

IN THE SUPREME COURT OF INDIA

(CIVIL APPELLATE JURISDICTION)

CIVIL APPEAL NO.4056-4064 of 1999

IN THE MATTER OF :

Mineral Area Development Authority Appellants

Versus

M/s Steel Authority of India & Others Respondents

CIVIL APPEAL NO.4722-4724 of 1999

IN THE MATTER OF :

Mineral Area Development Authority Appellants

Versus

Tata & Steel Company Ltd. & Others. Respondents

VOL I(F)

ADDITIONAL NOTE ON BEHALF OF APPELLANTS BY SANSRITI

PATHAK

I. 'FISCAL EXACTIONS' : COLORLESS /NEUTRAL EXPRESSIONS :

1. The term 'exaction' has been used as a 'colourless expression' in order to say that all exactions such as royalty, dead rent, surface rent etc have been exhaustively provided for in MMDR Act, 1957 and therefore States cannot levy any more 'fiscal exactions'.
2. It is submitted that there is nothing colourless about the 'fiscal exactions' in our Constitution. They are structurally distinct and historically and Constitutionally distinct meaning and significance have been attached to them and are never used interchangeably.

3. The lines between 'tax' and 'fee' which have always been held to be distinct imposts were blurred by the concept of compensatory tax. The said concept was discarded by a 9 Judge bench of this Hon'ble Court in **Jindal Stainless Vs State of Harayana (2017)12 SCC 1 (Pr 67.2)** because the concept of compensatory tax obliterated the distinction between a tax and a fee.

4. 'Tax' is a compulsory exaction by the State in the capacity as Sovereign for common good and has no element of quid pro quo. Unlike, tax, fee is a levy imposed by the State for a services rendered or regulatory in nature.

The Constitution uses distinct expressions such as tax, duties, cesses, surcharge, fees (license fees or fees for services rendered) royalty, fines , other pecuniary penalties [See Article 110(i) and (ii) for instance]. Each exaction or imposition are imposed under a distinct power and they are distinct and not used interchangeably. Tax, duties, cess and surcharge form one class of exactions which is levied under Article 245/246 read with the taxing entries. Fees is another class. Fees can be either regulatory or for services rendered which is levied under Article 245/246 read with the general entries read with Entry 96 List I and Entry 66 List II.

Royalty in the field of minerals , license fees for grant of spectrum, levy charged for parting with privilege in liquor trade, is neither tax nor fees It is price charged as owner of these resources and in the latter case a price for parting with privilege. A Constitution Bench in **State of Punjab Vs Devas Modern Breweries (2004) 11 SCC 26 Pr 113** held that levy charged for parting with privilege is neither tax nor a fee and it is simply a levy for the act of granting permission for the exercise of power to part with privilege. It is neither a tax nor a fee and will not attract Articles 301-304.

Dead rent and surface rent are payable under the MMDR Act, 1957 to the State in the capacity of the owner/lessor of the land . Where the lease is of a private land , the royalty, dead rent and surface rent is payable to the private person. Here also the payment is given to the private person in the capacity of owner/ lessor.

5. These levies are not mutually exclusive. State being the owner of the land can receive royalty for parting with land with mineral rights and can also levy tax on the same land in the capacity of the Sovereign taxing its constituents.

6. The power of the State to impose tax on mineral rights under Entry 50 List II is a power to impose tax. None of the statutory ‘ fiscal exactions’ mentioned in Section 9,9A, 9B and 9C are or can be in the nature of tax. Parliament has provided for payment of royalty, dead rent, surface rent etc under Article 245/246 read with Entry 54 List I which is a not taxing field. To say that MMDR Act, 1957 exhausts the field of ‘ fiscal exactions’ distorts the settled distinction between these impositions.

7. Difference also arises on account of nature of relationship. When tax is being levied, Sovereign is taxing its constituents. On the other hand when royalty is being levied, owner/lessor is charging consideration for parting with the right to win/excavate minerals.

8. It Is submitted that royalty is neither tax nor akin to tax nor can it substitute a tax.

II. UNIFORMITY NOT ENVISAGED BY ARTICLES 245 & 246 READ WITH

LIST II:

1. Uniformity in List II subjects is a misnomer, reason being there is no symmetry in nature and availability of resources either quantitative or qualitative, stage of development, fiscal requirements etc. Therefore the subjects that did not

have nation-wide implications were put in List II so that each State could devise its own legislative mechanism to suit its needs. It is precisely for this reason why Article 14 cannot be invoked by comparing laws of two different States.

2. Subjects regarding which uniformity was envisaged, were put in List I [See *Khazan Chand Vs State of J&K* (1984) 2 SCC 456 Pr 14]

3. But in the case of Entry 50 List II and Entry 57 List II, it may be possible to bring in uniformity since both these taxing entries permit such an intervention by the Parliament. But that has not been done by the Parliament.

4. Like there cannot be any taxation by inference similarly there cannot be any limitation by inference on sovereign power of taxation. Firstly, limitations need to be express (See *Jindal Stainless*) and secondly even the express limitations needs to be construed strictly (See *Monnet Ispat* (2012) 11 SCC 1).

5. Constitutionally, taxation by inference is a paradox.

III. FISCAL FEDERALISM

1. The jurisprudence regarding Federalism which is the basic feature of the Constitution is becoming more nuanced. There is 'Collaborative Federalism' ; 'Competitive Federalism'; 'Federalism involving Contestation'.

➤ The consultative and participative exercise of royalty fixation is an instance of **Collaborative Federalism**.

➤ The States designing their fiscal measures by giving incentives, tax holidays, exemptions, lower tax rates etc to attract investment or increase tax base is an instance of **Competitive Federalism**

➤ The States contesting for their powers conferred under the Constitution is a case of '**Federalism in Contestation**'. This aspect of Federalism should not be seen as disruptive but it is the bounden duty of the States to ensure that no limitations are imposed de hors the Constitution in the interest of uniformity, National interest etc. There are express provisions in the Constitution for situations requiring subordination of powers of the State in National Interest and the procedure is also prescribed [Article 249]

The States have **plenary** and **exclusive** powers over List II subjects and that means they do not /should not have to knock on the doors of the Centre for imposing levies which they are exclusive empowered to charge. Knocking on the doors of the Centre for tax relating to List II subject is not Collaborative Federalism but subversion of Federalism.

2. Therefore Fiscal Federalism is the most basic and fundamental aspect of Federalism. The existence of the State depends on the taxes and they form the life line of the State without which States are rendered nothing but paper tigers.

IV . **LIMITATION CANNOT BE READ TO MEAN DESTRUCTION**

1. Relying on the judgments on the proposition that 'regulation' includes prohibition or 'restriction' under Article 19(6) may include prohibition it is said that Parliament can prohibit the States from taxing. Firstly, the text of the Constitution

does not say that Parliament will 'regulate' the taxing power of State referable to Entry 50 List II. The Entry reads :

' Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development'

The word 'regulation' is found in Entry 54 List I. Parliament while making a law referable to Entry 54 List I can certainly prohibit mining or prohibit mining of a certain mineral or prohibit certain kinds of mining; it has that power since it has the power to 'regulate' mines and mineral development. Thus, far, the *Hind Stone* line of cases relied by the Respondents are correct but are inapplicable. Entry 50 List II enables the Parliament to impose limitations on the taxing power of the State while exercising its power referable to Entry 54 List I and not does not empower Parliament to 'regulate' power of State. The later part of the Entry does not grant Legislative Competence to the Parliament beyond what is envisaged in Entry 54 List I meaning thereby the law that it will make will still be referable to Entry 54 List I. But while exercising its exclusive Legislative competence under Entry 54 List I Parliament can impose limitations on exercise of exclusive Legislative competence of the State referable to Entry 50 List II. Secondly, the word limitation finds mention only in one other provision of the Constitution i.e. Article 134 while deals with the jurisdiction of the Supreme Court. When the word the 'limitation' is being used in vis a vis States/ Courts , the all canvassing meaning assigned to 'regulate' cannot be mechanically transplanted to mean prohibition.

Dated : 14.03.2024

Drawn & Filed by

(Ms. Sansriti Pathak)
Advocate for the Appellant/MADA