

**IN THE SUPREME COURT OF INDIA
(CIVIL APPELLATE JURISDICTION)**

CIVIL APPEAL NO. 4056-4064 OF 1999

IN THE MATTER OF :

Mineral Area Development Authority

....APPELLANT

Versus

M/s Steel Authority of India & Others

...RESPONDENTS

VOLUME-II-(D) (WRITTEN SUBMISSIONS)

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Submitted by:

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Written Submissions on behalf of the Attorney-General for India

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A. Issues

1. The following core issues arise for consideration in the light of the questions, which have been referred by the reference court in the matter *Mineral Area Development Authority v. M/s Steel Authority of India Ltd.*¹:
 - I. What is the true construction of Entry 50 List II in the company of Entry 54 List I?
 - II. Having regard to the special and peculiar features of the mines and minerals industry, whether words and expressions used under Entry 54 List I and Entry 50 List II will receive their special meaning as may be in consonance with the conjunction of the above-said entries?

B. The Scope of and the principles underlying the MMDR Act 1957

2. For the purpose of understanding and arriving at a true construction of Entry 50, we need to look at the words and expressions occurring in Entry 50, their technical connotation, and their logical nexus.

¹ Mineral Area Development Authority and Others vs. Steel Authority of India and Others, Civil Appeal No. 4056-4064 of 1999; (2011) 4 SCC 450

3. The laws relating to mines and mineral development, whether the Mines and Minerals (Regulation and Development) Act, 1948, or the Mines and Minerals (Development and Regulation) Act, 1957 [**MMDR Act 1957**], are based on long-established principles and understandings. The grant of a permission to undertake any activity in relation to a mineral is a core aspect. The grant of such a permission, called the lease or license, is always based on certain terms and conditions. The consideration for the grant of such permission, traditionally known as '*Royalty*', is in essence demand for parting with the privilege of working the mineral. Such a consideration is also in essence the price to be paid by the recipient of the permission for working the mineral. Working the mineral includes several activities, such as exploring, winning, producing, processing, transfer, transportation or dispatch, and sale, as the case may be. All these activities, either under a lease or otherwise, will be mineral rights activities.
4. The bundle of mineral rights will come into being on the grant of such permission or parting with the privilege. Mere ownership of a land with mineral wealth by any person is not by itself a mineral right within the meaning of Entry 50 List II. Consequently, any and all levies, charges, imposts, or demands that can be imposed or demanded from, will constitute taxes on mineral rights.
5. It may also be seen that the MMDR Act, 1957, has enacted in Section 19 the prospecting licenses, and mining leases to be void, if in contravention of the MMDR Act, 1957. This would mean that all mineral rights activity will be regulated under the MMDR Act of 1957.
6. The regulatory scope of the MMDR Act of 1957 is wide. In a connected context, in the *State of Tamil Nadu vs. Hind Stone*, this Hon'ble Court has proposed that the word 'regulation' in relation to this law will be read widely.

C. The interplay between Entry 54 List I and Entry 50 List II

7. For the correct purpose of Entry 50 List II, the word ‘taxes’ need not be seen from the point of view of its conventional connotation. For the purpose of Entry 50 List II, taxes shall be taken to mean, any compulsory exaction, levy, charge, impost, or demand that may be charged in relation to or in respect of mineral rights.
8. Both Entry 54 List I and Entry 50 List II constitute a family of entries. Both the Entries have in mind the principle of mineral development and all attendant and related activities that will connect to mineral development, and in promotion of mineral development. Taxes on mineral rights must be understood as such levies, charges, impositions, or demands that are related to mineral development and not otherwise.
9. Mere presence of mineral wealth is not mineral rights. Rights in relation to the exploitation or working of minerals are mineral rights. The concept of mineral rights as understood in England in the early 1900s is evidenced by their Finance Act, 1910, where under Section 20 thereof, a duty on ‘mineral rights’ was imposed on the ‘*rights to work minerals*’.
10. Taxes on mineral rights cannot be any levy, charge, impost, or demand unrelated to mineral development are only with reference to the ideal existence or availability of mineral wealth. In other words, Entry 50 List II cannot be the source of authority for imposing any levy, charge, impost, or demand which either is unconnected with mineral development, or in relation to any other alien purpose, such as an *education cess*. Entry 50 List II is not an entry conferring competence on the State Legislature to convert it into a general taxing purpose entry.
11. Entry 54 List I contemplates a complete legislation in relation to the regulation of mines and/or mineral development, and all incidences of mineral development. The concept of regulation occurring in Entry 54 List I is a comprehensive concept. Mineral development means and includes all activities and transactions in relation to the

availability and the working of mines. Consequently, the processes and the procedures that will be required for providing in respect of such activities and transactions would be an essential part of such a law. As stated above, the process by which the right to win, or to extract, or to work minerals, is on the basis of a lease or a license as the case may be. All matters relating to such leases or licenses would form part of such a regulatory law. Further, the charge which can be demanded, or the consideration to be parted with, in relation to the grant of leases or licenses would also be part of such a law. In other words, all matters relating to mineral rights and mineral development will fall within the scope of Entry 54 List I (Section 18 of MMDR Act 1957, providing in regard to mineral development, can be usefully referred to).

12. A levy, charge, impost, or demand for parting with the right to win, extract, work etc., always carries the expression '*Royalty*'. As already stated above, since a mere ownership of a mineral, cannot be the reason for imposition of any levy, charge, impost, or demand, any imposition at the hands of the State has to be in relation to mineral rights. It is in this context that the expression 'taxes' occurring in Entry 50 List II will have to be understood. This expression shall be taken to mean any levy, charge, imposition, or demand, that can have a nexus with the mineral rights activities. Beyond this, the word 'taxes' in Entry 50 List II cannot have any other general meaning or connotation.
13. Since Entry 54 List I law being a regulatory law, in so far as such a law deals with all matters of levies, charges, imposts, or demands that can be legitimately provided for having a nexus with mineral rights, such matters of levies, charges, imposts, or demands will be treated as a limitation on the power of the States to demand or impose similar levies, charges, imposts, or demands of same nature. Once the word 'taxes' occurring in Entry 50 List II is seen from the above perspective, there will be no further need to inquire as to whether Entry 54 law is a law under a taxing entry or not. To reiterate, merely because the word 'tax' is used in Entry 50 List II, the law relating to mineral

development in order to be considered as a limitation within the meaning of Entry 50 List II, need not necessarily be a law under any taxing entry.

14. Comparison with general and taxing entries in the general scheme of the Seventh Schedule, may not therefore be opposite. The reliance placed on *M.P.V. Sundararamier*² is also inapposite.

D. The India Cement's path is not in tune with the correct reading of Entry 50 List II

15. Attempt has been made in *India Cement*³ to suggest that the cess in question under Section 115 of the Madras Village Panchayats Act, cannot be a levy in relation to land, and if it is in nature of tax falling under Entry 50 List II, it will fall foul of the MMDR Act 1957, which provides in relation to 'Royalty'. It was in that context, the proposition that 'Royalty is a tax' was pressed into service, to exclude from Entry 50 List II, the cess in question. It is submitted that this understanding has arisen out of misconceptions about Entry 54 List I and Entry 50 List II.

16. It is submitted that for the purpose of delineating the limitations on, 'taxes on mineral rights' in Entry 50 List II, it is not:

- a. that the taxes which can be levied by the State under Entry 50 List II will be, and are other than, levies, charges, imposts, or demands, falling outside the well-understood categories of levies, charges, imposts, or demands, in relation to mineral development.
- b. that the taxes which can be so levied, need not partake the character or features of 'Royalty' and such related demands.
- c. that any levy, charge, impost, or demand that may form part of the law relating to mineral development, if and in so far as they are in relation to mineral rights,

² M.P.V. Sundararamier & others vs. the State of Andhra Pradesh & others 1958 SCR 1422 (Page 93 of Vol-V)

³ India Cement Ltd and Ors. vs. State of Tamil Nadu and Ors., (1990) 1 SCC 12 (Page 1151 of Vol-V)

(as observed in *Hingir Rampur*⁴), will be the limitations noticed in Entry 50 List II.

17. In the above view of the matter, it is immaterial that ‘*Royalty*’ is designated as tax or not. As long as ‘taxes on mineral rights’, by whatever name called, namely levy, charge, impost, or demand, can be only in relation to mineral development or mineral rights facilitation, similar levy, charge, impost, or demand, as provided for and enacted in an Entry 54 List I law, that will be relevant for the purposes of Entry 50 List II.
18. In light of these submissions, *Kesoram Industries*⁵ needs to be clarified. Therefore, there is no need for the Court to embark on an enquiry as to whether *India Cement*⁶ suffers from a typographical error.

E. The submissions relating to Entry 49 List II are misconceived

19. Any levy, charge, impost, or demand with reference to the value of a mineral produce, from a mineral-bearing land, or with reference to any other aspect of the mineral, will be treated as a levy, charge, impost, or demand, in relation to mineral rights activities. They cannot be taxes falling under Entry 49 List II. In consonance with the principle that taxing entry cannot be enlarged, Lands and buildings occurring in Entry 49 List II cannot include any matter in relation to mineral rights activities.
20. It is reiterated that, Entry 54 List I enables the Parliament to enact an all comprehensive legislation in relation to mineral development. Mineral development as stated above will necessarily include and relate to mineral rights. Matters relating to the grant of mineral rights would thus include a levy, charge, impost, or demand that can be imposed in relation to the exercise of mineral rights. The Constitution makers did not contemplate that a law under Entry 54 List I will not deal with matters relating to levy,

⁴ *Hingir Rampur Coal Co Ltd. vs. State of Orissa*, (1961) 2 SCR 537 (per Wanchoo J, (Page 142 of Vol-V)

⁵ *State of West Bengal vs. Kesoram Industries Ltd.* (2004) 10 SCC 201 (Page 2020 of Vol-V)

⁶ *India Cement Ltd and Ors. vs. State of Tamil Nadu and Ors.*, (1990) 1 SCC 12 (Page 1151 of Vol-V)

charge, impost, or demand, in relation to the exercise of mineral rights. A law minus these aspects will neither be a regulatory law, nor a law in relation to mineral development, in all its aspects. Consequently, the Constitution did not envisage the need for a separate Entry in List I under which a law relating to levies, charges, imposts, or demands can be enacted.

21. A law under Entry 54 List I, enacted with all such elements, and providing in regard to all such aspects, will not only be a law that will impinge upon Entry 23 List II but also be a law that can be treated as a 'limitation' under Entry 50 List II. On the Entry 54 List I law being a complete code, see paragraphs 129-132 of *Monnet Ispat*⁷ and paragraphs 80-82 of *Sandur Manganese*⁸.

22. The predecessor legislation of the Andhra Pradesh Mineral Bearing Lands (Infrastructure) Cess Act, 2005, namely the Andhra Pradesh (Mineral Rights) Tax Act, 1975, was struck down by the Andhra Pradesh High Court, in *KCP Limited vs Government of AP*⁹. The High Court has considered both *India Cement* and *Kesoram*. The 2005 Act, a virtual reenactment of the 1975 Act, stands enacted on the strength of *Kesoram*.

⁷ *Monnet Ispat and Energy Ltd vs Union of India* (2012) 11 SCC 1 (Page 2760 Vol-V)

⁸ *Union of India vs. Sandur Manganese & Iron Ores Ltd. and Ors* (2010) 13 SCC 1 (Page 2586 Vol-V)

⁹ *KCP Limited vs Government of Andhra Pradesh* reported in AIR 1990 AP 314

Appendix

Cess

1. Cess means a duty in the nature of duty of excise and customs, imposed and collected on motor spirit commonly known as petrol and high-speed diesel oil for the purposes of this Act, [*Section 2(b), Central Road Fund Act, 2000 (India)*].
2. Cess is also a tax, but is a special kind of tax. Generally, tax raises revenue which can be used generally for any purpose by the State, *Vijayalashmi Rice Mill v. CTO*, (2006) 6 SCC 763.
3. The term cess is commonly employed to connote a tax with a purpose or a tax allocated to a particular thing suggested by the name of the cess, such as health cess, education cess, road cess etc. However, it also means an assessment or levy. Depending on the context and purpose of levy, cess may not be a tax; it may be a fee as well. It is not necessary that the services rendered from out of the fee collected should be directly in proportion with the amount of fee collected. It is equally not necessary that the services rendered by the fee collected should remain confined to the persons from whom the fee has been collected. Availability of indirect benefit and a general nexus between the persons bearing the burden of levy of fee and the services rendered out of the fee collected is enough to uphold the validity of the fee charged. *State of W.B. v. Kesoram Industries Ltd.*, (2004) 10 SCC 201.
4. The word “cess” is used in Ireland and is still in use in India although the word rate has replaced it in England. It means a tax and is generally used when the levy is for some special administrative expense which the name (health cess, education cess, road cess etc.) indicates, *Shinde Bros. v. Commr.*, AIR 1967 SC 1512: (1967) 1 SCR 548.
5. Cess means the goods and services tax compensation cess levied under Section 8 of Goods and Services Tax (Compensation to States) Act, 2017, [*Section 2(1)(c), Goods and Services Tax (Compensation to States) Act, 2017 (India)*].

Levy

6. Levy means to realise or to collect. Only necessary condition is that the proceedings for realisation of the fine must be commenced within the stipulated period, *Mehtab Singh v. State of U.P.*, (1979) 4 SCC 597: 1980 SCC (Cri) 142.
7. Levy includes proceedings for assessment, *Ashok Singh v. CED*, (1992) 3 SCC 169.
8. Levy includes not only the imposition of the charge but also the whole process up to raising of the demand, *Mafatlal Industries Ltd. v. Union of India*, (1997) 5 SCC 536.
9. The term “levy” is wider in its import than the term “assessment”. It may include both “imposition” as well as “assessment”, *CCE v. Smithkline Beecham Consumer Health Care Ltd.*, (2003) 2 SCC 169.
10. Levy can also mean the act of raising money or men. [Wharton’s Law Lexicon].
11. The term “levy” it is held, is an expression of wide import. It includes both imposition of a tax as well as its quantification and assessment, *Ujagar Prints (2) v. Union of India*, (1989) 3 SCC 488.
12. The term “levy” appears to be wider in its import than the term “assessment”. It may include both “imposition” of a tax as well as assessment. The term “imposition” is generally used for the levy of a tax or duty by legislative provisions indicating the subject-matter of the tax and the rates at which it has to be taxed. The term “assessment”, on the other hand, is generally used in this country for the actual procedure adopted in fixing the liability to pay a tax on account of particular goods or property or whatever may be the object of the tax in a particular case and determining its amount, *Asstt. Collector of Central Excise, CCE v. National Tobacco Co. of India Ltd.*, (1972) 2 SCC 560 : AIR 1972 SC 2563 : (1973) 1 SCR 822 : 1973 Tax LR 1607.
13. While the expression “levy” may include both the process of taxation as well as the determination of the amount of tax or duty, the expression “collection” refers to actual collection of the payable duty or the tax, as the case may be, *S.K. Pattanaik v. State of Orissa*, (2000) 1 SCC 413.

Impost

14. Impost means compulsory levy. “Tax” in its wider sense includes all imposts. *CIT v. McDowell and Co. Ltd.*, (2009) 10 SCC 755.
15. Impost means compulsory levy. The well-known and well-settled characteristic of “tax” in its wider sense includes all imposts. Imposts in the context have following characteristics: (i) The power to tax is an incident of sovereignty. (ii) “Law” in the context of Article 265 means an Act of legislature and cannot comprise an executive order or rule without express statutory authority. (iii) The term “tax” under Article 265 read with Article 366(28) includes imposts of every kind viz. tax, duty, cess or fees. (iv) As an incident of sovereignty and in the nature of compulsory exaction, a liability founded on principle of contract cannot be a “tax” in its technical sense as an impost, general, local or special, *CIT v. McDowell and Co. Ltd.*, (2009) 10 SCC 755.
16. Impost means any tax or tribute imposed by authority; particularly by a tax or duty laid by government on goods imported. [Wharton’s Law Lexicon.]

Duty

17. Duty means a duty of customs leviable under the Act, [Section 2(15), *Customs Act, 1962 (India)*].
18. Duty is a tax, an impost or imposition; also an obligation. [Wharton’s Law Lexicon.]
19. The word “duty” means an indirect tax imposed on the importation or consumption of goods. “Customs” are duties charged upon commodities on their being imported into or exported from a country. The expression direct taxes includes those assessed upon the property, person, business, income, etc., of those who are to pay them, while indirect taxes are levied upon commodities before they reach the consumer and are paid by those upon whom they ultimately fall, not as taxes, but as part of the market price of the commodity, *Union of India v. Nitdip Textile Processors (P) Ltd.*, (2012) 1 SCC 226