of a mining lease under the MMDR Act, 1957, a Central Act as a tax.

(vi) Thus, royalty is a tax.

15.9 The aforesaid conclusion was so arrived, *inter alia*, because the Explanation to Section 115 of the aforesaid amended Tamil Nadu Act defined 'land revenue' to include royalty, lease amount or any other sum payable to the Government in respect of land held direct from the Government

on lease or licence. Local cess on every rupee of "land revenue" was payable as per the above definition which meant royalty. This meant that on royalty payable on mining leases in respect of mineral bearing lands in the State of Tamil Nadu, which was included in the definition of land revenue, a further local cess was payable. Therefore, payment of royalty on a mining activity in exercise of a mineral right was construed to be "land revenue" and the basis for imposing a local cess. The payment of cess was in addition to payment of royalty under the provisions of the MMDR Act, 1957, which is a Central enactment. Thereby the payment to be made by a holder of a mining lease was a local cess to be paid under the Tamil Nadu Act in addition to royalty being paid under the MMDR Act, 1957. Moreover, under Section 116 of the Tamil Nadu Act, a Panchayat Union Council could also levy a local cess surcharge on every person liable to pay land revenue to the State Government in respect of any land in the Panchayat Union. The levy of local cess and local cess surcharge on the payment of royalty by a holder of a mining lease would inevitably increase

the price of minerals extracted in the State of Tamil Nadu over and above what is otherwise the price that could be fixed which would include, *inter alia*, only the royalty charges. Therefore, the increase in the price of a particular mineral extracted in the Tamil Nadu by virtue of the local cess and surcharge on local cess would not be in the interest of mineral development as it would lead to price escalation in the State of Tamil Nadu. This is not in the interest of mineral development as this would lead to every State imposing local cesses/imposts/tax on the minerals extracted in the respective States over and above royalty payable under the MMDR Act, 1957 which is a structured levy in the form of a tax to be determined only by the Central Government in order to maintain uniformity in the price of a mineral extracted throughout the country. But if over and above payment of royalty by a holder of a mining lease, local cesses and surcharges are also imposed based on the royalty paid, it would be contrary to Entry 54 - List I and the declaration made under Section 2 of the MMDR Act, 1957 and

the scheme of the said Act which envisages only payment of royalty on the minerals extracted.

15.10 Further, royalty could not be the basis for levy of cess construed as "land revenue" by the Tamil Nadu Act as this would make royalty a tax on land and cess on royalty would make it a tax which a State is not permitted to levy on mineral bearing land in view of Section 9 of the MMDR Act, 1957. Having regard to the provisions of MMDR Act, 1957, it was held that royalty is a tax. The same cannot be included within the definition of "land revenue" which itself is a tax which a State cannot make as the basis for imposing a cess or a surcharge on cess. Therefore, in paragraph 34 of the Judgment in ***India Cement***, the seven-judge Bench of this Court held that royalty is a tax and therefore cess on royalty being a tax on royalty was beyond the competence of the State legislature. This was having regard to the scheme of MMDR Act, 1957 and the Rules made thereunder as discussed above. Further, Entry 49 - List II could not be relied upon by the State Government to impose a cess on royalty by treating it as a land revenue and as a tax on land.

This was because payment of royalty was under Section 9 of the MMDR Act, 1957 as a tax on exercise of mineral rights. Hence, it was observed in paragraph 34 itself that "Royalty on mineral rights is not a tax on land but a payment for the use of land." It is in the above legal framework of the Tamil Nadu Act and the Entries in List I and List II and having regard to the object and scheme of MMDR Act, 1957 and the Rules made thereunder that the conclusion in paragraph 34 was arrived at. Ultimately, it was held that the levy of cess and surcharge on cess on the royalty payable was *ultra vires* the power of the State Legislature. As a result, the appeals filed by the appellant in ***India Cement***, were allowed.

As already noted, reference was made in detail to two decisions of the Patna and Mysore High Courts in arriving at the above conclusion by this Court which could be discussed at this stage.

Laddu Mal:

16. In ***Laddu Mal***, notices issued to the brick-layers by the Assistant Mining Officer, Purnea, Bihar calling upon them to

pay royalty were assailed. The petitions challenged the notices mainly on the ground that what were being used by them for manufacture of bricks, which were minor minerals and therefore, the Bihar State Government had no authority in law to impose any royalty in respect of minor minerals. In the said case, the High Court considered the definition of "taxation" under Article 366(28) of the Constitution of India to include the imposition of any tax or impost and observed that the expression royalty is used in a secondary sense to signify that part of the reddendum which is variable and depends upon the quantity of minerals taken out. It is a payment made to the land owner by the lessee of the mine, in return of the privilege of working which is different from rent. Royalty is a levy in proportion to the minerals worked. Royalty is an impost by the Government and was in the nature of tax because it was a compulsory exaction recoverable, in the event of non-payment, as if it was arrears of land revenue. That royalty on mines and minerals is not a fee but a levy which is in the nature of a tax. Article 265 of the Constitution provides that no tax shall be

levied or collected except by authority of law and the State Government had no authority to impose and demand royalty for mines and minerals.

16.1 With reference to Entry 54 - List I and Entry 23 - List II, it was observed that the area of operation of the two Entries has been kept separate and distinct. Anything beyond what is declared by Parliament to be expedient in the public interest to be kept under the control of the Union, will be under the legislative ambit of the State in regard to mines and mineral development in the State. The MMDR Act, 1957 is an enactment of the Parliament for the regulation of mines and the development of minerals under the control of the Union. Referring to various provisions of the MMDR Act, 1957 such as Section 3(a) which defines “minerals” to include all minerals except mineral oils; “mining lease” in Section 3(c) and ”mining operations” in Section 3(d) and the definition of ‘minor minerals” in Section 3(e) of the said Act, it was observed that Section 2 of the said Act declared that it was expedient in public interest that the Union should take under its control the regulation of

mines and the development of minerals to the extent provided. Further, on a reading of Sections 4 to 13 of the said Act, it was clear that the Parliament gave control of all mines and minerals except mineral oil, to the Union Government. However, in Sections 14 and 15, an exception was carved with regard to minor minerals. Therefore, Entry 54 - List I gave the power to the Union Government to regulate all mines and development in minerals except oils thereby leaving no area for legislation in that respect to the State Legislature. That, insofar as 'minor minerals' are concerned, the State Governments were authorised to make rules for regulation of grant of prospective licenses and mining leases and for purposes connected therewith and it is also a delegated authority given to the State Government and not the State Legislature.

16.2 Taking into consideration Entry 50 - List II, which deals with taxes on mineral rights subject to any limitation imposed by the Parliament by law relating to mineral development, it was observed that in view of the limitation imposed by the Parliament under the MMDR Act, 1957, it was doubtful if any

legislative competency has been left for the State Legislature to impose any tax on mineral rights. Discussing Section 9 of the MMDR Act, 1957, it was observed that the same mandates payment of royalty by the holder of a mining lease in respect of any mineral removed by him after the commencement of the Act at a rate specified in the Second Schedule thereof. The Union Government had been empowered to enhance or reduce such rate, subject to certain conditions. That the Parliament had given power to the Union Government to modify the rates of royalty for all minerals except for minor minerals in respect of which the matter was left to the States. Insofar as minor minerals are concerned, imposition of royalty was within the power of the State Government by way of rules. Also, rules made by the State Government prior to the enforcement of the MMDR Act, 1957 continued to be operative till fresh rules were enforced, being the Bihar Minor Mineral Concession Rules, 1984. It was reasoned that, Entry 54 - List I uses the expression "mines and minerals" which includes (i) regulation of mines and (ii) mineral development. Therefore, widest possible meaning

should be given to the said expression considering the question in the context of the Bihar Minor Minerals Concession Rules, 1954 and the impugned notices demanding royalty. Consequently, the notices issued by the Assistant Mining Officer calling upon the petitioners to pay royalty on account of brick-earth were quashed.

Laxminarayana Mining Co.:

17. Reference was made to the judgment of the Mysore High Court in ***Laxminarayana Mining Co.*** authored by Venkataramiah, J. (as His Lordship then was), in ***India Cement***. In the said case it was observed that on a combined reading of Entries 23 and 50 - List II and Entry 54 - List I it established that as long as the Parliament did not make any law in exercise of its power under Entry 54 - List I the powers of the State Legislature in Entries 23 and 50 - List II would be exercisable by the State Legislature. But once the Parliament makes a declaration by law that it is expedient in the public interest to make regulation of mines and development of minerals under the control of the Union, to the extent to which

such declaration is made, such regulation and development is undertaken by law made by Parliament and the powers of the State Legislature under Entries 23 and 50 - List II are denuded.

17.1 In this case, the Mysore Village Panchayats and Local Boards Act, 1959, ('State Act', for short) by enacting Sections 143 and 144 intended to confer power on the Taluk Board to levy a licence fee on the mining of manganese ore, iron ore etc carried on by persons holding mineral concessions i.e. on the activity of mining.

17.2 By Notification issued under the aforesaid provisions, persons engaged in mining of manganese iron ore, etc. with the help of machinery or without the help of machinery, as the case may have been, under Entries 62 and 63 of the Schedule to the aforesaid State Act had to pay a licence fee. Aggrieved by the notices of demand and the Notification issued under Sections 143 and 144 of the aforesaid State Act, the petitioners therein had filed the writ petition seeking quashing of the notices of demand and the Notification in so far as they levied licence fee

under the aforesaid provisions. Further, Sections 143 and 144 of the State Act provided for regulation of certain trades and the relevant part of Schedule II of the State Act, on the basis of which the impugned Notification was issued which provided for the levy of a licence fee on any purpose or the doing in the course of any industrial process, which, in the opinion of the Taluk Board, was likely to be dangerous to human life, or health or property or was likely to create or cause a nuisance.

The following three main contentions were urged by the petitioners therein: -

(i) that the State Legislature could not have made a law authorising the imposition of the impugned levy after the Mines and Minerals (Regulations and Development) Act, 1957 (Central Act LXVII of 1957) came into force;

(ii) that the Notification in so far as it levied licence fee on the mining activities carried on by the petitioners therein was outside the scope of Sections 143 and 144 of the State Act; and

(iii) that the licence fee in question which was in the nature of a tax and could not have been levied because Sections 143 and 144 of the State Act did not confer power on the Taluk Development Board to levy a tax.

17.3 The respondent-State of Mysore had sought to contend that the demand notices as well as the Notification were rightly issued and that the licence fee demanded by the them was in the nature of a tax and that the Taluk Development Board had the competence to levy the same as the State Legislature was authorised by Entry 23 - List II to make law with respect to regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union. It was further contended that Entry 50 – List II of the same list authorised the State Legislature to levy tax on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development.

17.4 After referring to the scheme of the MMDR Act, 1957 as well as the Mineral Concession Rules, 1960, the High Court

reasoned that the State enactment was passed in the year 1959 whereas the MMDR Act, 1957 was passed in the year 1957. Section 143 of the State Act dealt with regulation of certain trades. The notification issued under Sections 143 and 144 of the aforesaid State Act had mandated that the owner or occupier of a place for the purpose of mining of manganese ore or iron ore etc. with the help of machinery or without the help of machinery had to pay a licence fee for the use of such place. Relying upon ***Hingir-Rampur*** and ***M.A. Tulloch***, and distinguishing ***HRS Murthy***, it was observed that this Court had in unequivocal terms had held that in respect of matters dealt with by the Central Act, i.e. MMDR Act, 1957, the State Legislature had no authority to make any law.

17.5 It was also observed that this Court in ***Hingir-Rampur*** or in ***HRS Murthy*** did not decide the question as to what meaning should be given to the expression 'tax on mineral rights' appearing in Entry 50 – List II. It was further reasoned in paragraphs 17 and 18 as under:

"**17.** Entry 50 in List II which authorises the levy of tax on mineral rights is subject to limitations imposed by Parliament by law relating to mineral development made in exercise of its power under Entry 54 of List I. It was contended on behalf of the respondents that in the instant case the tax was not on mineral rights, but on the activity of mining carried on in certain areas. We find it difficult to accept the said contention. As observed by the Supreme Court in *State of Orissa* v. *M.A. Tulloch*, AIR 1964 SC 1284 by making a declaration under Section 2 and enacting Section 18 of the Central Act, the intention of the Parliament to cover the entire field of mineral development including tax on mineral rights is made clear. The levy of royalty under Section 9 of the Central Act and the provision for making rules with regard to the fixation and collection of dead rent, fines and fees or other charges and the collection of royalties on prospecting licence and mining lease and the provisions of Section 25 of the Central Act authorising the recovery of any tax payable under the Central Act as arrear of land revenue, clearly shows that the Parliament intended that the power to legislate with regard to taxation on mineral rights also should be assumed by it to the exclusion of the State Legislatures. The expression 'royalty' is used differently in different contexts. Sometimes it is used as equivalent to a tax also and in some other cases it is used as representing the amount payable by a lessee in respect of minerals removed by the lessee even though the lessor is not the sovereign Government we are of the opinion that the expression 'royalty' in Section 9 which requires payment of royalty to the State Government as prescribed in the II Schedule connotes the levy of a tax. Vide *Laddu Mal* v. *The State of Bihar*, AIR 1965 Pat 491. It is a levy falling outside the scope of Entry 84 in List I which provides for levy of excise duty by Parliament but within the scope of the expression 'tax on mineral rights' within the meaning of that expression in Entry 50 of List II. To us it appears the expression 'tax on mineral rights' includes within its scope the royalty payable on minerals extracted.

Mineral rights and mining activity carried on in exercise of those mineral rights appear to us to be indistinguishable in the above context. That appears to be the true intendment of the declaration contained in Section 2 of the Central Act and that it is so enacted in order to see that throughout the 'Indian Union, the rents, royalties and other taxes payable in respect of mining and minerals are uniform. It may be recalled here that in *Hingir Rampur Coal Company's case*, AIR 1961 SC 459 the Supreme Court has stated that the scope of the Central Act is wider than the scope of the Central Act LIII of 1948 which by Section 6(2) provided for making rules regarding levy and collection of royalties fees or taxes on minerals mined, quarried or excavated (vide paragraph 24 of the judgment).

18. We are, therefore, of the opinion that by the enactment of the Central Act, the State Legislature lost its legislative power under Entries 23 and 50 of List II to the extent indicated in the Central Act. Hence, we cannot accept the contentions of the respondents that even after the passing of the Central Act, the State Legislature by enacting Section 143 of the State Act intended to confer power on the respondents to levy tax on the mining activities carried on by persons holding mineral concessions. It follows that levy of tax on mining by respondents as Per the impugned notification is Unauthorised and is liable to be set aside. ... ... What is however liable to be set aside is the notification issued by respondent 1 in exercise of its power under Section 143 of the State Act to the extent it levies a tax on mining of manganese or iron ore."

The Mysore High Court held that royalty under Section 9 of the MMDR Act, 1957 is in the nature of a tax. Therefore, the levy of a licence fee on mining activity by the Taluk Board as per the impugned notification issued under the aforesaid

provision was unauthorised and was set aside as there was no power vested under Entry 50 – List II after the enforcement of MMDR Act, 1957. This was because Section 9 was a limitation imposed by Parliament on Entry 50 – List II.

17.6 This judgment is instructive inasmuch as it put into perspective what was required to be decided, i.e. whether royalty is a tax within the scope and meaning of Section 9 and other relevant provisions of the MMDR Act, 1957 and not from any other perspective.

Orissa Cement:

18. Subsequent to the judgment in ***India Cement***, the validity of the levy of a cess, based on the royalty derived from mining lands, by the States of Bihar, Orissa and Madhya Pradesh was challenged in ***Orissa Cement*** in the respective appeals filed by the State. On discussing the legislative Entries and earlier decisions of this Court and having regard to Section 2 of the MMDR Act, 1957 and the various State enactments under which cess on royalty was sought to be levied, this Court raised two questions as under:

"(1) Can the cess be considered as "land revenue" under Entry 45 or as a "tax on land" under Entry 49 or as a "tax on mineral rights" under Entry 50 of the State List?

(2) If the answer to question (1) is in the negative, can the cess be considered to be a fee pertaining to the field covered by Entry 23 of the State List or has the State been denuded of the legislative competence under this Entry because of Parliament having enacted the MMRD Act, 1957?"

After a detailed discussion, in paragraph 37 of ***Orissa Cement,*** it was observed by this Court that if royalty were to be regarded as a tax, it can perhaps be described properly as a tax on mineral rights and has to conform to the requirements of Entry 50 - List II. If the cess is taken as a tax, then, unless it can be described as land revenue or a tax on land or a tax on mining rights, it cannot be upheld under Entry 45, 49 or 50 - List II. It was further observed that the question whether royalty is a tax or not does not assist much in furnishing an answer to the two questions posed in the case.

18.1 Considering the Scheme of the MMDR Act, 1957 and the Rules made thereunder, it was opined that levy of tax had to be struck down insofar as the Bihar Act was concerned. As far as the Madhya Pradesh Act was concerned, the levy of cess

was not on land in general but only on land held in connection with mineral rights, which, in the State of Madhya Pradesh is principally in regard to coal and limestone. Reiterating that cess is not referrable either under Entry 49 or 50 - List II, the State's petition was dismissed. It was held that the State legislature had no competence to impose the cess. The same reasoning was also applied insofar as the levy of cess in the State of Orissa was concerned.

Mahalaxmi Fabric Mills:

19. In ***Mahalaxmi Fabric Mills***, two questions fell for consideration in the said appeals – *firstly,* whether Section 9(3) of the MMDR Act, 1957 was *ultra vires* the Constitution; and, *secondly,* whether the notification dated 01.08.1991 issued by the Central Government under Section 9(3) of the Act was *ultra vires*, illegal and inoperative in law. This Court followed the earlier dicta in ***India Cement*** as well as ***Orissa Cement*** and was observed that the contention of the Central Government that prices of minerals for exports were fixed and could not be escalated with the enhancement of the royalties by different

States as their working would become impossible. Therefore, the Parliament had placed an embargo on enhancement of the royalty directly or indirectly except by the Union and in the manner specified under the MMDR Act, 1957. In paragraph 20 of the judgment, it was observed that enhancing uniformly the rates of royalty for the entire country even though minerals might be extracted from different States is necessary for having a uniform pattern of price of minerals and that has a direct linkage with the development of minerals. Further, regulating the rates of royalty on extraction of minerals also has an important role to play in opening up new mining areas for winning minerals. In this connection, Section 18 of the Act which deals with mineral development was referred to and it was observed that fixation of royalty rates is in the realm of development of minerals as envisaged by Section 18 of the MMDR Act, 1957 and the contrary submission to the above was not accepted.

19.1 Referring to the definition clause which defines, *inter alia,* 'minerals and minding operations', it was observed that

'mining operation' means any operation undertaken for the purpose of winning any mineral. It was obvious that development of mineral as envisaged by Section 18 of the MMDR Act, 1957 and even by Entry 50 - List II necessarily would mean extraction of mineral from the earth or from the crust of the earth by mining operations. Therefore, the term development of minerals has a direct linkage with mining operation. Without that, minerals cannot develop by themselves. Therefore, it was held that regulation of mines and development of minerals are interconnected concepts. This was because minerals hidden in the earth by themselves cannot yield profit to anyone and they become minerals only when they are brought out on the surface of the earth by mining operations. Therefore, imposition of royalty is in the context of development of minerals on a uniform pattern throughout the country. It was further observed that the original writ petitioners had failed to show how the enhanced rate of royalty as per the impugned notification had become unreasonable or

confiscatory in nature. Consequently, the appeals were dismissed.

Mahanadi Coalfields:

20. The main controversy in this case was with regard to levy of tax under the Orissa Rural Employment, Education and Production Act, 1992, on coal-bearing lands. The Division Bench of the High Court of Orissa held that the State Legislature did not have the competence to levy the tax on coal-bearing lands and had struck down Section 3(2)(c) of the said Act as well as the Schedule appended to the said Act. The High Court took the view that the levy was hit by Section 9-A of the MMDR Act, 1957 and was also discriminatory and hit by Article 14 of the Constitution. On discussing the earlier judgments of this Court in light of the constitutional Entries in Lists I and II and the Scheme of the MMDR Act, 1957 as well as the combined effect of the proposed levy, the civil appeals were disposed of by concurring with the conclusions of the High Court of Orissa to the effect that the State had no legislative competence to levy the cess under the aforesaid Act of 1992.

Saurashtra Cement.:

21. In this case, the interesting question was regarding the constitutional validity of Section 9(3) of the MMDR Act, 1957, *inter alia*, on the ground that the levy of royalty on minerals is a tax and the Union Legislature did not have the power under Entry 54 - List I to enact such a law which denudes the right of the State Legislature to levy tax on minerals right under Entry 50 - List II. The Gujarat High Court followed the dicta in ***India Cement*** and ***Mahalaxmi Fabric Mills*** and disposed of the writ petitions.

Goodricke:

22. In ***Goodricke Group Ltd. vs. State of West Bengal, 1995 Supp. (1) SCC 707 ("Goodricke"),*** the validity of the levy of education cess and rural employment cess created by the West Bengal Taxation Laws (Second Amendment) Act, 1989 was called in question by way of writ petitions preferred by several tea estates in West Bengal. The first question considered was, whether, the impugned levy was a levy upon the lands within the meaning of Entry 49 - List II. In this case, the judgment of

this Court in ***India Cement*** was considered and it was observed that what was of crucial relevance in ***India Cement*** was that the levy of cess was not upon the land or upon its yield (or its income) but upon the royalty amount payable to the lessor, which was included within the definition of "land revenue" under the Madras Panchayats Act. The question in ***India Cement***, therefore, arose whether such cess levied with reference to or calculated on the basis of amount of royalty can be called a tax on land. It was held that it could not be so. It was pointed out that the royalty varies according to the particular mineral quarried in a given year and if no mineral was quarried, no royalty would be payable. However, the basis of the judgment was that it was a case where tax was measured not with reference to or on the basis of the income or yield of the land but with reference to the amount of royalty payable by the lessee to his lessor. It was for this reason that the cess was held to be not upon the land. Royalty is a matter of agreement between the lessor and the lessee. It may also be determined by a statutory provision. But royalty is not the produce of the land;

royalty is not the income of the land nor is royalty the yield of the land and that is the distinction. In ***India Cement***, the petitioners' contention was that the impugned measure being a tax not on the share of the produce of the land but on "royalty" payable, the levy of cess was bad. This contention was upheld. It was held that cess on royalty cannot be sustained under Entry 49 - List II as being a tax on land. It was observed that the cess impugned in ***India Cement*** was "*an additional charge on royalty*" which was impermissible as it was not a tax on land but an impost on royalty paid for exercising mineral rights.

22.1 The aforesaid reasoning in ***India Cement*** was therefore distinguished in ***Goodricke.*** Similarly, ***Orissa Cement*** was also distinguished. It was observed that the levy should not be an indirect levy on land like the one in ***India Cement*** wherein it was on the royalty but not on land itself. However, levy on land quantified on the basis of its yield could be treated as direct levy upon the land. Therefore, in ***Goodricke,*** it was observed that the mere fact that the tax was measured with reference to

the yield of the land did not make it any the less tax upon the land directly and within the scope of Entry 49 - List II.

22.2 In my view, the aforesaid distinction brought out in ***Goodricke*** between the levy of cess on royalty and levy of cess on yield from land, clearly indicates that in ***India Cement,*** the cess was struck down as not coming within the scope and ambit of Entry 49 - List II as the cess was not on land directly. Cess was on a payment of royalty by a lessee conducting a mining operation which is not a cess directly on the land but on exercising a mineral right which aspect was under the control of the Union by virtue of the MMDR Act, 1957.

22.3 However, in ***Goodricke,*** it was observed that tax imposed on land measured with reference to or on the basis of its yield, is certainly a tax directly on the land. Apart from income, yield or produce, there can perhaps be no other basis for levy. Merely, because a tax on land or building is imposed with reference to its income or yield, it does not cease to be a tax on land or building. The income or yield of the land/building is taken merely as a measure of the tax; it does

not alter the nature or character of the levy. It remains a tax on land or building. The aforesaid reasoning would not apply to the present case. The payment of royalty on exercise of mineral right is itself a tax and the royalty being considered as a measure for the purpose of payment of tax on land within the scope and ambit of Entry 49 – List II would not arise in view of there being a separate Entry 50 – List II.

22.4 Moreover, in ***Goodricke***, what was considered was Entry 52 – List I and not Entry 54 – List I. Entry 50 – List I which is subjected to Entry 54 – List I and the same being a unique Entry, would not apply while considering Entry 49 – List II in the context of Entry 52 – List I. This is because Entry 52 – List I does not impose any limitation on Entry 49 – List II and if the tax on exercise of mineral right squarely falls within the ambit of Entry 50 – List II then the limitation in the context of Entry 54 – List I would have to be borne in mind before the State can embark upon levying any further tax on the basis of royalty as a measure.

22.5 Having noted this *sui generis* relationship above, I may observe the difficulty in drawing any further analogy between ***Goodricke*** and the instant case. Every facet concerning minerals, whether it be taxation, regulation, or development, is without an *iota* of doubt an important question of national concern for, it has ramifications on the stability of national economy, environmental degradation, labour laws, rights of tribal communities, etc. That the aforesaid sentiment was shared and acted upon by our Constitutional framers is explicit *vide* insertion of a unique and special apparatus in the Constitution through Entry 54 - List I, Entry 23 – List II and Entry 50 – List II. In my opinion, it would be incongruous with the constitutional intent to hold that the conscious provision for Union supremacy through the insertion of aforesaid apparatus, specifically through insertion of Entry 50 – List II, denudes the States' power to use mineral rights or royalty levied upon them as a measure to tax land. To do so would simply render Entry 50 – List II nugatory.

22.6 The contention that land cannot be decoupled from mineral rights is attractive at first blush. But, on closer examination, this proposition goes against the cardinal rule of interpreting Entries in the Lists. It is settled law that there must be a reasonable nexus between the nature of tax and the measure of tax. In ***India Cement***, this Court had noted that royalty is only indirectly connected with land and cannot be said to be a tax directly on land as a unit. In my opinion, this finding requires no second look. The contention that royalty can be used a measure to tax land under Entry 49 – List II would, in my opinion, inevitably lead to conflation with the nature of tax that is reserved for Entry 50 – List II subject to any limitations imposed by Parliament by law relating to mineral development.

Kesoram:

23. The dictum in ***India Cement*** by a seven-judge Bench and subsequent decisions which followed it was doubted by a majority of a five-judge Bench of this Court in ***Kesoram***. It would be useful to highlight the relevant portions of the said

judgment as the real controversy stems from this Judgment. In the said case, three sets of matters arose from West Bengal, which, for the sake of convenience, were called as (A) "coal matters" (B) "tea matters" and (C) "brick earth matters". The other set of matters which arose from the State of Uttar Pradesh was (D) "minor mineral matters".

23.1 In the coal matters, the constitutional validity of the amendment made to the Cess Act, 1880 and West Bengal Rural Employment and Production Act, 1976 by which the expression "coal-bearing land" was defined to mean holding or holdings of land having one or more seams of coal comprising the area of a coal mine, given effect to from 01.04.1992, was successfully impugned before the High Court. Therefore, the State of West Bengal had filed the appeal before this Court. The High Court had placed reliance on the judgments of this Court in ***India Cement*** and ***Orissa Cement*** wherein the levy of cess impugned therein was struck down as unconstitutional. The Calcutta High Court had held that the levy was without legislative competence of the State and hence, was liable to be struck down. The High

Court had also concluded that the Cess cannot be said to be on land so as to be covered by Entry 49 - List II.

23.2 A similar cess was levied by the State Legislature of Orissa as the Orissa Rural Employment, Education and Production Act, 1992 on land-bearing coal and other minerals. A challenge to the constitutional validity of such cess was successfully laid before this Court and the Section 3(2)(c) of the Orissa legislation was struck down as unconstitutional as *ultra vires* the competence of the State Legislature in ***Mahanadi Coalfields.***

23.3 Insofar as the cases arising from the Allahabad High Court concerning constitutional validity of a cess on mineral rights levied under Section 35 of the Uttar Pradesh Special Area Development Authorities Act, 1986 read with Rule 3 of Shakti Nagar Special Area Development Authority (Cess on Mineral Rights) Rules, 1997 ("the SADA Act" and "the SADA Cess Rules", respectively), the challenge was to the imposition of cess on mineral rights at such rates as may be prescribed, subject to any limitations imposed by Parliament by law relating to

mineral development. The SADA Cess Rules as well as Section 35 of the SADA Act were challenged on the ground that MMDR Act, 1957 having been enacted, containing a declaration under Section 2 thereof as contemplated by Entry 54 - List I and the Act being applicable to the State of Uttar Pradesh as well, the State legislature was denuded of its power to enact the impugned law and levy impugned cess. It was contended that the impugned cess would have the impact of adding to the royalty already being paid and thereby increase the same, which was *ultra vires* the power of the State Government as that power could only be exercised by the Central Government. The Allahabad High Court held that SADA Act and SADA Rules and the levy of cess thereunder was within the competence of the State Legislature with reference to Entry 50 - List II. Since this Court, through a three-judge Bench, had noted a conflict of decisions, the matters were placed before Hon'ble the Chief Justice for appropriate directions. Thereafter, the matters were listed before a five-Judge Constitution Bench.

23.4 The Constitution Bench in ***Kesoram*** noted the question of constitutional significance centring around Entries 52, 54 and 97 - List I and Entries 23, 49, 50 and 66 - List II, as also the extent and purport of the residuary power of legislation vested in the Union of India. In Paragraph 52 of the judgment, this Court noted the questions which arose in ***India Cement*** and encapsulated the ratio of the said judgment.

23.5 In ***India Cement***, the judgment of the Mysore High Court in ***Laxminarayana Mining Co.*** was cited with approval. As already noted, the Mysore High Court had struck down as violative of the MMDR Act, 1957 imposition of a licence fee on mining manganese, iron ore, etc., under a State legislation by issuance of a notification. In ***Kesoram,*** while considering the ratio of the judgment of the Division Bench of the Mysore High Court in ***Laxminarayana Mining Co.,*** which had held that, licence fee was a step trenching upon the field of regulation and mineral development, was liable to be struck down on that ground alone, in paragraph 55, observed as under:

> **"55.** In our view, the decision by the Mysore High Court cannot be read so widely as laying down the law that the Union's power to regulate and control results in depriving the States of their power to levy tax or fee within their legislative competence without trenching upon the field of regulation and control. There is a distinction between power to regulate and control and power to tax, the two being distinct and that difference has not been kept in view by the Mysore High Court."

In substance, this Court observed that Union's power to regulate and control is distinct from the State's power to levy tax and the distinction between the two had not been borne in mind by the Mysore High Court which aspect shall be discussed later.

23.6 Moving further in paragraph 56, this Court in ***Kesoram*** observed as under:

> ***"(A diversion from the main issue) Royalty, if tax?***
>
> **56.** We would like to avail this opportunity for pointing out an error, attributable either to the stenographer's devil or to sheer inadvertence, having crept into the majority judgment in *India Cement Ltd. case* [(1990) 1 SCC 12 : 1989 Supp (1) SCR 692 : AIR 1990 SC 85] . The error is apparent and only needs a careful reading to detect. We feel constrained — rather duty-bound — to say so, lest a reading of the judgment containing such an error — just an error of one word — should continue to cause the likely embarrassment and have adverse effect on the subsequent judicial pronouncements which would follow *India Cement Ltd. case* [(1990) 1 SCC 12 : 1989 Supp (1) SCR 692 : AIR 1990 SC 85] , feeling bound and rightly, by the said judgment

having the force of pronouncement by a seven-Judge Bench. Para 34 of the Report reads as under: (SCC p. 30)

> "*34*. In the aforesaid view of the matter, we are of the opinion that *royalty is a tax*, and as such a cess on royalty being a tax on royalty, is beyond the competence of the State Legislature because Section 9 of the Central Act covers the field and the State Legislature is denuded of its competence under Entry 23 of List II. In any event, we are of the opinion that cess on royalty cannot be sustained under Entry 49 of List II as being a tax on land. *Royalty on mineral rights is not a tax on land* but a payment for the user of land."

23.7 In paragraph 57, this Court made its inferences on what was observed by the seven-judge Bench of this Court in paragraph 34 (extracted above) of ***India Cement*** as under:

> **"57.** In the first sentence the word "royalty" occurring in the expression "royalty is a tax", is clearly an error. What the majority wished to say, and has in fact said, is "cess on royalty is a tax". The correct words to be printed in the judgment should have been "cess on royalty" in place of "royalty" only. The words "cess on" appear to have been inadvertently or erroneously omitted while typing the text of the judgment. This is clear from reading the judgment in its entirety. Vide paras 22 and 31, which precede para 34 abovesaid, Their Lordships have held that "royalty" is not a tax. Even the last line of para 34 records "royalty on mineral rights is not a tax on land but a payment for the user of land". The very first sentence of the para records in quick succession "... as such a cess on royalty being a tax on royalty, is beyond the competence of the State Legislature...." What Their Lordships have intended to record is "... that cess on royalty is a tax, and as such a cess on royalty being a tax on royalty, is beyond the competence of the State Legislature ...". That makes correct and sensible reading. A doubtful expression occurring in a

judgment, apparently by mistake or inadvertence, ought to be read by assuming that the Court had intended to say only that which is correct according to the settled position of law, and the apparent error should be ignored, far from making any capital out of it, giving way to the correct expression which ought to be implied or necessarily read in the context, also having regard to what has been said a little before and a little after. No learned Judge would consciously author a judgment which is self-inconsistent or incorporates passages repugnant to each other. Vide para 22, Their Lordships have clearly held that there is no entry in List II which enables the State to impose a tax on royalty and, therefore, the State was incompetent to impose such a tax (cess). The cess which has an incidence of an additional charge on royalty and not a tax on land, cannot apparently be justified as falling under Entry 49 in List II."

(underlining by me)

23.8 Thereafter, this Court discussed the meaning and content of the expression royalty from various dictionaries and other authorities and referred to the judgments of the High Courts of Orissa, Punjab and Haryana, and Gujarat High Court and in paragraph 64 observed as under:

"64. We need not further multiply the authorities. Suffice it to say that until the pronouncement in *India Cement* [(1990) 1 SCC 12 : 1989 Supp (1) SCR 692 : AIR 1990 SC 85] nobody doubted the correctness of "royalty" not being a tax."

(underlining by me)

And ultimately in paragraph 69, it was inferred as under:

> **"69.** In *India Cement* [(1990) 1 SCC 12 : 1989 Supp (1) SCR 692 : AIR 1990 SC 85] (vide para 31, SCC) decisions of four High Courts holding "royalty is not tax" have been noted without any adverse comment. Rather, the view seems to have been noted with tacit approval. Earlier (vide para 21, SCC) the connotative meaning of royalty being "share in the produce of land" has been noted. But for the first sentence (in para 34, SCC) which we find to be an apparent error, nowhere else has the majority judgment held royalty to be a tax."
>
> (underlining by me)

23.9 The inference being that there is an apparent error in holding that "royalty to be a tax", whereas "royalty is not a tax". However, the above inference loses sight of the fact that in paragraph 34 of the ***India Cement*** it has been observed that ***"Royalty on mineral rights is not a tax on land, but a payment for the user of the land"***. This has been held to be a contradiction in ***Kesoram***. However, what was actually meant in ***India Cement*** was that royalty is a tax on mineral rights. The majority in ***Kesoram*** thereafter noted how the matter was dealt with in ***Mahalaxmi Fabrics Mills*** and ***Saurashtra Cement*** and made observations therein, as noted in paragraph 70 of the judgment. Ultimately, in paragraph 71, it was

observed that ***royalty is not a tax*** **and** ***royalty cannot be a tax*** and that even in ***India Cement*** it was **not** the finding of the Court that royalty is a tax.

23.10 With regard to decisions post ***India Cement***, the majority expressed its dissent with that part of the judgment in ***Mahalaxmi Fabrics Mills***, which stated that there was "no typographical error" in ***India Cement***. The reasoning in ***Mahanadi Coalfields*** was also not subscribed to in ***Kesoram*** and it was held that the said case was not correctly decided inasmuch as they applied ***India Cement*** and ***Orissa Cement*** and therefore, it was over-ruled.

23.11 With great respect to the majority in ***Kesoram***, the aforesaid strong observations were in fact premised on a "typographical error" in para 34 of the judgment in ***India Cement*** when there was none. The entire reasoning in paragraph 57 of ***Kesoram*** extracted above proceeded on the basis that a typographical error was inadvertently or erroneously committed while typing the correct text of the

judgment and therefore, what was a "sensible reading" was supplied by the majority to make an omission or error, namely, "*cess on royalty" instead of "royalty"* only.

23.12 With respect, I find that the aforesaid understanding by the majority in ***Kesoram*** is incorrect, a departure from all precedents right from the judgment of this Court in ***Hingir-Rampur*** and contrary to the scheme of Entry 54 – List I and Entry 50 – List II and the architecture of the MMDR Act, 1957 enacted pursuant to Entry 54 - List I and particularly, having regard to Section 2 of the said Act. Therefore, there was no necessity to doubt the proposition that royalty is a tax. On a non-appreciation of what exactly the import of the judgment in the ***India Cement*** was, this doubt expressed by the majority in ***Kesoram*** has ultimately led to the constitution of this nine-judge Bench to answer eleven points for reference which, in my view, was wholly unnecessary. This aspect would become more clear if the judgment of this Court in ***P. Kannadasan vs. State of Tamil Nadu, (1996) 5 SCC 670 ("Kannadasan")*** is perused which is discussed later.

23.13 By contrast, Sinha J., in his dissenting opinion in ***Kesoram*** at paragraph 309, has appreciated the controversy in the following words:

> **"309.** The decisions of the Privy Council in *Governor General in Council* v. *Province of Madras* [1945 FCR 179 : AIR 1945 PC 98] on the question of interpretation as regards conflicting legislative entries in general and tax entries in particular may not be apposite in the instant case inasmuch as herein we are concerned with only one question, namely, whether the field of taxation of mines and minerals which are extracted and cease to be a part of the surface, is wholly covered or not. One of the principles for reconciling conflicting tax entries is to ascertain as to whether a person, thing or activity is the subject-matter of tax and the amount of the tax to be levied. The question which has to be answered on the basis of the aforementioned principle is, is it a tax on land or tax on mineral. If having regard to the nature of tax and keeping in view the history of the legislation to the effect that the State of West Bengal has all along been trying to impose tax on minerals as opposed to tax on land, is taken into consideration, it will be noticed that endeavours have been made to continue to impose "cess" on mineral and mineral rights in the garb of "land tax"."
>
> (underlining by me)

23.14 Therefore, the pith and substance of the controversy being, *whether in the garb of imposition of impugned land tax on the strength of Entry 49 - List II, the State has the power to impose cess on royalty, or, in other words, cess on mineral and mineral rights* was rightly identified. This is because royalty is a

payment for the exercise of mineral rights and not a tax on land and if cess is levied on royalty, then the same is an imposition on the exercise of mineral rights, which is covered under Section 9 of the MMDR Act, 1957. It is in the aforesaid context that Sinha, J. also referred to Section 25 of the MMDR Act, 1957 which states that any rent, royalty, tax, fee or other impost under the said Act or the Rules made thereunder can be recovered as arrears of land revenue. Therefore, in paragraph 321, it was opined by Sinha, J. as under:

> **"321.** Section 25 of the MMRD Act, 1957 by necessary implication refers to the taxing power of Parliament. Imposition of taxes on mineral rights would affect the development of mines and minerals. Parliament's authority to regulate and control mineral development would be seriously impaired and affected if it is held that the matter relating to imposition of tax on minerals is also vested in the State. The vires of Sections 9 and 9-A of the 1957 Act has not been questioned. In fact, they have been held to be intra vires in *State of M.P.* v. *Mahalaxmi Fabric Mills Ltd.* [1995 Supp (1) SCC 642] , *Saurashtra Cement and Chemical Industries Ltd.* v. *Union of India* [(2001) 1 SCC 91] and *South Eastern Coalfields Ltd.* [(2003) 8 SCC 648 : (2003) 7 Supreme 539] Unless power to levy compulsory impost is held to be ultra vires the Constitution, it cannot be held that Parliament has encroached upon the States' power of taxation."
>
> (underlining by me)

The aforesaid observations are significant in light of the history of legislation as regards regulation of mines and development of minerals and the logical corollary would be that in the field of levy of tax, fee or other charges, the Parliament by virtue of Section 9 read with Section 25 of the MMDR Act, 1957 has covered the field of legislation which act as a limitation on the State's power under Entry 23 - List II of the Constitution. Therefore, Sinha, J. rightly observed that once it is held that the entire field of mines and minerals is covered by the MMDR Act, 1957 the impugned levy by way of cess on coal-bearing land is nothing but an imposition of tax on exercise of mineral rights which is barred having regard to the field being covered by the provisions of the MMDR Act, 1957.

24. What is of significance is that in ***India Cement***, the seven-judge Bench of this Court considered the judgments of the Patna High Court in ***Laddu Mal*** and that of the Mysore High Court in ***Laxminarayana Mining Co.*** and approved the same. However, there was a reference made to four other judgments of the High Courts of Punjab and Haryana, Gujarat,

Orissa and Rajasthan. The criticism by the majority in ***Kesoram*** is that there was no discussion on those judgments in ***India Cement***. The reasons for there being no necessity for discussion of the said judgments are not far to see. The judgments of the Patna and Mysore High Courts considered at length the concept of royalty in the context of the constitutional Entries in Lists I and II, as discussed above and in light of the declaration made in Section 2 and the scheme of the MMDR Act, 1957. It was observed by the Patna and Mysore High Courts that having regard to the constitutional scheme *vis-à-vis* the legislative fields, in the context of making laws on mineral rights and mineral development and Section 2 of the MMDR Act, 1957 payment of royalty on a mining lease being covered under the Parliamentary Act, i.e. MMDR Act, 1957, the same acted as a limitation imposed by the Parliament by law relating to mineral development on the States' competence to also tax on exercise of mineral rights by levying a cess or any other impost on royalty. Therefore, by a logical deduction, it was held that royalty is a tax within the meaning of Entry 50 - List II.

Consequently, any cess on royalty or any other impost on royalty or royalty being a basis for a further tax or impost being levied by a State Government was impermissible. In other words, the MMDR Act 1957 insofar as and to the extent dealt with the aspect of royalty being payable by a holder of a mining lease imposed a limitation on the States' right to levy any other impost/tax on mineral rights as royalty was payable for exercise of mineral rights resulting from a mining operation and extraction of minerals. It was in this context that it was reasoned that royalty is a tax. Also, royalty could not be a basis for levy of any other tax on mineral bearing land as land revenue.

24.1 On the other hand, the judgments of four other High Courts, namely, Punjab and Haryana, Orissa, Rajasthan and Gujarat did not consider the controversy from the perspective of the constitutional Entries and Section 2 of the MMDR Act, 1957. The said judgments proceeded on the dictionary meaning of 'royalty' under various types of transactions under which royalty has to be paid and concluded that royalty was

not an impost or tax, which approach was also adopted by the majority in ***Kesoram***. Thereby, Entry 54 - List I and Entry 50 - List II as well as Section 2 of the MMDR Act, 1957 was given a complete go-by while arriving at such a conclusion. Consequently, the said judgments and also the majority in ***Kesoram*** concluded that the States have the legislative competence to tax mineral rights or make royalty a basis for any other exaction such as cess etc. This was contrary to the view expressed in ***India Cement*** by this Court. Therefore, it was unnecessary for the seven-judge Bench in ***India Cement*** to have discussed the judgments of the High Courts of Punjab and Haryana, Gujarat, Orissa and Rajasthan referred to above. In fact, in my view, the judgments of the aforesaid High Courts were impliedly overruled in ***India Cement***, which aspect has not been noticed by the majority in ***Kesoram.***

25. Insofar as the judgment of this Court in the case of ***Mahalaxmi Fabric Mills*** is concerned, the said judgment followed ***India Cement***. However, it was overruled in ***Kesoram***. So also, the judgments in ***Saurashtra Cement*** and other

cases. Reference was made to ***Mahanadi Coalfields*** wherein the levy by the State Legislature was a tax of Rs.32/- per thousand acre on coal-bearing lands. The attack on the legislation was that the provision was one on mineral lands and mineral rights and the Parliament had enacted the MMDR Act, 1957 and the field was entirely covered and the State Legislature was incompetent to levy the tax. The three-judge Bench concluded that the charging Section of the impugned Act imposed a tax on the minerals also and was not confined to a levy on land or surface characteristic of the land. This was because non-mineral-bearing lands and non-coal-bearing lands were left out of the levy. The levy was struck down as the levy was not a tax on land, but on minerals and mineral rights.

Kannadasan:

26. In this context, it is significant to refer to another judgment of this Court in ***Kannadasan*** wherein this Court, by following the observations in ***India Cement*** and ***Orissa Cement***, held that the States are denuded of the power to levy any tax on minerals and therefore, the State enactments were

declared to be lacking in legislative competence as in the aforesaid cases, insofar as they pertained to levy of tax/cess on royalty paid on minerals extracted. It was observed that the denudation of the States' powers was not partial but total and the States cannot levy any tax on mining and minerals, so long as the declaration in Section 2 of the MMDR Act, 1957 stands. Once the denudation is total, there is no occasion or necessity for any further declaration of denudation, or for that matter, for repeated declarations of denudation. ***Kannadasan*** was partially overruled by a three-judge Bench in ***District Mining Officer vs. Tata Iron and Steel Company, (2001) 7 SCC 358 ("Tata Iron and Steel")***, but on a different question which I shall also advert to later.

26.1 However, what is relevant for the purposes of this reference could be discussed in the first instance. In ***Kannadasan,*** the appellants therein had challenged the validity of the Cess and Other Taxes on Minerals (Validation) Act, 1992 ("Validation Act" for short) enacted by Parliament. The High Court had rejected the writ petitions. The background

of the said Act was that in ***India Cement***, this Court had held that (i) the levy could not be sustained under and with reference to Entry 49 - List II as a tax on land; (ii) the levy was a levy on minerals and was relatable to Entries 23 and 50 - List II; (iii) that on account of the declaration made by Parliament contained in Section 2 of the MMDR Act, 1957, the State Legislatures had been denuded of the power to levy tax on minerals. That regulation of mines and mineral development takes within its purview the levy of tax on minerals. This Court held that Sections 9 and 9A of the MMDR Act, 1957 provides for levy of royalty/dead rent on minerals. The State Legislatures cannot, therefore, impose any tax on minerals or exercise of mineral rights and ***HRS Murthy*** was wrongly decided. Having so declared, this Court in ***India Cement***, however, directed that the said decision shall only have a prospective effect. This was for the reason that the States had been levying and collecting the cesses on the basis of the decision of this Court in ***HRS Murthy***. The decision in ***India Cement*** was rendered on 25.10.1989.

26.2 Thereafter, a three-judge Bench in ***Orissa Cement*** declared identical levies imposed by the States of Orissa, Bihar and Madhya Pradesh as being lacking in legislative competence. The Bench again directed that the said decision shall be operative prospectively with effect from the date of the said judgment i.e., 04.04.1991 in the case of State of Bihar, with effect from 22.12.1989 in the case of State of Orissa and with effect from 28.03.1989 in the case of State of Madhya Pradesh. In view of the States not having the competence to make the said levies, the Union had to step in and promulgated the Cess and other Taxes on Mineral (Validation) Ordinance, 1992 on 15.02.1992 and thereafter replaced it by a Parliamentary enactment called the Cess and other Taxes on Minerals (Validation) Act, 1992 with effect from 04.04.1992. The Act was enforced in order to validate the imposition and collection of cesses and certain other taxes on minerals under certain State laws. The Act was deemed to come into force on 04.04.1991. Under the said Act, a person could claim refund of any cess or tax paid by him in excess of the amount due from him under

any such State law. The Schedule to Section 2 named the Acts of various States which were validated. For immediate reference, Section 2 of the Validation Act is extracted as under:

> **"2. Validation of certain State laws and actions taken and things done thereunder. -** (1) The laws specified in the Schedule to this Act shall be, and shall be deemed always to have been, as valid as if the provisions contained therein relating to cesses or other taxes on minerals had been enacted by Parliament and such provisions shall be deemed to have remained in force up to the 4th day of April, 1991.
>
> (2) Notwithstanding any judgment, decree or order of any court, all actions taken, things done, rules made, notifications issued or purported to have been taken, done, made or issued and cesses or other taxes on minerals realised under any such laws shall be deemed to have been validly taken, done, made, issued or realised, as the case may be, as if this section had been in force at all material times when such actions were taken, things were done, rules were made, notifications were issued, or cesses or other taxes were realised, and no suit or other proceeding shall be maintained or continued in any court for the refund of the cesses or other taxes realised under any such laws.
>
> (3) For the removal of doubts, it is hereby declared that nothing in sub-section *(2)* shall be construed as preventing any person from claiming refund of any cess or tax paid by him in excess of the amount due from him under any such laws."

Section 2 was the validation clause stating that the laws specified in the Schedule to the Act shall be, and shall be deemed always to have been, as valid as if the provisions

contained therein relating to cesses or other taxes on minerals had been enacted by Parliament and such provisions shall be deemed to have remained in force up to 04.04.1991. The Act was deemed to have come into force on 15.02.1992, which was the date on which the Ordinance was promulgated by the President. According to this Court, the Parliament adopted the device of legislation by incorporation as a result of which all the relevant provisions of the Scheduled Acts (State Acts) were deemed to have been enacted by Parliament and read into Section 2(1) of the Validation Act. As a corollary, all the taxes which were set aside by this Court and the High Courts were deemed to be the taxes/levies of the Parliament itself. This was on the clear understanding that the power of Parliament to levy such taxes was not in dispute and States had no power to levy such cesses or taxes. This was also on the acceptance of the judgment in ***India Cement.*** The provisions of the Act were declared to be in force up to 04.04.1991 though the law was enforced from 04.04.1992, which was unique by itself.

26.3 The validity of the Validation Act was questioned before this Court on several counts by the private parties and defended by the Union of India. This Court observed that the object and purpose of enacting the MMDR Act, 1957 was to bring about, *inter alia*, a uniformity in taxes and royalties throughout the country in the interest of mineral development in the country for which only the Union or the Central Government could impose a levy such as royalty or any other tax. There is not a precondition to a law made by Parliament under Entry 54 - List I nor is there a limitation upon Parliament's power. If Parliament has enunciated the principle, it can also create an exception thereto in appropriate circumstances or to meet an exigency. The Validation Act was in order to meet such an exigency. The said Act was both an addition to as well as an exception to Section 9 of the MMDR Act, 1957. With regard to Section 9 of the MMDR Act, 1957, it was reasoned that in light of the decisions of this Court in ***India Cement*** and ***Orissa Cement,*** the States were totally denuded of the power to levy any taxes on minerals. The

denudation of the State is not partial; it is total insofar as the levy of any tax or cess on mineral is concerned. So long as the declaration in Section 2 stands, it is unnecessary to have a fresh declaration to be made by Parliament whenever the Union increases the rate of royalties.

26.4 It was further observed that what was sought to be levied under the impugned enactment was a tax/cess and not a fee and therefore, the Parliament was not bound to utilize the taxes realized under the impugned Act, i.e., the Validation Act, only for the purpose of regulation of mines and mineral development. That even in the matter of fees, it is not necessary that an element of *quid pro quo* should be established in each and every case as fees can be both regulatory and compensatory and that in the case of regulatory fees, the element of *quid pro quo* is totally irrelevant *vide* ***Corporation of Calcutta vs. Liberty Cinema, AIR 1965 SC 1107, ("Liberty Cinema")***.

26.5 It was further observed that the Validation Act though a temporary statute did not have an expiry date, in the sense it was deemed to come into force on 15.02.1992 and validated all imposts up to 04.04.1991 and not thereafter. By this, it didn't mean that the statute itself expired on 04.04.1991 as it was deemed to come into force on a later date, i.e. on 15.02.1992. The Validation Act was also not a temporary statute. It was observed that the duration of the levy validated under the Act and the life of the Act are two different things which are not necessarily coextensive. The Validation Act would remain in force till Parliament chooses to repeal it. Therefore, the argument that the Validation Act being a temporary statute was not effective from 04.04.1991, was rejected by this Court. It was observed that levies were validated by the Validation Act notwithstanding the cessation of levy after 04.04.1991 and the machinery created to recover and refund the said cesses/taxes was kept alive.

26.6 The judgment of this Court in ***Kannadasan*** is a clear indication of the fact that it was the Parliament, by enacting a

legislation in the year 1992 in the form of a Validation Act which had to step in to support the States for validation of the States' incompetent levies, namely, cesses or taxes on royalty which had been set aside over decades by this Court. This legislation was also in the interest of mineral development and in exercise of powers and relatable to Entry 54 - List I. But for the Validation Act enacted by the Parliament, the levies being declared invalid by this Court as well as the High Courts, it was the bounden duty of the States to have refunded the levies collected in the form of cesses or surcharge on cesses on royalties as directed by this Court which would have been a drain on the States' exchequers. Realising the financial predicament in which the States were, the Parliament, in exercise of its unitary powers and as the Union of the States, came to rescue all the States by passing the Validation Act so that till 04.04.1991, by a fiction the States' levies in the form of cesses or other taxes on royalty were validated as if the State laws were enacted by Parliament itself. Therefore, all judgments which had struck down the levies imposed by the State on

mineral rights discussed above if had directed to refund the levies collected by them would now not have been necessary. Further, all such State levies being validated, arrears till 04.04.1991 could be collected by the States. Such an Act was passed by way of an abundant caution as in certain other judgments of this Court, there could be directions to refund the taxes or levies collected and attended complications on the refund of the said incompetent levies or in order to collect the arrears till 04.04.1991. These aspects constrained the Parliament to pass the Validation Act. In the circumstances, the appeals and the writ petitions were dismissed.

26.7 The judgment in ***Kannadasan*** clearly established the fact that the Parliament has supremacy over the regulation of mines and development of minerals in view of Entry 54 - List I read with Section 2 and the other provisions of MMDR Act, 1957, as Entry 23 – List II is also subject to Entry 54 – List I. That levying of a uniform impost in the form of royalty and dead rent imposed under Sections 9 and 9A of the MMDR Act, 1957 throughout the length and breadth of the country, insofar as a

particular mineral is concerned, without letting any State to impose any other levy over and above royalty is in the interest of mineral development. Thus, Sections 9 and 9A are an embargo and a limitation on the power of the State to impose any tax on exercise of mineral rights. This is because royalty is paid on exercise of mineral rights. It is a statutory exaction under the MMDR Act, 1957 and is compulsory for every holder of a mining lease to pay royalty to the State Government which executes the lease deed in the status of a lessor. Payment of royalty being compulsory by the holder of a mining lease, it makes it a tax as the rate of royalty is fixed by the Central Government as per Section 9 of the MMDR Act, 1957 and as notified in the Second Schedule to the aforesaid Act. Thus, royalty being a tax could be collected as arrears of land revenue in the event of non-payment. Such being the construction and interpretation of the provisions of MMDR Act, 1957 in light of the Entries in the Lists, royalty as a compulsory exaction has met all the parameters of a tax and hence the provisions regarding collection of royalty under the MMDR Act, 1957

and the Rules made thereunder acted as a limitation under Entry 50 – List II. Hence, the States are denuded of their power to impose a cess or any other levy on royalty or define it as a land revenue which could be imposed by the States under Entry 49 – List II. Such State levies on royalty is against the interest of mineral development in the country and therefore the State levies on the basis of royalty was struck down by this Court and certain High Courts. The validation Act also established the fact that the Parliament by passing such an Act did so in the interest of mineral development in the country and to save the States from losing the revenue collection made though under incompetent levies prior to 04.04.1991. Therefore, the States were not required to refund the illegal levies collected by them and continued to collect the same till 04.04.1991. The sustaining of the Validation Act by this Court is also significant. Thus, as a result of the Validation Act, the decades' old controversy between States' attempts to levy taxes on royalty and the High Courts and this Court striking down the same by holding that it was the Parliament

only which could do so by a law, brought down the curtains on the said controversy till its revival in ***Kesoram***.

26.8 Justice Jeevan Reddy speaking for the Bench in ***Kannadasan*** cleared any lurking doubts about States having any power to levy any cess, tax or other impost on exercise of mineral rights; it was only the Parliament which could impose such a levy either by way of royalty or in any other form.

26.9 Thereafter, in ***Tata Iron and Steel***, the controversy arose from the Patna High Court, in the context of the Validation Act, 1992 wherein it was held that the said Act did not authorise recovery of any tax or cess after 04.04.1991, even if the liability was incurred under the validated laws before 04.04.1991 and consequently, it restrained the State of Bihar from taking any steps to realise such demands. However, by then this Court in ***Kannadasan*** had upheld the right of the State to demand and collect levies which were collectable up to 04.04.1991. The decision of the Patna High Court to the extent

it restrained the State from realising the demand was challenged before this Court by the State of Bihar.

26.10 The matter was considered by a three-judge Bench as ***Kannadasan*** was decided by a two-judge Bench. It was observed that the Validation Act had validated the levy of taxes by eleven States upto 04.04.1991. That the Validation Act fictionally held that the Parliament had in fact imposed the cess and other taxes on minerals by keeping those provisions of State Act, which had been struck-down, alive till 04.04.1991. Although, Parliament never in fact re-enacted the eleven Acts mentioned in the Schedule to the Validation Act but it merely provided legislative competence for those Acts which related to cesses or taxes on minerals. This was done owing to the judgments of this Court in ***India Cement*** and ***Orrisa Cement*** that had led the to a situation that required a Validation Act to save the State from refunding the incompetent levies already collected. This was to allay the apprehension of the State Government that the incompetent levies already collected would have to be refunded. Therefore, Parliament, being also of the

same opinion, through a legislative device of providing legislative competence in respect of the certain provisions of the States' laws and by validating the levies which could be collected up to 04.04.1991 i.e. the date on which this Court delivered the judgment in ***Orissa Cement*** case, had enacted the Validation Act.

26.11 The controversy, however, revolved on the expression "imposition and collection" under Section 2(1) of the Validation Act. Whether it related to only imposition and collection already made under certain State laws or conferred further right of imposition and collection of cesses on the minerals extracted upto 04.04.1991. In ***Kannadasan*** this Court had interpreted the provisions to the effect that the Validation Act would confer a right on the State Government to make fresh levy and collection of dues which were collectable upto 04.04.1991. This interpretation was, however, not accepted by three-judge Bench. It was observed that the Validation Act could not be construed to confer a right to make a levy or collection of the cess and taxes on the minerals which were collected upto

04.04.1991, as was held in ***Kannadasan***. It merely validated the collections already made so that the State will not be burdened with the liability of refunding the amount, already collected under void law. Therefore, the contrary view expressed in ***Kannadasan*** was held to be not correct.

26.12 With reference to Article 265 of the Constitution, it was observed that the State laws which stood expired on various dates prior to 04.04.1991 and on 04.04.1991 did not authorise imposition and collection of taxes and cess on minerals after 04.04.1991 in respect of minerals extracted till 04.04.1991, on which the cess was collectable. It was observed that object of the Validation Act was only to confer the life to void statutes by fictional re-enactment and granting legislative competence for limited purpose so that the State would not be called upon to refund the cess already collected under such void law. Thus, the void laws never existed after 04.04.1991 and consequently, there was no right with the State to make any levy or collection of the cess, which was collectable up to 04.04.1991. Only past actions had been sought to be validated,

that too, by a fictional enactment of the State laws by Parliament, keeping it alive till 04.04.1991. Even if imposition of levy had been made but not collected, the same could not be collected after 04.04.1991 as the Validation Act had not provided any provision permitting State to levy or collection after 04.04.1991. Therefore, it was held that the States cannot be conferred a right to levy or collection after 04.04.1991. Therefore, to that extent ***Kannadasan***'s observations were not approved.

26.13 The overruling of certain observations made in ***Kannadasan*** by the three-judge Bench in ***Tata Iron and Steel*** does not touch upon the question whether imposition of cess and other taxes on the basis of royalty or in addition to royalty by a State legislature is competent. The judgment in ***Tata Iron and Steel*** on the other hand proceeds on the premise that ***India Cement*** and ***Orissa Cement*** were rightly decided. The Validation Act had been passed by the Parliament and there being a confusion with regard to the actual collection of the levies by the States on or after 04.04.1991 and in

Kannadasan, this Court having held that it could be so in the form of arrears and dues, to that extent, disapproved ***Kannadasan.***

26.14 I do not find any inconsistency between the judgments in ***Kannadasan*** and ***Tata Iron and Steel*** on the questions of whether royalty is a tax and whether the States had no competency to levy any tax on exercise of mineral rights. On the other hand, what is common to both ***Kannadasan*** and ***Tata Iron and Steel*** is the fact that they proceeded on the basis that this Court, having set aside the incompetent levies imposed by the States and the Parliament, coming forward to support the States *vis-à-vis* their apprehension regarding refund to be made on the basis of the principle of unjust enrichment, enacted the Validation Act. The challenge to the said Act otherwise failed in ***Kannadasan***. The contention of the assessee was only with regard to levies to be collected up to 04.04.1991 under the Validation Act and not after that date. This aspect was answered by the three-judge Bench in ***Tata Iron and Steel*** by holding that the Validation Act was in fact a temporary statute

which neither gave the State the right to levy any taxes or cesses etc. which were struck-down by this Court as being incompetent nor could the States collect arrears of such taxes/cesses after 04.04.1991.

26.15 In view of the aforesaid judicial and legislative history, can this Court once again confer powers on the States to levy taxes, etc. on the exercise of mineral rights in addition to royalty by way of a cess or a surcharge on cess or independently on the basis of royalty as a measure for imposing such taxes? The majority judgment in ***Kesoram*** has attempted to do that. This is by holding that royalty imposed under Section 9 of MMDR Act, 1957 is not a tax and therefore, the States can levy taxes on minerals rights either under Entry 50 or Entry 49 – List II.

Thus, the legal quagmire has not ended but continued.

27. In my view, the majority judgment in ***Kesoram*** is liable to be overruled for holding that royalty is not a tax for the following reasons:

Firstly, because the doubt expressed in the said judgment by the majority was premised on a "typographical error" in paragraph 34 of the main judgment in ***India Cement*** by failing to appreciate the entire reasoning of the seven-judge Bench. It also failed to notice that in the case of ***India Cement***, Oza, J. penned a separate but concurring opinion and arrived at a conclusion that royalty is in the nature of a tax by separate reasoning. The majority in ***Kesoram*** did not find any "typographical error" in Oza, J.'s opinion.

Secondly, the majority in ***Kesoram*** came to the conclusion that royalty is not a tax based on the definition of royalty in dictionary meanings, etc. without reference to the constitutional Entries, particularly, Entry 50 - List II being limited by Entry 54 - List I and a Parliamentary law MMDR Act, 1957 being made under the latter Entry and the declaration made in Section 2 thereof. In this regard, it would be useful to refer to the observations of this Court in ***State of***

Orissa vs. Titaghur Paper Mills Company Limited, 1985 Supp. SCC 280 ("Titaghur Paper Mills"), wherein this Court discussed the scope and ambit of the expression royalty and it was observed that while understanding the meaning of an expression, the dictionary meaning of a word cannot be looked at where that word has been statutorily defined or judicially interpreted (in light of the constitutional Entries in the Lists). Where there is no such definition or interpretation, the Court may take the aid of dictionaries to ascertain the meaning of a word in common parlance, bearing in mind that a word is used in different senses according to its context and a dictionary gives all the meanings of a word in several contexts. The Court has therefore to select the particular meaning which would be relevant to the context in which it has to interpret that word.

Thirdly, the judgment in the ***India Cement*** was doubted even in the absence of their being a conflict of

the judgment with any other seven-judge Bench decision. No doubt, at the Highest Court, one cannot really be bogged down by the Bench strength nor does the doctrine of *stare decisis* would apply strictly to this Court when a judgment of a larger Bench is questioned by a Bench of similar or smaller strength. But for that, there must be present a flagrant violation of law, a patent error or a blatantly erroneous approach in the matter so as to enable a Bench of a similar or smaller strength to doubt the correctness or otherwise of the decision of a larger Bench. There could also be a situation where a judgment is *per incuriam* or the doctrine of *sub silentio* would apply.

For instance, a two-judge Bench of this Court doubted the correctness of a five-judge Bench decision in ***A.R. Antulay vs. R.S. Naik, 1986 Supp SCC 510 ("A.R. Antulay")*** which led to the constitution of a seven-judge Bench by Hon'ble the Chief Justice of India. By a majority of 5:2, the seven-judge Bench in

the aforesaid case answered the questions raised by the two-judge Bench and thereby set aside the judgment of the five-judge Bench. The circumstances as, they occurred in the case of ***A.R. Antulay*** did not present themselves in ***Kesoram*** so as to doubt ***India Cement.***

Fourthly, in my view, the opinion of the majority in the ***Kesoram*** is *per incuriam* as it failed to follow the dictum in ***India Cement*** on the basis of a "typographical error" in paragraph 34 thereof where there was none. Judgments of larger Benches cannot be questioned by smaller Benches on the basis of an imagined "typographical error"! The entire judgment must be read and understood including its under currents before negating it for what it stands. A judgment of a Court of law is not a piece of legislation but one pregnant with reasoning and it becomes the duty of a succeeding Bench considering a precedent to be cautious in opining something contrary on the premise of a "typographical error" in a judgment of a

larger Bench by failing to understand the import of the reasoning.

Fifthly, ***Kesoram*** also failed to note that the Parliament enacted the Validation Act, 1992 on the definite premise that the States did not have the legislative competence to levy the impugned levies which were rightfully set aside by this Court in a series of judgments starting from ***Hingir-Rampur***.

Sixthly, I may observe that the Validation Act, 1992 clearly established that the dicta of this Court in ***India Cement, Orissa Cement*** and other cases which followed the said judgment are correct and were accepted by the Parliament which acted on it by passing the Validation Act.

Seventhly, in ***Kannadasan***, the validity of the Validation Act, 1992 was upheld. This clearly established the fact that the State's levies which were quashed and set aside by this Court in ***India Cement***

and other cases were not relatable to Entry 49 - List II. If that was so, then Parliament could not have enacted the Validation Act, 1992 as only States can levy taxes on lands and buildings under the Entry 49 – List II.

Eighthly, the actual basis for the majority in ***Kesoram*** doubting the judgment in ***India Cement*** is on the premise that there is a distinction between the power to regulate and control and the power to tax, the two being distinct and different. It was held that the taxation Entry i.e. Entry 50 – List II could not be controlled by Entry 54 – List I which is a regulatory Entry which is meant for regulation for mines and mineral development under the control of the Union. That may be so in the case of many other Entries, however, Entry 50 – List II is unique inasmuch as the taxation Entry namely, the power to impose taxes on mineral rights is itself subject to any limitations imposed by Parliament by law relating to mineral development. In the context of mineral development,

limitations could be imposed by Parliament by law *vis-à-vis* the power to impose taxes on mineral rights which is evident on a reading of Entry 50 – List II. The reason being, exercise of mineral rights is related to mineral development which is a subject under Entry 54 – List I. This coalescing of the subjects in Entry 50 – List II with Entry 54 – List I has not been noticed whereas in ***India Cement*** as well as in ***Laddu Mal*** and in ***Laxminarayana Mining Co.,*** this aspect has been the foundation of the reasoning.

28. In view of the aforesaid discussion, I differ from the judgment of Hon'ble the Chief Justice of India, and hold that ***India Cement, Orissa Cement, Mahalaxmi Fabric Mills, Saurashtra Cement, Mahanadi Coalfields, Kannadasan*** excluding to the extent overruled in ***Tata Iron and Steel,*** and ***Tata Iron and Steel*** have been correctly decided and therefore, are binding precedent and cannot be overruled.

Entries 49 and 50 – List II:

29. The second aspect of this case which also requires consideration is with regard to interplay of Entries 49 and 50 - List II in the context of mineral bearing lands.

30. In the judgment proposed by Hon'ble the Chief Justice of India, it has been concluded as under:

> "e. The State legislatures have legislative competence under Article 246 read with Entry 49 of List II to tax lands which comprise of mines and quarries. Mineral-bearing land falls within the description of "lands" under Entry 49 of List II;
>
> f. The yield of mineral bearing land, in terms of the quantity of mineral produced or the royalty, can be used as a measure to tax the land under Entry 49 of List II. The decision in ***Goodricke (supra)*** is clarified to this extent;
>
> g. Entries 49 and 50 of List II deal with distinct subject matters and operate in different fields. Mineral value or mineral produce can be used as a measure to impose a tax on lands under Entry 49 of List II; and
>
> h. The "limitations" imposed by Parliament in a law relating to mineral development with respect to Entry 50 of List II does not operate on Entry 49 of List II because there is no specific stipulation under the Constitution to that effect."

31. In ***India Cement,*** the State of Tamil Nadu mainly contended that impugned levy, namely, imposition of cess on royalty under Entry 49 - List II as taxes on lands and buildings

and therefore defining "land revenue", as including royalty on mineral bearing land in exercise of mineral rights by the holder of a mining lease was justifiable. In this regard, reference was made by the State of Tamil Nadu to ***Raja Jagannath Baksh Singh vs. State of U.P., (1963) 1 SCR 220 ("Raja Jagannath Baksh Singh"),*** wherein it was indicated that the expression "lands" in Entry 49 - List II is wide enough to include agricultural as well as non-agricultural land. But this contention was repelled by this Court by observing that 'royalty' being that which is payable on the extraction of minerals from land and 'cess' being an additional charge on the basis of royalty cannot be considered to be a tax on mineral land under Entry 49 – List II. It was observed that there was a clear distinction between tax directly on land and tax on income arising from land such as from minerals extracted from the land.

31.1 In fact, this Court in ***New Manek Chowk Spinning & Weaving Mills Co. Ltd. vs. Municipal Corporation of the City of Ahmedabad, (1967) 2 SCR 679 ("New Manek Chowk***

Spinning & Weaving Mills"), had observed that Entry 49 - List II only permitted levy of tax on lands and buildings and not on machinery contents in or situated on the buildings even though the machinery was there for the use of the buildings for a particular purpose. Also construing the said Entry, this Court in ***Sudhir Chandra Nawn vs. Wealth Tax Officer, Calcutta, (1969) 1 SCR 108 ("Nawn")***, observed that Entry 49 - List II contemplated a levy on land as a unit and the levy must be directly imposed on land and must bear a definite relationship to it. The aforesaid decision was affirmed in ***Assistant Commissioner of Urban Land Tax vs. The Buckingham & Carnatic Co. Ltd., (1970) 1 SCR 268 ("The Buckingham & Carnatic Co.").*** Similarly, in ***Second Gift Tax Officer, Mangalore vs. D.H. Nazareth, (1971) 1 SCR 195 ("D.H. Nazareth"),*** it was held that a tax on the gift of land is not a tax imposed directly on land but only for a particular act, namely, the transfer of land by way of gift. In ***Union of India vs. Harbhajan Singh Dhillon, (1971) 2 SCC 779***

("Harbhajan Singh Dhillon"), the aforesaid two decisions were approved.

31.2 Further, it was observed in ***India Cement*** that royalty which is indirectly connected with land cannot be said to be tax directly on land as a unit. The cess impugned could not be levied if there was no mining activity carried on as no royalty was payable as payment of cess was on royalty. Hence, it was manifest that cess on royalty was not relatable to land as a unit which is the only method of valuation of land under Entry 49 - List II but was relatable to minerals extracted, i.e. royalty was payable on a proportion of the minerals extracted based on the rate fixed under the Second Schedule to MMDR Act, 1957. Therefore, the impugned cess on royalty was held in pith and substance to be a tax on royalty and not a tax on land. Hence, royalty could not be included within the definition of "land revenue" for the purpose of imposition of a cess on land revenue, which means cess on royalty, when royalty is itself a tax paid by a holder of mining lease for exercise of his mineral rights, which is in the interest of mineral development.

31.3 It was further observed in ***India Cement*** that Entry 23 - List II deals with regulation of mines and mineral development subject to the provisions of List I, i.e. Entry 54 - List I. Even though the subject mineral rights are part of the State List, taxes on mineral rights are treated separately and hence, the principle that the specific excluded the general must be applied. Therefore, it was observed that the word "lands" in Entry 49 - List II cannot include mineral bearing lands. In this connection, it was further observed that the extent to which regulation of mines and mineral development under the control of the Union is declared by Parliament by law to be expedient in the public interest (Entry 54 – List I), must be noted as, to that extent, denuding the State Legislation of its power under Entry 50 - List II. It was further observed that in view of the Parliamentary legislation under Entry 54 - List I, namely, the MMDR Act, 1957, and the declaration made under Section 2 and the provisions of Section 9 thereof, the State's power would be overridden to that extent.

31.4 Further, in ***India Cement***, reliance was placed by State of Tamil Nadu on the judgment of this Court on ***HRS Murthy*** wherein it was observed that land cess paid on royalty has a direct relation to the land and only a remote relation with mining. This was held to be an incorrect approach in the matter by the seven-judge Bench in ***India Cement***. In paragraph 30 of ***India Cement,*** it was further clarified that in ***HRS Murthy,*** attention of this Court was not invited to the provisions of Section 9 of the MMDR Act. It was also observed that Section 9(3) of the MMDR Act, 1957 in terms states that royalties payable under the Second Schedule of the said Act shall not be enhanced more than once during a period of three years. Therefore, this created a clear bar on the State Legislatures taxing royalty in any manner so as to in effect amend Second Schedule of the MMDR Act as additional taxes on royalty imposed by the States would vary the tax structure from State to State leading to variance in the price of a particular mineral in the country which is not in the interest of mineral development. Therefore, it was observed that tax on

royalty cannot be a tax on land. This is *ultra vires* the State legislative power particularly in view of Section 9(3) of the MMDR Act, 1957. It was also observed in ***India Cement*** that under Section 9 of the MMDR Act, 1957 the field was fully covered by the Central legislation and that royalty is directly relatable only to the minerals extracted. Hence, royalty was found relatable only to Entry 50 - List II and not Entry 49 - List II. As the field is covered by the MMDR Act, 1957, Entries 23 and 50 - List II will be subject to the declaration made under Section 2 of the MMDR Act, 1957 which has been enacted as per Entry 54 - List I.

32. In view of the above, the reasoning in the proposed judgment of the learned Chief Justice of India, in paragraph 339 that *"though Parliament can limit the taxing field entrusted to the State under Entry 50 - List II through a law relating to mineral development, the limitation operates on the field of taxing mineral rights. Such a limitation cannot operate on Entry 49 - List II because there is no specific stipulation under the Constitution to that effect. The nature of taxes under both the Entries, that is*

Entries 49 and 50 - List II, are distinct. The Constitution envisages the imposition of limitations by Parliament on the legislative field of the state of taxes on mineral rights, and not taxes on lands … Therefore, we are of the opinion that the doctrine of generalia specialibus non derogant has no application in the instant case because Entries 49 and 50 of List operate in different fields" in my view is contrary to what has been reasoned by the seven-judge Bench in ***India Cement*** and also the scheme of Entry 54 - List I and Entries 23 and 50 - List II as well as the object, intent and scheme of Parliament in making a declaration under Section 2 of the MMDR Act, 1957. Further, the Validation Act passed by the Parliament on the strength of Entry 54 – List I would have been wholly unnecessary if Entry 49 – List II was applicable to mineral bearing lands.

33. In view of what has been discussed above, in my view, Entry 49 - List II is an Entry of the widest amplitude. Taxes on lands and buildings would include taxes on agricultural land, non-agricultural land, etc. But insofar as mineral-bearing land

is concerned, there cannot be a tax on such land *per se* to be levied by the State Legislature as well as tax on mineral rights exercised on such land which is based on the value of the minerals produced under a Central Act. The reasons for saying so are as follows:

(i) *Firstly,* royalty as a tax on the value of the minerals extracted is paid by the lessee or the person who would exercise mineral rights to the State or lessor, as the case may be, under the provisions of MMDR Act, 1957 which is a Parliamentary law. Whereas, a tax or cess on land is paid by the owner or the occupier of the land as the case may be as per particular statute or by an agreement between the owner and the occupier.

(ii) *Secondly,* on a reading of the lease-deed executed in terms of Form-K appended to the Mineral Concession Rules, 1960, which are Central Rules, in light of Section 9 of the MMDR Act, 1957 and the Second Schedule thereof, it is clear that the

lessee is under an obligation to pay royalty to the Government on the mineral extracted which is in exercise of his mining rights as per the provisions of MMDR Act, 1957, which is a Parliamentary legislation enacted in terms of Entry 54 - List I for regulation of mines and mineral development uniformly throughout the country.

(iii) *Thirdly,* the royalty is paid as a tax as a tax in respect of minerals removed or consumed by the holder of a mining lease from the leased area at the rate for the time being specified in the Second Schedule to MMDR Act, 1957 in respect of that mineral. There is no payment of royalty on the basis of a private negotiation between the lessor or lessee. The rate at which royalty has to be paid is prescribed in the Second Schedule of the MMDR Act, 1957 mineral wise. Only the Central Government by notification in the official gazette can amend the Second Schedule so as to enhance

or reduce the rate at which the royalty shall be payable in respect of any mineral with effect from the date as may be specified in the notification. Provided that the Central Government shall not enhance the rate of royalty in respect of any mineral more than once during any period of three years. This power is reserved only with the Central Government, which is in the interest of mineral development in a uniform manner throughout the country.

(iv) *Fourthly,* there is no value that can be attached to a mineral bearing land so as to impose tax on such land minus the minerals. Insofar as extraction of minerals is concerned, being an exercise of a mineral right, royalty is payable by a holder of a mining lease and when no mining activity is carried on, dead rent is payable by such a person. Thus, royalty being a tax or an exaction, there cannot be another tax imposed by the State under Entry 49 -

List II on such mineral bearing land. Such land is valuable because of the mining activity that is carried thereon and the minerals are extracted. Such land is not the same as agricultural or non-agricultural land or land on which buildings are constructed that is subjected to tax under Entry 49 - List II by a State Government.

(v) *Fifthly,* to reiterate, when the value of minerals extracted is the basis of payment of royalty under the scheme of the MMDR Act, 1957, which is a Parliamentary legislation, such land cannot be construed to be falling within the scope and ambit of Entry 49 - List II also so as to be subjected to a tax imposed by the State. In other words, there cannot be a tax on mineral bearing land twice over by the State Government: one, under Entry 49 - List II as land *per se* and another, under Entry 50 - List II which is subject to any limitation being made by Parliament by law i.e. MMDR Act, 1957

made pursuant to Entry 50 - List I and more particularly, Section 2 read with Section 9 of the said Act. If, for instance, Section 9 of the MMDR Act, 1957 is repealed and the Parliament leaves it to the wisdom of State legislatures to impose royalty, then, there cannot be a duplication of taxes on mineral bearing land: one under Entry 49 - List II and another under Entry 50 - List II. A tax on mineral bearing land cannot fall under two Entries of the same List. Taxation Entries are mutually exclusive from each other in a particular List, the State List – List II in the instant case, unless they are made subject to an Entry in another List i.e., Union List - List I as in the instant case, Entry 50 - List II is subject to Entry 54 - List I.

34. In view of the aforesaid discussion, I also observe that mineral value or mineral produce cannot be used as a measure to tax mineral bearing land under Entry 49 - List II; also, the

word “lands” under Entry 49 - List II cannot include mineral bearing land as well. This would amount to “double taxation” so to say imposed by two different Legislatures: one, by the State Legislature on the mineral bearing land under Entry 49 - List II and again for conducting a mining operation which is for exercise of a mineral right under Section 9 of MMDR Act, 1957, which is a Parliamentary law also paid to the State Government. This is impermissible having regard to the constitutional intent and scheme of Entries in the Lists. Therefore, royalty cannot also be a measure to impose tax on mineral bearing land. Hence, the State Legislature using royalty on mineral produce as a measure to impose a cess under Entry 49 - List II on mineral bearing land would indeed overlap Entry 50 - List II. This is because minerals are extracted by virtue of mining activity which is in exercise of a mineral right and taxes on mineral rights are envisaged under Entry 50 – List II subject to any limitation imposed by the Parliament. Therefore, Entry 50 - List II would have to be viewed distinctly from Entry 49 - List II. If so viewed, it becomes subject to Parliamentary law in

the form of MMDR Act, 1957 and the rules made thereunder which would be a limitation on the power of the State to tax under Entry 50 – List II. Hence to get over the rigour of Entry 50 – List II, the States cannot resort to Entry 49 – List II.

Effect of Overruling India Cement:

35. A survey of cases on the aspect as to whether royalty is a tax or not would reveal that ***Hingir-Rampur, M.A. Tulloch, Baijnath Kedia, India Cement*** and the two judgments of Patna High Court and Mysore High Court have clearly held that royalty is a tax coming within the scope and ambit of Article 366(28) of the Constitution. There are other judgments which have followed ***India Cement.*** This is having regard to the interpretation of the Entries namely, Entry 50 – List II in light of Entry 54 – List I and the declaration made in Section 2 of the MMDR Act, 1957 and the scheme of the provisions of the said Act. On the other hand, in ***HRS Murthy*** and ***Kesoram,*** it has been held by this Court that royalty is not a tax.

35.1 What is significant is between ***India Cement*** and the cases that have followed the said dictum and ***Kesoram*** is the

judgment of this Court in ***Kannadasan*** which marks a watershed in the entire controversy and in fact had put a closure to the same. The circumstance which led to the Parliament enacting the Validation Act was to validate all the incompetent levies imposed in the form of cesses and surcharge on cesses, licence fee, etc. on royalty which had been set aside by this Court. Parliament was constrained to enact the Validation Act having regard to Entry 54 – List I and Section 2 of the MMDR Act, 1957. This significant aspect has not been appreciated by the majority in ***Kesoram***. Instead the judgment in ***Kesoram*** proceeded on an imagined "typographical error" in paragraph 34 of ***India Cement*** without appreciating the reasoning therein for holding that royalty is a tax.

35.2 Apart from questioning the verdict of a larger Bench on the premise that there was a "typographical error", the majority in ***Kesoram*** lost sight of the implication and the adverse impact that its view would have on mineral development in the country. If royalty is not held to be a tax and the same being covered under the provisions of the MMDR Act, 1957, it would

imply that despite Entry 54 – List I and the declaration made in Section 2 of the MMDR Act, 1957 and Section 9, 9A and other provisions thereof, taxes on mineral rights could be imposed by the States over and above payment of royalty on a holder of a mining lease. This would also mean that the limitation that the Parliament has made by law on the taxing power of a State explicitly stated in Entry 50 – List II would be given a go by. This would further imply that despite such a Parliamentary limitation, the States could pass laws imposing taxes, cesses, surcharge on cess, etc. on the basis of royalty which is in addition to payment of royalty. Further, that such levies could also be imposed under Entry 49 – List II thereby making Entry 50 – List II redundant is not acceptable. As a sequitur, this would result in mineral development in the country in an uneven and haphazard manner and increase competition between the States and engage them into what has been termed by Louise Tillin in a 'race to the bottom' in a nationally sensitive market. There would be unhealthy competition between the States to derive additional revenue and consequently, the steep,

uncoordinated and uneven increase in cost of minerals would result in the purchasers of such minerals coffing up huge monies, or even worse, would subject the national market being exploited for arbitrage. The steep increase in prices of minerals would result in a hike in prices of all industrial and other products dependent on minerals as a raw material or for other infrastructural purposes. As a result, the overall economy of the country would be affected adversely which may result in certain entities or even non-extracting States resorting to importing minerals which would hamper foreign exchange reserves of the country. There would lead to a breakdown of the federal system envisaged under the Constitution in the context of mineral development and exercise of mineral rights. It could also lead to a slump in mining activity in States which have mineral deposits owing to huge levies that have to be met by holders of mining licences. Further, another impact of this would be a unhealthy competition to obtain mining leases in States which have the mineral deposits and who do not wish to impose any other levy apart from royalty. It is, therefore,

necessary to realise why the framers of the Constitution took a clue from the Government of India Act, 1935 in order to distribute the legislative powers between the Union and the State List insofar as regulation of mines and minerals is concerned.

35.3 At this juncture, I must also observe the overruling the judgment in ***India Cement*** would mean that all judgments which are akin to the ratio of ***India Cement*** whether prior to or subsequent thereto, stand overruled irrespective of whether they are the judgments of the High Courts or this Court. Consequently, all States would once again start levying taxes on mineral rights under Entry 49 - List II and thereby bypass Entry 50 - List II so as to not be bound by any limitation that the Parliament had imposed by law on the power of the States to levy taxes on mineral rights. The circle would come around when Parliament would have to again step in to bring about a uniformity in the prices of minerals and in the interest of mineral development so as to curb the States from imposing levies, taxes, etc. on mineral rights. Why should that happen

again? There would then be legal uncertainty which would cause adverse economic consequences including on mineral development in India. For the above reason also, the majority judgment in ***Kesoram*** is not a good law and ought to be overruled to the extent that it holds that royalty is not a tax.

Federalism in India:

36. According to Louise Tillin, in her article *"Building a National Economy : Origins of Centralized Federalism in India"* published by the Oxford University Press in 2021, India's post-colonial Constitution introduced a new approach to federalism which has departed from the principle that federal and regional governments should each have independence in their own sphere of authority. According to Tillin, "the distinctive elements of Indian federalism were shaped at their foundations by the desire to boost industrial development and lay the foundation for a national welfare state in a post-colonial future by preventing the consolidation of "race to the bottom" dynamics arising from unregulated inter-provincial economic competition." According to her, Indian federalism was

influenced by emerging debates taking place within India and in the international fora established alongside the League of Nations after the First World War, about the regulation of economic competition and the development of the twentieth century welfare State. According to her, the distinctive element of Indian federalism is the combination of a strong Centre and a substantial sphere of shared Centre-State jurisdiction. This thinking was shaped by nationalist politicians, industrialists, and labour leaders in the decades prior to India's Independence and the significant political and economic factors that influenced the constitutional design of federalism in India.

36.1 According to certain scholars, India's founding fathers opted for Parliamentary supremacy with a strong centre to prevent further secessionist movements. That, Jawaharlal Nehru's preference was for a centralized model of federalism was to hold together the fledgling Union and concerted efforts to foster a national, civic identity rather than parochial identification with local or linguistic identities. Therefore, the Constitution uses the word "Union" instead of "Federation".

36.2 Nehru, who was the Chairman of the Union Powers Committee of the Constituent Assembly, was of the view that *"it would be injurious to the interests of the country to provide for a weak central authority which would be incapable of ensuring peace, of coordinating vital matters of common concern and of speaking effectively for the whole country in the international sphere."* (*Nehru cited in M.P. Jain, Nehru and the Indian Federalism, Journal of the Indian law Institute, Vol.19, No.4, 1977, p.408*).

36.3 The Government of India Act, 1935 was the first comprehensive blueprint for legislative division of power in India between federal, provincial and concurrent spheres which resolved residuary powers to rest with the Federal Government. Though there are apparent similarities between the Government of India Act, 1935 and the Indian Constitution, yet factors, such as, regulation of economic competition and the development of twentieth century welfare States guided the constitutional blueprint for a model of federalism in which

provincial initiative should not preclude national coordination, particularly, in the fields of socio-economic spheres.

36.4 According to Tillin, "in the case of India, political economy considerations intersect with the accommodation of diversity in shaping the resulting forms of federalism". The question of a desirable balance between Central and the State Governments has to be viewed in the context of the country continuing to confront the need to promote economic growth while upholding and expanding social rights.

Sarkaria Commission Report on Centre-State Relations:

37. Resolved to study and reform the existing arrangements between the Union and the States in an evolving socio-economic scenario, the Ministry of Home Affairs *vide* Order dated 09.06.1983 constituted a Commission under the Chairmanship of Justice R.S. Sarkaria with Shri B. Sivaraman and Dr. S.R. Sen having due regard to the framework of the Constitution. At this stage, reference to Section 5, Chapter II – Legislative Relations of the Report of the Sarkaria Commission ("Sarkaria Commission Report") may be of assistance:

"2.5.21 In every Constitutional system having two levels of government with demarcated jurisdiction, contents respecting power are inevitable. A law passed by a State legislature on a matter assigned to it under the Constitution though otherwise valid, may impinge upon the competence of the Union or vice versa. Simultaneous operation side-by-side of two inconsistent laws, each of equal validity, will be an absurdity. The rule of Federal Supremacy is a technique to avoid such absurdity, resolve conflicts and ensure harmony between the Union and State laws. This principle, therefore, is indispensable for the successful functioning of any federal or quasi-federal Constitution. It is indeed the kingpin of the federal; system. "Draw it out, the entire system falls to pieces"

2.5.22 If the principles of Union Supremacy are excluded from Articles 246 and 254, it is not difficult to imagine its deleterious results. There will be every possibility of our two-tier political system being stultified by internecine strife, legal chaos and confusion caused by a host of conflicting laws, much to the bewilderment of the common citizen. Integrated legislative policy and uniformity on basic issues of common Union-State concern will be stymied. The federal principle of unity in diversity will be very much a casualty. The extreme proposal that the power of Parliament to legislate on a Concurrent topic should be subject to the prior concurrence of the States, would, in effect, invert the principle of Union Supremacy and convert it into one of State Supremacy in the Concurrent sphere. The very object of putting certain matters in the Concurrent List is to enable the Union Legislature to ensure uniformity in laws on their main aspects throughout the country. The proposal in question will, in effect, frustrate that object. The State Legislatures because of their territorially limited jurisdictions, are inherently incapable of ensuring such uniformity. It is only the Union, whose legislative jurisdiction extends throughout the territory of India, which can perform this pre-eminent role. The argument that the States should have legislative paramountcy over the Union is basically unsound. It involves a negation of the elementary truth that the 'whole' is greater than the 'part'."

(emphasis supplied)

As the paragraphs extracted above elucidate, the Commission was of the firm view that the principles of Union Supremacy cannot be undermined from Articles 246 and 254. While the immediate paragraph is concerned with legislative actions taken under the List III - Concurrent List, they provide us a beneficial lens to both the importance of Union supremacy in matters that demand national uniformity and the Commission's following discussion on "Mines and Minerals" in Chapter XIII.

37.1 As the extract hereunder reflects, the Commission noted that the tug-of-interpretation between Centre and States was causing adverse impact on prices of petroleum which is necessarily not in the interest of national conformity and uniformity. It reads as under:

> *"13.5.10 .....We are informed by the government of India that one State has levied mineral rights tax, approximately 300 percent of royalty on coal and lime-stone and 100 percent of royalty on other minerals. The Union Government, while conceding the States rights under Entries 49 and 50 (subject to such limitation as may be imposed by Parliament), has pointed out the need for the States to exercise restraint on imposition of such levies, so as not to affect uniformity or competitiveness.....*
>
> *xxx*

13.5.12 The controversy, is therefore, not of legal interpretation of their respective jurisdiction, but one of evolving an understanding in regard to the extent to which these sources of revenue can be exploited keeping in view the overall national interest. Such issues can best be sorted out through consultation and consensus. We are of the view that the NEDC proposed by us will be the best forum for this purpose. It is, however, quite clear that the issues are inter-linked. Mutual trust and confidence can be built up only if, on the one hand, the Union Government promptly revises royalty rates at reasonable intervals and on the other, the States abstain from arbitrary action in levy of cesses, etc. Parochial considerations must yield to the larger interests of the nation in such matters."

However, till the above situation is achieved constitutional courts would have to adjudicate by way of judicial review.

37.2 One has to also appreciate the pragmatic solution-oriented approach coupled with the acknowledgment that the subject matter of this *lis*-taxation on minerals-which are natural resources, should be exploited for the development of the country as a whole. Therefore, it is only Union legislation which can ensure the same successfully. The Report further states as under:

"13.5.15 Exploitation of mineral resources will continue to increase. There is general agreement that minerals are national resources and they should be exploited and developed for the benefit of the country as a whole. Only Union legislation can ensure such regulation and

development of minerals. The States have been given an unrestricted field in respect of 'minor minerals' which have little all-India implications. There is, however, need for periodic review of the First Schedule to the MMRD Act, in consultation with the States, say after every three years, as there is a possibility that a particular mineral, not included in the Schedule, may become a matter of national concern or vice versa. Any amendment of the Act should normally be preceded by consultation in the NEDC."

(emphasis supplied)

38. However, the controversy in this case would demonstrate how a State with substantial mineral reserves manages, regulates and taxes its resources without hurting the national interest and the development of the country in the context of mineral development. It is with the above background that the distribution of legislative powers between the Union and the States were thought of in a manner that would give an upper hand to Parliamentary supremacy, so to say, over the legislative power of the State. Therefore, the respective Entries in Lists I and II, namely, the Union List and the State List respectively, have been so drafted in order to ensure that there is overall mineral development in the country as a whole, rather than particular States possessing the mineral wealth acting contrary

to the overall welfare of the country and against the economic interest of the other States.

39. In view of the aforesaid discussion, I find that the learned Attorney General is right in contending that the MMDR Act, 1957 contemplates all manner of levies, charges, impost or demands that could be provided for having a nexus with mineral rights. Therefore, the Act itself has to be construed as a limitation on the power of the States to demand or impose levies to the extent to which is stated in the Act. Although, Entry 50 – List II is a taxing Entry, it will be subject to the limitations enacted by the Parliament by law under Entry 54 – List I. The answer to the question raised by learned Solicitor General, whether the States can impose levies under Entry 50 – List II over and above the amount of royalty received by them under the MMDR Act, 1957, is in the negative. The submission that Entry 50 – List II is *sui generis* because it is the only legislative Entry which limits the taxing powers of the State legislatures by reference to a general law, is a correct submission made by Sri Harish Salve, learned senior counsel.

Therefore, the expression "mineral development" found in Entry 50 – List II has to be traced to the entire architecture of the MMDR Act, 1957 which serves as limitation of the taxing power of the State legislature under Entry 50 – List II. To read it otherwise would lead to destruction of the federal balance, as rightly contended by Sri Salve. Further, tax on mineral right would also include royalty as envisaged under Section 9 and the other Sections of the MMDR Act, 1957 which is in the nature of sovereign exaction and every holder of mining lease is bound to pay royalty in terms of Section 9 read with Second Schedule to the said Act. In that sense, royalty is in the nature of a tax on mineral rights which has to be compulsorily paid by the holder of a mining lease irrespective of who the owner of the mineral bearing land is.

39.1 Also the MMDR Act, 1957 and the Rules made thereunder is a complete Code on the regulation of mineral development and royalty paid by a holder of a mining lease is in the nature of a tax paid on mineral rights, the State legislature cannot, on the basis of royalty paid, levy any other tax, cess or

surcharge on cess. The States can only levy tax on sale of mineral as per Entry 54 – List II which is not a tax on mineral rights, as rightly contended by Sri Datar, learned senior counsel. Moreover, Entry 50 – List II is a recognition of parliamentary superiority *via* imposition of a limitation, as rightly argued by Dr. Singhvi, learned senior counsel.

39.2 Consequently, the contention of learned senior counsel Sri Rakesh Dwivedi for the appellants-States to the effect that value of the minerals could be used as a measure to tax mineral bearing land under Entry 49 – List II cannot be accepted. It is also not right to contend that the Parliament has only fixed the amount of royalty payable under Section 9 which cannot be a limitation on the taxing power of the State legislature under Entry 50 – List II. Moreover, the expression "any limitation" used in Entry 50 – List II can be construed to mean even a prohibition apart from a restriction.

Conclusions:

40. What follows are my answers to the conclusions reached on the issues raised in the judgment of Hon'ble the Chief Justice of India, which read as under:

Question	Issues	My Conclusions
a.	What is the true nature of royalty determined under Section 9 read with Section 15(1) of the MMDR Act? Whether royalty is in the nature of tax?	The true nature of royalty determined under Section 9 read with Section 15(1) of the MMDR Act, 1957 is that it is in the nature of a tax coming within the scope and ambit of Article 366(28) of the Constitution which defines taxation to include the imposition of any tax or impost, whether general or local or special and the word "tax" is to be construed accordingly.
b.	What is the scope of Entry 50 - List II of the Seventh Schedule? What is the ambit of the limitations imposable by Parliament in exercise of its legislative powers under Entry 54 - List I? Does Section 9, or any other provision of the MMDR Act, contain any limitation with respect	Entry 50 - List II of the Seventh Schedule is, no doubt, a taxation Entry which deals with taxes on mineral rights. But this Entry is subject to any limitations imposed by Parliament by law relating to mineral development. The use of the word "any" means the limitation could be in any form

Question	Issues	My Conclusions
	to the field in Entry 50 - List II?	which can be imposed only by the Parliament by law relating to mineral development. In view of the use of the expression "any limitations", it must be given the widest possible meaning to include a limitation in the form of Sections 9 and 9A, 25 or any other provision of the MMDR Act, 1957 and Rules made thereunder which act as a limitation to Entry 50 - List II.
c.	Whether the expression "subject to any limitations imposed by Parliament by law relating to mineral development" in Entry 50 - List II *pro tanto* subjects the Entry to Entry 54 - List I, which is a non-taxing general Entry? Consequently, is there any departure from the general scheme of distribution of legislative powers as enunciated in ***MPV Sundararamier*** (supra)?	The expression "subject to any limitations imposed by Parliament by law relating to mineral development" in Entry 50 - List II *pro tanto* subjects the Entry to Entry 54 - List I. The use of the expression "any limitations" would mean that the taxing Entry would be subject to a non-taxing or general Entry such as in Entry 54 - List I which could also be termed as a regulatory Entry. Consequently, there is a departure from the general scheme of distribution of legislative

Question	Issues	My Conclusions
		powers as enumerated in ***MPV Sundararamier*** insofar as Entry 50 - List II read with Entry 54 - List I is concerned which is unique to Entry 50 – List II. This is having regard to the significance of Entry 54 – List I which also overrides Entry 23 – List II.
d.	What is the scope of Entry 49 - List II and whether it covers a tax which involves a measure based on the value of the produce of land? Would the constitutional position be any different *qua* mining land on account of Entry 50 - List II read with Entry 54 - List I?	Entry 49 - List II deals with taxation of lands and buildings. It does not cover taxes on mineral bearing lands. The constitutional position is different *qua* mineral bearing lands on account of Entry 50 - List II read with Entry 54 - List I and Section 2 of the MMDR Act, 1957. Consequently, any imposition on the basis of royalty by a State Legislature or involving royalty as a measure of the value of the minerals extracted from the land is impermissible.
e.	Whether Entry 50 - List II is a specific Entry in relation to Entry 49 - List II, and would consequently subtract	Yes, Entry 50 - List II is a specific Entry in relation to Entry 49 - List II and would consequently subtract mining lands

Question	Issues	My Conclusions
	mining land from the scope of Entry 49 - List II?"	from the scope of Entry 49 - List II. This is particularly so having regard to Entry 50 - List II to be read with Entry 54 - List I and Section 2 of the MMDR Act, 1957.

41. Consequently, the following conclusions are arrived at by me:

a. I hold that royalty is in the nature of a tax or an exaction. It is not merely a contractual payment but a statutory levy under Section 9 of the Act (Section 9A relating to dead rent). The liability to pay royalty does not arise purely out of the contractual conditions of a binding lease. The payment of royalty to the Government is a tax in view of Entry 50 - List II being subject to any limitations imposed by Parliament by law in the context of Entry 54 - List I read with Section 2 of the MMDR Act, 1957.

b. Entry 50 - List II is an exception to the position of law laid down in ***MPV Sundararamier vs. State of Andhra Pradesh, AIR 1958 SC 468 ("MPV Sundararamier").*** Moreover, in the said case, the scope and ambit as well the implication of Entry 54 – List I on Entry 50 - List II was not considered at all. Therefore, the principle stated in ***MPV Sundararamier*** is foreign to the instant case and the ratio of the said decision does not apply to the present case. No doubt, the legislative power to tax mineral rights vests with the State legislature but Parliament, though may not have an express power to tax mineral rights under Entry 54 - List I, it being a general Entry, Parliament can, nevertheless on the strength of Entry 54 - List I read with Section 2 of the MMDR Act, 1957, impose any limitation on the power of the States to tax mineral rights under Entry 50 - List II. Sections 9 and 9A of the MMDR Act, 1957 are two such instances of

limitations imposed by the Parliament on the taxing power of the State under Entry 50 - List II. This is a unique Entry and must be given its true and complete meaning and while interpreting the same one cannot be swayed by the principles laid down in ***MPV Sundararamier*** as the same do not apply in the instant case. At the cost of repetition, it is stated that Entry 50 - List II never came for consideration in the aforesaid case.

c. Parliament is not using its residuary power with respect to imposing any limitation on the taxing power of the State under Entry 50 – List II. In fact, even the Validation Act, 1992 enacted by Parliament was upheld having regard to Entry 54 - List I read with Section 2 of the MMDR Act, 1957 and not Entry 97 - List I.

d. Entry 50 - List II envisages that Parliament can impose "any limitations" on the legislative field

created by that Entry under a law relating to mineral development. The MMDR Act, 1957 has imposed the limitations as envisaged in Entry 50 - List II in Sections 9, 9A and 25, etc. on the strength of Entry 54 – List I.

e. I, however, concur with the learned Chief Justice that the scope of the expression "any limitations" under Entry 50 - List II is wide enough to include the imposition of restriction, conditions, principles as well as a prohibition by Parliament by law.

f. The State legislatures have legislative competence under Article 246 read with Entry 49 - List II to tax lands and buildings but not lands which comprise of mines and quarries or have mineral deposits as mineral bearing lands do not fall within the description of lands (under Entry 49 - List II). Similarly, States can tax such mineral bearing lands which are not covered within the scope of

MMDR Act, 1957 i.e., minor minerals, under Entry 50 – List II and not under Entry 49 – List II as tax on exercise of mineral rights. Thus, mineral bearing lands cannot be taxed under Entry 49 – List II.

g. Further, the yield of mineral bearing lands, in terms of quantity of mineral produced or royalty paid cannot also be used as a measure to tax such lands under Entry 49 - List II. In my view, the decision in ***Goodricke*** does not apply to the present case and hence does not require any clarification.

h. Entries 49 and 50 - List II, no doubt, operate in different fields. Entry 49 - List II deals with taxes on lands and buildings but Entry 50 - List II deals with taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development. There is no constitutional

limitation on the competence of the State legislature to tax lands and buildings. However, the State's competence to tax mineral rights is subject to any limitations imposed by the Parliament by law relating to mineral development. Entry 49 - List II and Entry 50 - List II are distinct and operate in distinct ways. Entry 49 - List II does not apply to mineral bearing lands as such lands are taxed in the form of royalty or dead rent in the context of exercise of mineral rights. Exercise of mineral rights is the basis for payment of royalty or dead rent. Consequently, value of mineral produced cannot be used as a measure to once again impose a tax on mineral bearing land under Entry 49 - List II. If so, Entry 50 – List II would be rendered redundant.

i. As Entry 49 - List II does not apply to mineral bearing land, the limitations imposed by Parliament by law relating to mineral development

with respect to Entry 50 - List II would restrict the power of the State legislature to impose tax on mineral rights under the latter Entry. Thus, the power of the State legislature to impose tax under Entry 50 - List II is subject to the Parliament imposing any limitation by law relating to mineral development.

42. In view of the above discussion, the eleven questions referred to this Bench are accordingly answered. In particular, I hold that:

(i) Sections 9, 9A and 25 of the MMDR Act, 1957 denude or limit the scope of Entry 50 - List II;

(ii) the majority decision in ***Kesoram*** is a serious departure from the law laid down by the seven-judge Bench in ***India Cement*** which was wholly unwarranted and therefore, in my view, the said majority judgment is liable to be overruled and is overruled to the extent of holding that royalty is not a tax;

(iii) taxes on lands and buildings under Entry 49 - List II contemplates a tax levied directly on the land as a unit having a defined relationship with the land and does not include mineral bearing lands within its scope;

(iv) in view of the declaration under Section 2 of the MMDR Act, 1957 made in terms of Entry 54 - List I and to the extent of the provisions of the said Act, the State legislature is denuded of its powers under Enry 50 - List II; and

(v) Entry 50 - List II is a unique Entry because it is the only taxation Entry in Lists I and II where the taxing power of a State legislature has been subjected to "any limitations imposed by Parliament by law relating to mineral development". The dictum in ***MPV Sundararamier*** has not discussed on Entry 50 – List II and hence the said decision has no bearing as such on the

present controversy. The conclusion that 'royalty' is a 'tax' is the only exception to the position of law laid down in ***MPV Sundararamier***. Of course, the scope of expression "any limitations" in Entry 50 - List II is wide enough to include the imposition of restrictions, conditions, principles as well as a prohibition.

43. In the result, in my view, the judgments in ***India Cement, Orissa Cement, Mahalaxmi Fabric Mills, Saurasthra Cement, Mahanadi Coalfields, Kannadasan*** excluding to the extent overruled in ***Tata Iron and Steel,*** and ***Tata Iron and Steel*** are correct and therefore are binding precedent and cannot be overruled. On the other hand, the majority judgment in ***Kesoram***, is overruled to the extent it holds that royalty is not a tax.

44. The Registry is directed to place these matters before Hon'ble the Chief Justice of India for directions on listing the matters before the appropriate Bench.

I must place on record my sincere appreciation to the learned Attorney General, learned Solicitor General and their teams, learned senior counsel appearing for the respective parties, learned instructing counsel and learned counsel for the respective parties for their valuable assistance to this Bench.

.....J.
(B.V. NAGARATHNA)

New Delhi;
July 25, 2024.