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-I (C)

REJOINDER WRITTEN SUBMISSIONS OF STATES / AUTHORITIES

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REJOINDER WRITTEN SUBMISSION ON BEHALF OF THE APPELLANT / MINERAL AREA DEVELOPMENT AUTHORITY BY RAKESH DWIVEDI, SENIOR ADVOCATE .

I. THE BASIC FEATURE OF FEDERALISM :

1. Constitution of India may have some features common with Government of India Act,1935, but it substantially departs from the fabric and objective of the 1935 Act. The Federalism envisaged under the 1935 Act preserved the Indian States as distinct units and Federalism depended upon their willingness to surrender to the Federal Government, at such pace as they thought fit. It was attempting to produce a communal balance through

elections as per Communal award. It envisaged no Fundamental Rights for the people and Directive Principles. It also did not envisage plenary legislative powers for the Provinces in British India, and constituted no legislature for the Indian States (Princely). Its objective was to perpetuate and prolong British colonial rule and its conception of justice was colonial preserving British paramountcy, and not founded on liberty, equality and fraternity. It did not seek to create a Union of India. In these vital respects, the Constitution of India is a substantial departure. It is much closer to the Constitutions drafted by Moti Lal Nehru Committee and later, by the Sapru Committee in its concept of Federalism.

2. India, i.e. Bharat is constituted as a Union of States, and the territories of the States form the territory of India. Part VI of the Constitution deals with the Legislative and Executive structure of the States and the High Courts and subordinate courts in the States. Articles 152-237 are devoted for this purpose. Part XI details the relations between the Union and the States, both legislative and administrative. Part XII deals with Financial Relations including taxation and exemptions from taxes of each other, though with some difference. Part XVIII deals with emergency situations. But primary , is Article 355 which casts a duty on the Union to protect the States from external aggressions and internal disturbance and to ensure that the government of every State is carried on in accordance with the Constitution. This is the wide spread of the federal features under the Constitution. These provisions show that the States are neither the agent nor appendages of the Union. Federalism is basic feature intended to preserve the Constitutional sanctity of the States, their existence and the plenitude of power which the Constitution envisages for them.

S R Bommai Vs Union of India (1994) 3 SCC 1 (Pr 4,20,96-99,169,247,& 276) [Pg. 244-542 Vol VN]

Jindal Stainless Steel Vs State of Haryana (2017) 12 SCC 1 (Pr 30-37) [Vol V *Pg.* 2937-3557]

Per Ramanna J Pr 188-192

Per Dr DY Chandrachud J Pr 610-615

3. The Federalism under the Constitution of India, is very importantly , founded on the legislative distribution of power unfurled by Article 245, 246 and the VIIth Schedule of the Constitution. The legislative distribution of power is subject to the provisions of Constitution. The field of legislations has been carefully carved out in the three lists of VIIth Schedule. Since the object of Constitution of India was to build a strong centre, most of the vital subject matters were placed in List I along with residuary powers [Article 248 read with Entry 97 List I]. Some of the matters were placed in List III for concurrent exercise of power with supremacy to the Parliamentary laws as per Article 254. Rest of the matters though not any less vital for the society were ' exclusively' placed in the State list or List II. Notwithstanding the careful crafting, since the subject matters deal with the life of the Nation and the State often, appear to be overlapping. In many cases, the entries are made expressly made 'subject to' the entries in the other lists. With respect to some of the various entries in the State list, there is a specific carving out of legislative field by specific and express words as was pointed out by the Hon'ble Chief Justice. The different phraseology used in the entries pertaining to List II are as below :

(i) ' but not including' [Entry 1,51,54,66]
(ii) subject to some entry in List I [entry 2,17,22, 24, 33]
(iii) 'except the ..'' [entry 3,65]
(iv) ' that is to say..' [entry 5,8 ,13,17, 18, 42]
(v) ' other than ' [entry 7,12, 32, 63,]
(vi) ' not specified in List I [entry 13]
(vii) 'subject to the provisions of List I and List III' [Entry 13]

(viii) 'subject to the provisions of List III'[Entry 27, 57]

(ix) ' subject to the provisions of List I with respect to..'' [Entry 23]

(x) 'subject to any limitations imposed' [Entry 50, or 'subject to provisions of any law made by the Parliament' [Entry 37]

Some entries such as Entry 13 deploy more than one of the phrases and therefore the repetition may be seen in the respective categories.

There are also some entries in List I which enable the Parliament to subtract from the specific field in the State list. They are entry 23, 24, 27 , 52, 54, 56, 62,63,64,67. There are yet some other entries which exclude some field from the Union List like those relating to agricultural land [See Entry 86,87,88 List I and regarding stamp duty, entry 90 ; and fees as in Entry 96]. In particular, Entry 32 List I makes property of Union and revenue therefrom where property is situated in State to be subject to State legislation. It however reserves power to Parliament to be provided by otherwise by law.

4. The use of different methodologies and terminologies with respect to interrelationship of some of the entries in the VIIth Schedule would indicate that different results are contemplated. Wherever, abstraction of the State field is envisaged in List I, the same is contemplated either to be done ' by or under law' [Entry 23, 27 & 67 List I] or by a declaration ' by Parliament by law' [Entry 24,52,53,54,56, 62, 63,64]. It is significant that Enty 67 had originally deployed the expression 'declared by Parliament by law' but the entry was substituted by Constitution VIIth Amendment Act, 1956 in the form that it exists now. Similar substitutions were made in Entry 12 of List II , Entry 40 of List III, and Article 49. The obvious intent of this substitution is to enable the delegate to make the declaration in certain specified cases. Section 27 of the Constitutional Amendment VIIth Amendment Act is reproduced below

'*27. In each of the following provisions of the Constitution, namely:-*

(i) entry 67 of the Union List,

(ii) entry 12 of the State List,

(iii) entry 40 of the Concurrent List, and

(iv) article 49,

for the words "declared by Parliament by law", the words "declared by or under law made by Parliament" shall be substituted.'

5. Following, aspects emerge from the aforesaid:

(i) Entry 50 List II does not enable Parliament to extract or abstract from the subject matter of Entry 50 List II. No declaration is contemplated to be made by Parliament by law for abstracting the subject matter. Hence, Parliament can neither denude the State's power with respect to Entry List II nor abstract it for making its own legislation under List I.

(ii) The Parliament can only impose 'limitations' with respect to the competence of State Legislature under Entry 50 List II.

(iii) Limitations can be of any kind as is indicated by the expression ' any limitations'. But they should be germane to taxes on mineral rights.

(iv) The limitation has to be imposed expressly, specifically and concretely by a law made by Parliament relating to mineral development. Thus, it cannot be any law under any entry in List I or List III.

(v) The limitations must be imposed only ' by law' of Parliament.' It cannot be imposed by a delegate acting under the Parliamentary law. Entry 50 List II does not deploy the expression 'by or under law' made by Parliament

6. Quite apart from, the exclusions, subjections and declarations. The extent thereof are specifically contemplated by the various entries in VIIth Schedule. It has to be borne in mind that the distribution of legislative field in the VIIth Schedule have been accorded special protection by Article 368. Article 368(2) read with proviso (c) provides for a more stringent procedure for amending any of the lists. In addition to the passing of the Constitutional Bill in each House by a majority of not less than 2/3rds of the members of

the House present and voting, the amendment bill will also require to be ratified by the Legislatures of not less than one half of the State by resolution to that effect before presenting the Bill to the President for assent. Sub article (4) and (5) thereof were struck down by this Court as invalid in Minerva Mills Vs Union of India (1980) 2 SCC 59.

7. From the aforesaid, significance of Federalism and distribution of powers, this Court has drawn the principles that State's legislative fields and powers should not be whittled down by courts through interpretation or factors like impact of price etc. which have no bearing on the issue of legislative competence of State.

Jindal Stainless Steel Vs State of Haryana (2017) 12 SCC 1 (Pr 85-88)
Per Dr DYC Chandrachud J Pr 605,612-615
[Vol V Pg. 2937-3557]

State of West Bengal Vs Kesoram Industries Ltd. (2004) 10 SCC 201 (Pr 50 & 139) [Vol. V Pg. 2020-2255 Vol. V]

ITC Vs Agricultural Produce Market Committee (2002) 9 SCC 232 Pr 59 [Vol V(A) Pg. 417-537]

S R Bommai Vs Union of India (1994) 3 SCC 1 Pr 4,20,96-99,169,247,& 276 [Vol V(N) Pg 244-542]

8. In the context of Federalism, the journey of Supreme Court has been in the direction opposed to whittling down of State's power by interpreting the Constitutional provisions in a manner in which strengthens the State and protects their power from Central onslaughts happening since the inception of the Constitution.

9. Article 356 was strictly construed so as to prevent arbitrary misuse of the said provision in **SR Bommai Vs Union of India (1994) 3 SCC 1 [Vol V(N) Pg 244-542]** and

In Re : Article 370 of the Constitution 2023 SCCOnline 1647 [Vol V (N)Pg 1788-2085]

This Court restrained political intervention of Governors of States with respect to interference in proceedings of legislature or release of prisoners. [**Nabam Rebia & Bamang Felix Vs Arunachal Pradesh Legislative Assembly (2016) 8 SCC 1 [Vol V(N) Pg 1146-1397]** ; **A.G. Perarivalan Vs State of Tamil Nadu (2023) 8 SCC 257] [Vol V(N) Pg 1771-1787]**

10. Recently this Hon'ble Court in **Union of India Vs Mohit Minerals (2022) 10 SCC 700 [Vol V(N) Pg 1652-1770]** while holding that 'Fiscal Federalism' is one of the important features of Indian Federalism (Pr 56) held that the recommendations of GST Council cannot be held to be binding on the legislature. To regard them as binding edicts would disrupt fiscal federalism where both Union and State are given equal power to legislate on GST (Pr 171.1.2) [See para 50-52,55,56,171.1.2]

> '***56.*** *One of the important features of Indian federalism is "fiscal federalism". A reading of the Statement of Objects and Reasons of the 2014 Amendment Bill, the Parliamentary reports and speeches indicate that Articles 246-A and 279-A were introduced with the objective of enhancing cooperative federalism and harmony between the States and the Centre. However, the Centre has a one-third vote share in the GST Council. This coupled with the absence of the repugnancy provision in Article 246-A indicates that recommendations of the GST Council cannot be binding. Such an interpretation would be contrary to the objective of introducing the GST regime and would also dislodge the fine balance on which Indian federalism rests. Therefore, the argument that if the recommendations of the GST Council are not binding, then the entire structure of GST would crumble does not hold water. Such a reading of the provisions of the Constitution diminishes the role of the GST Council as a constitutional body formed to arrive at decisions by collaboration and contestation of idea'*

171.1.2. *Neither does Article 279-A begin with a non-obstante clause nor does Article 246-A state that it is subject to the provisions of Article 279-A. Parliament and the State Legislatures possess simultaneous power to*  *legislate on GST. Article 246-A does not envisage a repugnancy provision to resolve the inconsistencies between the Central and the State laws on GST. The "recommendations" of the GST Council are the product of a collaborative dialogue involving the Union and the States. They are recommendatory in nature. To regard them as binding edicts would disrupt fiscal federalism, where both the Union and the States are conferred equal power to legislate on GST. It is not imperative that one of the federal units must always possess a higher share in the power for the federal units to make decisions. Indian federalism is a dialogue between cooperative and uncooperative federalism where the federal units are at liberty to use different means of persuasion ranging from collaboration to contestation*.'

11. Given the aforesaid, the interpretation of taxing entry , Entry 50 List II as suggested by Respondents is completely destructive of the State's legislative field relating to tax on mineral rights. The said entry pertaining to imposition of tax on mineral rights cannot be diluted to mean an exaction which is consideration for parting of rights of the State Government relating to mineral bearing land and the mineral rights. The Respondent's contention to treat both Section 9 and Entry 50 List II as being similar exactions which are consideration of State's rights relating to mineral bearing land is a Constitutional perversity. As settled by several judgments a 'tax' does not have element of quid pro quo nor is it a return for any transfer of rights. It is a levy for sovereign needs. [**Please See Para 2- 3 Pg 59-73 Vol IA**]

Jindal Stainless (2017) 12 SCC 1 Pr 17-20, 62,12.2,113

Per Shivkirti Singh J Pr 193

Per Ramanna J Pr 237.1 and 237.2

Per Banumathi J Pr 309,310-313,319

Per Dr DY Chandrachud J Pr 617,622-623

State of U.P. v. Systematic Conscom Ltd., (2014) 13 SCC 627 (Pr. 19) (Common Compilation of Judgments-[Vol V(A) Pg. 859-869]

Amrit Banaspati Co. Ltd. v. State of Punjab, (1992) 2 SCC 411(Pr. 10) [Vol V(A) Pg. 378-393]

Asstt. Commr. of Urban Lan Tax Vs Buckingham & Carnatic Co. Ltd (1969) 2 SCC 55 (Pr 10) [Vol V Pg. 390-405]

Rai Ramkrishan Vs State of Bihar AIR 1963 SC 1667 (Pr. 13). [Vol V(A) Pg. 31-45]

12. In **Jindal Stainless V State of Haryana (2007) 6 SCC 241** , a 5 Judge Bench of this Court had followed earlier Constitution Bench judgments which had held that compensatory tax was like a fee and involved element of quid pro quo to the payer of fee. This concept of compensatory tax was overturned by a 9 JJ in Jindal Stainless (2017) 12 SCC 1 on the ground that it obliterated the distinction between tax and fee [See para 62.2]. The attempt of the Respondents is to reintroduce a similar concept by styling Entry 50 List II as compulsory exaction for transfer of mineral rights to the lessse solely for the purpose of placing it in the same square as Section 9 of MMDR Act, 1957. Their approach is if you cannot succeed in elevating the status of royalty in Section 9 MMDR Act, 1957 as a tax then attempt to dilute the status of tax in Entry 50 List II as a return for consideration for transfer of mineral rights.

13. If Respondent's submission is accepted then it would mean that all the other taxing entries in List II are levies for sovereign needs being spent for public purpose unconnected with any return for the tax payer and only Entry 50 list II is an entry which is having a different character.

14. Cases have already been cited in context of Article 286(3) which hold that limitations shall be specific and clear[**Pr 116 @ Pg 56 of Vol I(A) W.S. of Mr. Rakesh Dwivedi**]. In addition, Article 276 is an illustration of the kind of limitation which is envisaged by Entry 50 List II. Article 276(2) expressly mentions the particular limitation and the nature of the limitation. The State can not exceed the limit of Rs 2500/- per annum. Article 276(3) also provides that the fact that State has imposed a tax on professions, trade, callings and employment shall not be construed as limiting in any way the power of Parliament to make law with respect to taxes on income. Thus limitations under Entry 50 List II cannot be by inference and implication. That would be destructive of Federalism and would result in taking away the niggardly fields of taxation which they have.

15. It is true that the Constitution envisages certain Union Taxes to be collected by the State and certain others to be shared between the Union and States on definite principles of distribution. It is also noteworthy that various taxing entries of the States have been drastically curtailed by virtue of Constitution (One Hundred and First Amendment) Act, 2016 by which Article 246-A was inserted levying GST. Yet, some of the other taxing provisions are very minor and practically dead entries (Like Entry 61 List II). Therefore, any entry much less taxing entries in List II should not be diluted by implication or inference. Hence Parliament, should be required by law itself to clearly provide limitation imposed on taxes on mineral rights. Both the nature of limitation and extent of limitation should be specific and clear.

16. It needs to be remembered that the fiscal powers of the States and the strength of their consolidated fund and contingent fund under the Constitution are the backbone of its existence and its strength. Surest way of annihilating Federalism envisaged by the Constitution is to squeeze and strangulate the fiscal entries by interpretation, by inference and by implication.

II. HAS PARLIAMENT IMPOSED LIMITATION BY LAW UNDER ENTRY 50 LIST II.

17. MMDR Act, 1957 contains a declaration vide Section 2 in terms of Entry 54 List I. It is noteworthy that there are four entries (Entry 53, 54, 55 & 56 of List I) which talk of regulation and development or simply regulation. Unlike, the other general entries, this is limited. Entry 54 List I corelates to Entry 23 List II which also talks of regulation and development. By virtue of the MMDR Act, 1957 the rights of the States as owner do not stand extinguished. For extinguishment of such rights the land has to be acquired by the Parliament by law as in the case of Coal Mines Nationalisation Act, 1972 and the Coal Bearing Areas (Acquisition and Development) Act,1957. Once such acquisition takes place and all the rights in the mineral bearing land stand transferred in the Central Government, the same would be Union property and would be protected from State taxation under Article 285.

State Of W.B. Vs UOI AIR 1963 SC 1241 [Vol V(N) Pg 18-83]

Monnet Ispat Vs Union of India (2012) 11 SC 1, Pr 134-142 [Vol V Pg. 2760-2915]

Therissamma Jacob Vs Department of Geology (2013) 9 SCC 725 Pr 14, 55 & 58 [Vol V(A) Pg 831-858]

18. Entry 54 List I requires Parliament to do three things.

(i) it must make a law for regulation of mines and mineral development under the control of the Union.

(ii) it requires Parliament to make a declaration that it is expedient in public interest to bring regulation and development under the control of the Union.

(iii) the Parliamentary law must lay down the 'the extent to which ' the regulation and development is being brought under the control of the Union.

Once the above three requirements are fulfilled, the field of State legislation under Entry 23 List II stands pro tanto restricted.

19. Thus, the law can abstract the State's legislative field only relating to Entry 23 List II. Section 2 of the MMRD Act, 1957 also limits the declaration to the extent hereinafter provided i.e. as provided in MMRD Act, 1957. All the provisions of the Act only abstract from the legislative field of Entry 23 List II. Neither Entry 54 List I nor the declaration under Section 2 enable any abstraction from Entry 50 List II. So the only question is whether there is any specific provision under MMDR Act, 1957 which operates as a limitation under Entry 50 List II as envisaged by the said entry.

20. The Respondents submit that Sections 9, 9A and after 2015 Amendment Act 10 of 2015, Sections 9B and 9C of the Act, in addition, are in truth and substance limitations within the meaning Entry 50 List II. It was said that royalty, dead rent etc and the amount calculated with reference to royalty u/S 9B and 9C are actually exactions with respect to mineral rights which are transferred to the lessee under the lease granted by the State Government and its nature is similar to that of the tax on mineral rights in Entry 50 List II.

21. It was also contended that while with respect to private persons in Chapter V of MC Rules, 1960 , the royalty paid to the private person is purely contractual and may be a consideration for transfer of rights. In so far as the State is concerned , all aspects are governed by statute and no contract is involved and therefore in the case where the minerals vest in the State, royalty would be an exaction which is akin to tax on mineral rights.

22. It is said that the MMDR Act, 1957 and the MC Rules, 1960 in all the avatars , was a complete code with regard to regulation of mines and mineral development and it ties the State Government in all respects virtually hand and foot. Its rights have been reduced to a husk. In the said case, the transfer of rights is statutory and not contractual unlike the case of private persons.

Monnet Ispat Vs Union of India (2012) 11 SC 1, Pr 134-142 [Vol V Pg. 2760-2915]

OCCUPIED FIELD :

23. Both the Ld AG, Ld SG and Shri Salve asserted that Entry 54 List I, enables the Parliament to occupy the whole field relating to regulation of mines and mineral development. Three aspects need to be noted :

(i) Entry 54 List I enables Parliament to abstract from the State's legislative power under Entry 23 List II only.

(ii) The Parliament can abstract only 'by law' if it feels that such regulation and development under the control of the Union is expedient in public interest.

(iii) Entry 54 List I is a regulatory entry and mere declaration is not enough. The law made by the Parliament must also lay down the 'extent to which' regulate is being provided for. The abstraction from Entry 23 List II is only pro tanto.

Hence, whenever a State enactment is impugned it would have to be seen whether the field covered by the State enactment is occupied by the Parliamentary law made with respect to Entry 54 List I i.e. MMDR Act, 1957.

State of Orissa Vs M/S M.A. Tulloch AIR 1964 SC 1284 (Pr 5,7,8,12 and 18) [Vol V Pg 278-295]

Monnet Ispat (2012) 11 SCC 1 Paras 129-131 , 134-142 & 144 [Vol V Pg. 2760-2915]

24. It is submitted that Entry 54 List I and Entry 23 List II are regulatory general entries and they do not provide a source for imposing any kind of tax.

State of Karnataka Vs State of Meghalaya (2023) 4 SCC 416 (Pr 72,77-79,81,83,92, 149.5 &151)[Vol V Pg. 3767-3848]

(2017) 12 SCC 1 Jindal Stainless Steel Vs State of Haryana(Pr 23, 119,120) [Vol V Pg. 2937-3557]
Per Ramana J Pr 237.5
Per Banumathi J Pr 319
Per Dr DY Chandrachudh J Pr 621
Hoechst Pharamceuticals Ltd. Vs State of Bihar (1983) 4 SCC 45 (Pr 76) [Vol V Pg. 790-849]

M.P.V. Sundrarameir & Co. Vs State of A.P. AIR 1958 SC 468 (Pr 51 & 55) [Vol V Pg. 93-141]

25. Both Ld. AG and Ld. SG talked of the field of State taxation in relation to mineral rights and minerals are fully occupied by MMDR Act, 1957. Occupation of the State's Legislature field of taxation in List II is a complete misconception. At best only Entry 50 list II appears related to Entry 54 List I and therefore Parliament's regulatory power can

only be confined to imposing limitation on State's exercise of power with respect to Entry 50 List II. State's competence cannot be usurped by referring to authority of Parliament to impost ' limitation'. Parliament cannot by law abstract and arrogate the legislative competence to impose tax on mineral rights.

26. The word 'limitation' in Entry 50 List II does not include a power to prohibit the State legislature from exercising its legislative power under Entry 50 List II. Any limitation refers only to the extent of limitation and a specimen of Constitutional limitation is provided in Article 276 and 286(3) of the Constitution.

27. Respondents refer to Section 9,9A,9B and 9C of MMDR Act, MC Rules, 1960 and Form K, clause 1 of part VII in particular, and also to Report of Study Group for Revision of Rates of Royalty,2019 to assert that the States have to be satisfied with the various payments of royalty, dead rent, surface rent which they receive under MMDR Act, 1957 and they cannot use their legislative competence referable to List II to impose taxes with respect to mineral rights and minerals. It is submitted that Entry 50 list II contemplates imposition of limitation 'by Parliament by law'. As far as other taxing entries are concerned they are not subject to Entry 54 List I. Therefore, reference to Government of India notification under Section 9, MC Rules, 1960 and Form K are misconceived. Delegated legislation cannot impose any limitation.

(1986) 1 SCC 264 LIC Vs Escorts (Pr 69)

28. In any event, clause 1 of Part VII of Form K expressly contemplates payment of tax on premises and words and this includes the leases area as would be apparent from clause 1 Part VIII, and the expression would include mineral rights also.

29. There are three situations in which a mining lease, are granted under 1957 Act and the Rules made thereunder.

(i) Where minerals vest in the government (Chapter II, III, IV & IVA of MC Rules, 1960)
(ii) Where minerals vest in a person other than a government (Chapter V)
(iii) Where minerals vest partly in the government and partly in private persons. (Rule 53)

30. In the first and third situations , Chapter III and IV of MC Rules, 1960 are applicable fully. In other words, Rule 8- Rule 40 are applicable. It follows that in these cases all the provisions of the Act and Rules which are applicable in case where the minerals vest in the government would also apply to the situation where in respect of land in which the minerals vest partly in the Government and partly in private persons. The third situation entails a sharing of dead rent and royalty between the State Government and a private person. This is in view of Section 17A(3) read with Rule 53 proviso. In both these cases, the dead rent and royalty are payable in terms of Section 9 and 9A of the 1957 Act and the mining lease is to be granted by the State Government under Section 4,5,6,8 and 8-A read with Rule 31 and Form K. In such cases, the private person is equally bound by statutory provisions and Rules as is the State Government in situation one. Therefore, the fine distinction drawn by the Respondents is erroneous.

31. There are two other fallacies in the submission of the Respondents. Firstly, it is not correct that MMDR Act 1957 even as amended and MC Rules, 1960 has reduced State's entitlement and contractual freedom to a husk. Section 4(1) expressly contemplates mining under to be under a lease. Section 4 acknowledges the State Government's right to grant mining lease, earlier on application and now through auction under Section 8A. While

Section 6 prescribes the maximum area to be granted under a mining lease , the State Government has a discretion to grant a smaller area. Similarly, Section 8 envisages a maximum period for mining lease to not to exceed 30 years and to be not less than 20 years. Therefore, the State has a discretion to adjust the period between 20 and 30 years. It can also decide to renew the mining lease under Section 8(3), although with previous approval of the Central Government. Under Section 8A , however, the period is fixed at 50 years and the mode of fresh grant is auction. Further, Section 9 and 9A recognise the entitlement of the State to receive royalty/dead rent whichever is greater as specified in the Second Schedule II and III. Power is given to Central Government to amend the Second Schedule so as to enhance or reduce the rate of royalty. The most important rights of State as owners of lands and minerals i.e. to grant lease and received royalty / dead rent have not been denuded rather have been preserved. Only the right to fix quantum of royalty and dead rent has been regulated. So much so that under Section 17(3), where Central Government undertakes mining operations on State land, it has to pay royalty to the State in the same manner as a private person. Further, State is entitled to reserve any area for mining operations through government company, though approval of Central Government is required. Furthermore, vide Rule 27/31 read with Form K, the lease is executed by the State Government as lessor. The State Government officials are entitled and lessee is obliged to ensure that the officials are present at the time of the weighing of the minerals at the pit. Significantly, Form K recites that whereas the lessees have applied to the Government with respect to described land, the lease is being executed ‘ in consideration of the rent and royalties, covenants and agreement by and in these presents’. Further, in lieu of these considerations all the mine beds/veins/seams with respect to specified minerals lying and being in or under the lands are demised to the lessee together with powers and

privileges in connection with the demise. It also recites that the parties have mutually agreed to the lease terms and conditions. Thus, the lease deed is specifically recognised to be an agreement though in statutory form and it is also clear that the rights of the States have not been reduced to a husk.

32. Secondly, the entitlement to grant lease and entitlement to receive royalty/ surface rent are not a gift of the MMRD Act, 1957. The Act simply regulates these entitlements of the State Government with respect to its ownership of mineral bearing land and its minerals. The ownership rights can be reduced to a husk only by acquisitions as in the case of Coal Bearing Areas Acquisition and Development Act, 1957. Article 294 of the Constitution is relevant in this regard [See Monnet Ispat Pr 134]

33. It may be emphasised compulsory sales under the statutes have been understood as sales involving the agreement of parties. Even where all aspects of contract are regulated by statute the very execution of agreement would make it contractual and consensual. The very making of application by an applicant for grant of lease or making bid in an auction, and his agreeing to terms and conditions of the lease in order to avail grant would make it consensual and contractual.

Compulsory Sale also amounts to sale

U.P. Coop Cane Unions Federations Vs. West U.P. Sugar Mills Assn. (2004) 5 SCC 430 Pr 29-31 [Vol V(N) Pg 709-797]

Food Corporation of India Vs State of Kerala (1997) 3 SCC 410 Pr 21-28 [Vol V(N) Pg 576-598]

Coffee Board Vs Commr of Commercial Taxes (1988) 3 SCC 263 Pr 18-19 [Vol V(N) Pg 175-203]

Statutory Contracts

Excise Commr Vs Issac Peter (1994) 4 SCC 104 Pr 26 [Vol V(N) Pg 543-564]

Union of India Vs Asso. Of Unified Telecom Service Providers (2011) 10 SCC 543 Pr 40 [Vol V(N) Pg 960-990]

PTC(India) Financial Services Vs. Venkateswarlu Kari (2022) 9 SCC 704 Pr 57 [Vol V(N) Pg 1590-1651]

34. It was contended by Respondents that MMDR Act, 1957 provides not only for royalty but also provides for mechanism of recovery , prescribes penalty and makes breach of Act an offence. Therefore, Royalty is a compulsory exaction and akin to tax. It is submitted that this architecture is not unique to royalty which is merely a consideration for transfer of mineral rights owned by the State as land owner. Even under Essential Commodities Act and various State enactments relating to supply of sugar cane by farmers to the sugar factory; production and supply of molasses [U.P Sugarcane Regulation of Supply and Purchase Act] 1953.; production and supply of alcohol/ rectified spirit (Excise Acts of States) ; distribution of spectrum under license granted by Union Government etc [Indian Telegraph Act], there are identical provisions involving complete and stringent regulation including provision of providing offences, recoveries and penalties. For this reason alone, the innate nature of the legal demand would not be altered. The enactments mentioned relate to payment of price fixed; payment of license fee which is considered to be a price for transfer of privilege etc. Because of stringent Regulation, the innate character of ‘price’ as consideration would not stand altered or would not be treated as tax, akin to tax or an exaction in the nature of tax. Exaction is a neutral word which applies across the board which applies to price, rent etc and other considerations.

35. Even as regards as situation two, the provisions of Section 4 , 5, 6, 8 and 8A , 8B, 9, 9A, 9B, 9C would be applicable. Section 10B is specifically excluded in cases where

minerals vest in private persons. Similar is the case of Section 11. Section 17-18 also apply. The provisions of penalty and offences contemplated by Section 21,22, and 23 would also apply if mining is unlawfully carried on in land where minerals vest in private persons. So far as the form of lease is concerned, Rule 45 requires several clauses of Rule 27 to the lease granted by the private person. Large number of conditions are mandatorily applied to such leases by Rule 45. There are also limitations imposed on transfer or assignment of lease, and in certain cases prior approval of Central Government is required. There is also prohibition for charging premium under Rule 49. Thus, even with respect to land where minerals vest in private persons, the statute governs the field to a very large extent though the extent may be slightly less where the minerals vest in the State Government. In both cases, the lease constitutes a statutory contract. The terming of situation no 1 as statutory and situation no 2 as contractual for the purpose of characterising royalty in one case as exaction akin to tax and a pure consideration for transfer mineral rights in case of private person in completely erroneous in view of MMDR Act, 1957 and MC Rules, 1960.

36. It is submitted that by virtue of Section 17A and Rule 45 of MC Rules royalty is required to be paid ‘ as required by Section 9’.

37. It is submitted that royalty paid in all the three cases cannot assume different character. In all the three cases, the character of royalty remains to be a payment in consideration of transfer of mineral rights. It is neither tax nor akin to tax nor an exaction which is similar to tax. This is similar to price paid by a licensee to the Government for parting with privilege in case of trade in liquor or price paid by a telecom licensee for spectrum

State of Punjab Vs Devans Modern Breweries (2004) 11 SCC 26 Pr 113 [Vol V(C) Pg 155-289]

Union of India Vs Asso. Of Unified Telecom Service Providers (2011) 10 SCC 543 Pr 49 [Vol V(N) Pg 960-990]

38. So far as the payments of amounts under Section 9B and 9C of the 1957 Act are concerned, they are only additional royalty to be used for specific purpose. Section 9B(5) and (6) expressly state that the amount payable is 'in addition to the royalty'. Moreover, royalty is a payment received by the State Government and constitutes a payment of share of profit which is earned by the holder of the lease. Further, the payment under Section 9B is to the District Mineral Foundation which is constituted by the State Government under the direction of the Central Government and the fund is utilised by the District Mineral Foundation. Similarly, the payment u/S 9C is to the trust created by the Central Government for funding exploration by Central Government agencies specified in Section 4(1). These two collections partake the character of royalty and do not amount to a tax on mineral right.

39. In various provisions including Section 21(5) and 25 one finds mention of royalty and tax separately. So is the position in the Constitution. This is also indicative of that the character of royalty is different from tax. In addition, clause 1 of Part VII of Form K obliges the lessee to discharge all taxes, assessments and impositions whatsoever being in the nature of public demands assesses by the authority of the Central and State Governments upon or in respect of the premises and works of the lessee, in common with other premises and work of a like nature. Clause 7 of Part VII of Form K and clause 1 of Part VIII of Form K make it clear that the premises is the land which is demised under the lease. Part VII only excepts demands for land revenue. It follows that Central Government does not consider royalty to be a tax and its nature to be such as would enable the lessee to avoid taxes assessed by the State Government.

III. ROYALTY IS NOT A LIMITAITON UNDER ENTRY 50 LIST II VIIth SCHEDULE :

40. It is essential to determine the real nature of royalty determined by Section 9 of the 1957 Act. It is our case, royalty is neither tax nor akin to tax nor an exaction in the nature of tax, and it cannot operate as a limitation envisaged by Entry 50 List II.

41. As submitted above, the 1957 Act is merely regulatory and that is how it is conceived in Entry 54 List I VIIth Schedule. The ownership rights in the State in the land and the minerals lying in its belly are not acquired by 1957 Act. These rights are merely regulated in the public interest. Consequently, the law made by Parliament has to necessarily provide for payment of royalty and dead rent. In the absence of Section 9 and 9A, the 1957 Act would become expropriatory as no payment of compensation is contemplated. The payment of royalty/dead rent/ surface rent are a recognition of the inherent right of the State to obtain a return or consideration for parting of its mineral rights in favour of a lessee. It is for this reason that even Central Government pays royalty to State Government like a private person. If royalty is treated as an exaction in the nature of tax then Act will become expropriatory.

42. Hypothetically, if Parliament had not made the 1957 Act, the State Government would have protected its entitlements to royalty by making a law under Entry 23 List II. Royalty, being a consideration is a consideration for parting with mineral rights could have been regulated under Entry 23 List II. But since this power of regulation has been denuded by MMDR Act, 1957, Section 9 would be relatable to Entry 54 List I.

43. Yet another reason why Section 9 cannot relate to Entry 50 List II as limitation is that the limitation must be imposed by Parliament by law relating to mineral development.

The expression is not "by or under law" made by Parliament. There are various entries in List I which use the expression by or under law [Entry 67 List I; Entry 12 List II; Entry 40 List III]. Since Section 9 enables the Central Government to alter the rate of royalty by means of the notification by amending the Second Schedule so as to enhance or reduce the rate , the amended Second Schedule would not qualify as a limitation by Parliament by law. It would be a case of amendment under the law by a delegate of Parliament. Therefore, Section 9 has nothing to do with tax on mineral rights.

44. The Preamble of Form K with reference to Section 4 read with Rule 27 and 31 expressly recognises that the lease is being granted ' in consideration of the rents and royalties, covenants and agreements and that the demise of land is in lieu of said payments'. Before the 1957 Act was enacted, the concept of royalty in the field of grant of mining lease, whether by private land owners or the States was well known. It has always been understood to be a consideration for parting with the mineral of the landowner in favour of the lease holder. There is no reason why the determination of royalty under Section 9 of 1957 Act should be understood differently. The judgment in ***Kesoram*** has not only referred to the dictionary meanings but also to the judgments of this Cout in several judgments of this Hon'ble Court including ***DK Trivedi*** where royalty has been held to be a consideration. In fact even in India Cement (Paras 22, 23 & 33) , this Court has held that royalty is in respect of extraction of minerals from land Hence, Kesoram cannot be faulted in this regard. In fact, in India Cement no one argued that royalty was tax or in the nature of tax. That was also not an issue involved. The matter related to cess on royalty and its validity.

45. Nature of dead rent: Section 9A(1) proviso requires holder of mining lease to pay either royalty or dead rent ' **in respect of that are'**, whichever is greater. Hence, dead rent is payable if no mining is done or if royalty paid by the holder of lease is less than the dead

rent which is payable at the rate specified in Third Schedule. Third Schedule post insertion of Section 8A, provides that in case of auction no dead rent is payable. Thus, the bid amount subsumes the dead rent. In other cases, dead rent is payable at prescribed Rupees per hectare per annum.

46. Section 9A requires payment of dead rent ' for all the areas included' in the instrument of lease. The proviso further states that lease holder shall pay either royalty for any mineral removed or consumed from the leased area or the dead rent in respect of that area. The proviso makes it apparent that both royalty or dead rent have nexus with the area of land which is leased. But dead rent is definitely calculated in respect of leased area and the rate is per hectare. Dead rent cannot therefore be said to be a payment which is in the nature of tax on mineral rights or an exaction of that nature. In fact, dead rent is payable for non-exercise of mineral rights less exercise of mineral rights. This section also shows that royalty is relatable to lease.

47. Reading Section 3(c) 'mining lease' and (d) 'mining operations with (ac) 'leased area' and (fa) 'production', one would see that the mining lease specifies the leased area within which mining operations can be undertaken for the purpose of winning or raising of mineral in order to process and dispatch the same. The mineral is said to be produced only when the mineral is won or raised after excavation and extraction from the earth. The words 'mine' and 'owner' prior to 2021 Amendment (28.03.2021) , were defined under the Mines Act, 1952 by virtue of Section 3(i) of MMDR Act, 1957. The said definitions in Section 3 of the Act are quotes below :

> *[(j) "mine" means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on and includes--*

(i) all borings, bore holes, oil wells and accessory crude conditioning plants, including the pipe conveying mineral oil within the oilfields;

(ii) all shafts, in or adjacent to and belonging to a mine, whether in the course of being sunk or not;

(iii) all levels and inclined planes in the course of being driven;

(iv) all open cast workings;

(v) all conveyors or aerial rope ways provided for the bringing into or removal from a mine of minerals or other articles or for the removal of refuse therefrom;

(vi) all adits, levels, planes, machinery, works, railways, tramways and sidings in or adjacent to and belonging to a mine;

(vii) all protective works being carried out in or adjacent to a mine;

(viii) all workshops and stores situated within the precincts of a mine and under the same management and used primarily for the purposes connected with that mine or a number of mines under the same management;

(ix) all power stations, transformer sub-stations, convertor stations, rectifier stations and accumulator storage stations for supplying electricity solely or mainly for the purpose of working the mine or a number of mines under the same management;

(x) any premises for the time being used for depositing sand or other material for use in a mine or for depositing refuse from a mine or in which any operations in connection with such sand, refuse or other material is being carried on, being premises exclusively occupied by the owner of the mine;

(xi). any premises in or adjacent to and belonging to a mine on which any process ancillary to the getting, dressing or preparation for sale of minerals or of coke is being carried on;]

*(l) "owner", when used in relation to a mine, means any person who is the immediate proprietor or lessee or occupier of the mine or of any part thereof and in the case of a mine the business whereof is being carried on by a liquidator or receiver, such liquidator or receiver[10]*** but does not include a person who merely receives a royalty, rent or fine from the mine, or is merely the proprietor of the mine, subject to any lease, grant or licence for the working thereof, or is merely the owner of the soil and not interested in the minerals of the mine; but [11][any contractor or sub-lessee] for the working of a mine or any part thereof shall be subject to this Act in like manner as if he were an owner, but not so as to exempt the owner from any liability*

48. Post 2021 Amendment , they are defined as per Occupation, Safety, health and safety working conditions Code, 2020. In view of substitution in Section 3(i) of MMDR Act, 1957 the definition of 'owner' includes the lessee and occupier of the leased area. In view of this the strained effort to apply the principles of noscitur a sociis with respect to imposition of tax under Entry 49 List II/Entry 50 list II of VIIth Schedule in order to assert that the tax can be levied only on the owner of the leased area is completely erroneous. This will also shows that segregation of mineral from land happens only after production resulting from mining operations. The liability to pay tax on land with respect to mineral bearing land gets affixed at the time when the mining lease is granted to the lessee and the lease dead is executed.

49. The occurrence of liability to pay and point of levy can be different. That is to say the liability gets fixed on occurrence of taxing event as the materialisation, payment and recovery of tax can be later.

Hotel Balaji Vs State of A.P. (1994) Suppl 3 SCC 536 Pr 92

RC Jall Parsi Vs Union of India AIR 1962 SC 1281 Pr 7 & 8

Godfrey Philips Ltd. Vs State of U.P. (2005) 2 SCC 514 Pr 47 [Vol V Pg 2267-2306]

50. There is intrinsic evidence in Section 9 that royalty is neither akin to tax nor an exaction in the nature of tax. The marginal note says that royalties 'are in respect of mining leases'. The liability to pay royalty is laid on ' the holder of a mining lease'. Further, royalty has a direct interconnect with dead rent as only one of them is to be paid. Furthermore, even the instrument of lease or any other law in force cannot prevent payment of royalty. Most importantly, payment of royalty is ' in respect of any mineral removed or consumed' from the leased area. These indicators show that in lieu of the grant of mining lease which involves transfer of State's mineral rights including right to mine and remove mineral to the holder of mining lease. Per contra there is not a whisper in Section 9 and 9A about royalty being in the nature of tax on mineral rights. The liability to pay royalty/ dead rent arises out of relationship of lessor and lessee.

IV. LIMITATION SHOULD BE EXPRESS :

51. It is submitted that 1957 Act may be a law relating to mineral development but it does not impose any express or specific provision which can be said to be 'limitation' as envisaged by Entry 50 List II. The Respondents rely upon Section 9, 9A,9B and 9C of the 1957 Act for asserting that it is a limitation. A bare reading of Section 9 would show that its content does not even impliedly refer to Entry 50 List II or to State's power to impose taxes on mineral rights.

52. It may be remembered that the Parliamentary law envisaged by Entry 50 List II is required to **impose** a limitation on the State's power to levy taxes on mineral rights. The entry contemplates a limitation on the legislative power of the State Legislature in a Federal Structure. The exercise of imposing such limitation has be to conscious and specific. This

cannot be left to be culled out by a strenuous interpretative exercise which seeks to impart a character to 'royalty' in Section 9 which according to Respondent's own contention is not recognised as a tax and even with respect to private persons is not a tax.

53. The framers have given ample indication of the manner in which limitation on State's taxing power is imposed [(See Article 276(2)]. In this reference may also be made to Section 15 of Central Sales Act, 1956 (now repealed).

54. That even where exemptions from State taxes are contemplated with respect to any particular taxation , the same is expressly provided by the Constitution when the interest of Union is involved [See Article 285,287 & 288].

55. In Jindal Stainless Vs State of Haryana (2017) 12 SCC 1 [Pr 28 & 29 ; Per Ramana J Pr 185, ; Per Banumathi J Pr 281], a 9 Judge Bench of this Hon'ble Court held that the limitations on the legislative/taxing power have to be express.

V. DECOUPLING OF MINERALS ON LANDS :

56. The Respondent's submitted that historically in India, the mineral bearing land and the minerals stood decoupled. It is also contended that the distribution of powers relating to tax in List II of VIIth Schedule of Constitution which is parallel to Government of India Act, 1935 also indicates the same. Consequently, the State legislation imposing tax on land with respect to Entry 49 List II cannot be structured with a measure based on value of minerals.

57. It is submitted that the history which is referred to by the Respondents is not substantiated on a sound basis either with reference to judgments or research papers. In the Indian context, the permanent settlement introduced by Lord Cornwalis in 1793 created the overlordship of the company with respect to the land which was then in its possession on

account of conquest and it subjected the landlords to the overlordship of the Company. In short, there was alienation of land ownership to some extent in favour of company. Even when, mining in large scale began in India , especially after the introduction of Railways in 1853, the mining was done under lease which granted a particular lease area with mining rights. The grants of lease were founded on the assumption that the Colonial Government is owner and land and minerals which were lying in its belly. There is no legal enactment of the British Government which would indicate that the minerals were segregated from the ownership for the purpose of mining. As regards the Government of India Act, 1935 , the Federation did not come into existence and the same remained a dead letter. Post Independence, MMRD Act, 1948 and after the advent of Constitution, the MMDR Act, 1957 also do not contain any provision which may imply a notional segregation from land. As a matter of fact, Sections 3(ac), 4, 6-9 and Rule 31 read with Form K would show that the lease granted involves the leasing of leased area, mineral rights; right to mineral; the payment of royalty and rent for the mineral removed. Thus, until the mineral is extracted from the land in exercise of mineral right, the land and the minerals remain naturally and legally intertwined. The segregation happens upon the exercise of mining right to excavate, extract and win and this is a continuous process which goes on during the period of the lease.

58. Even if Entry 49 List II is read along with Entry 50 List II, it is noticeable that Entry 50 List II deals with mineral rights and does not involve a tax on minerals. The minerals remain embedded in the land and segregation is on account of exercise of mineral rights. Therefore, Entry 50 List II does not in any way suggest that Constitutionally that minerals are notionally segregated or decoupled.

59. It is however, submitted that this idea of decoupling of minerals from land has no bearing with the concept of contouring of measure of tax which depends upon the measure having nexus with the tax imposed.

60. The measure of mineral value is not the sole preserve of Entry 50 List II. Before, the Constitution 101st Amendment Act, 2016, a sales tax could be levied on minerals sold under Entry 54 List II. Since this transaction is on every transaction of sale, in essence the tax is on annual mineral value determined on the basis of sale price. Even post Amendment , sales tax can be imposed on mineral oil.

Similarly, stamp duty under Entry 63 is imposed on the lease deed executed between the State Government and the lease holder under the MMRD Act, 1957. Clause 9 of Part IX of Form K requires that the stamp duty would be paid on anticipated royalty from the demised land. Thus, the Central Act itself requires that the annual value for the purposes of stamp duty would be the anticipated royalty. Royalty has been made a measure for the purposes of stamp duty. It is a portion of the annual mineral value as per sale price.

Even the Parliament imposed excise duty (Before 101st Amendment Act, 2016) under Central Excise Act, 1944 read with Central Excise Tariff Act, 1985 on minerals. Section V of the First Schedule dealt with ' Mineral Products' and Section XV deal with 'Base Metal and Articles of Base Metal'. A copy of the relevant section of First Schedule for the Year 2014-15 [**Pg Vol IV (P) Pg 105-219]**.

In addition to excise duty , education cess (2 %) and secondary and higher education cess (1%) and clean energy was also levied.

Import duty and export duty under Customs Act, 1962 read with Customs Tariff Act,1975 is also imposed by Parliament with reference to Entry 83 List I and the measure

is the mineral value. In addition to the custom duty , education cess and higher education cess is also levied. [**Pg Vol IV (P) Pg 37-490]**.

GST is being levied on royalty under notification No. 22/2016-ST,24/2016-ST and Circular No. 192/02/2016-ST. The imposition of GST on royalty was under challenge before the High Court of Rajasthan and the same and the same has been upheld vide judgment dated 24.10.2017 in **Udaipur Chambers Vs UOI. [Pg 419-433 CC Vol VB].** Special Leave Petition against the said judgment is pending **[Pg 434-435 CC Vol VB].**

It would also be possible to impose a tax on capital value of assets under Entry 86 List I by aggregating the minerals extracted on the basis of their annual mineral value.

61. In all the aforesaid cases, the measure of annual value of minerals would have direct nexus with the levies concerned. Therefore, if the State makes the annual mineral value or half the mineral value for applying the proportion fixed, the same cannot be said to be beyond its competence under Entry 49 List II. Mineral value or a part of it is a best yardstick for imposing a tax on mineral bearing land.

62. In the aforesaid context, it is worth noting that minerals occur naturally on account of complex and prolix in organic processes extending over centuries. There are about hundred major mineral components. The minerals form in all geologic environments and under a wide range of chemical and physical conditions, such as varying temperature and pressure. Under favourable conditions, minerals may grow as well formed crystals with internal and morphology. The properties of minerals depend upon their chemical composition. Electrical forces are responsible for binding together atoms, ions and ionic groups form chrystaline solids. The are also found in the state of chyrstaline aggregates as in the case of granites. A detailed study about Minerals and Rocks can be also seen from

Britannica , Macropedia Vol 24 **[Vol IV(P) Pg 568-687].** This shows that the minerals take birth in the womb of the earth over a period of several hundred years on account of natural processes taking place in the womb as well as the interaction with the natural processes above the earth on account of the decay of plants and animals as well as percolation of rain water. The decay gives birth to microorganisms which percolate with water into the belly of earth and contribute in the formation of minerals.

VI. <u>NOSCITUR A SOCIIS :</u>

63. The Respondents asserted that the principle of noscitur a sociis should be applied to Entry 50 List II in the light of neighbouring entries, Entry 45 and Entry 49 List II. It was said that since Entry 45 and 49 List II are generally whose incidence is on the owner, therefore, the tax under Entry 50 List II should also be understood as a tax whose burden falls on the owner of the land. It was said that the Respondents are merely lease holders and therefore cannot be made liable. The minerals are therefore intrinsic part of the land and remain so until they are excavated, extracted and removed. There is no segregation or decoupling before that.

64. It is submitted that in the case of ***Godfrey Philips India Vs State of U.P. (2005) 2 SCC 515*** [Paras 75-79,81] , this principle of interpretation was applied for construing the word 'luxuries' in Entry 62 List II. The word was construed in the light of the other words found in Entry 62 itself and not with reference to a different entry. This principle applies in context of association of words in the same provision. It is not a neighbourhood concept in the sense of construing one provision with reference to other provisions.

65. The Latin maxim ***noscitur a sociis*** contemplates that a statutory term is recognised it by its '***associated words'***. The Latin word 'sociis' means 'society'. Therefore, when

general words are found in association with specific words, general words will take colour from the special words in case ambiguity. However, this maxim has no application when there intent of the Legislature is clear and where is no ambiguity. This rule of interpretation cannot be exalted to nullify the plain meaning of words in a statute.

P. Mohanraj Vs. Shah Bros. Ispat (2021) 6 SCC 258 Pr 21-28 [Vol V(N) Pg 1493-1589]

Prabhudas Damodar Kotecha Vs Manhabala Jeram Damodar and Anr (2013) 15 SCC 358 Pr 42 & 43 [Vol V(N) Pg 991-1013]

Jagdish Chandra Gupta Vs Kajaria Traders (India) Ltd. AIR 1964 SC 1882 Pr 6 [Vol V(N) Pg 84-90]

G.P. Singh [Vol IV(P) Pg 554-561]

Maxwell [Vol IV(P) Pg 562-567]

66. Before this rule of interpretation can be applied it has to be shown that the words are clubbed/ are associated words/ are grouped together or coupled together and form a genus.

Jagdish Chander Gupta v. Kajaria Traders (India) Ltd., (1964) 8 SCR 50 : AIR 1964 SC 1882

6…. It follows, therefore, that interpretation ejusdem generis or *noscitur a sociis need not always be made when words showing particular classes are followed by general words. Before the general words can be so interpreted there must be a genus constituted or a category disclosed with reference to which the general words can and are intended to be restricted. Here the expression "claim of set-off" does not disclose a category or a genus.*

Maharashtra University of Health Sciences Vs Satchikitsa Prasarak Mandal (2010) 3 SCC 786 Pr 42 & 43 [Vol V(N) Pg 951-959]

Municipal Corpn of Greater Bombay Vs. Bharat Petroleum Corpn Ltd (2002) 4 SCC 219 Pr 7 & 9 [Vol V(N) Pg 699-708]

Lokmat Newspapers Vs Shankarprasad (1999) 6 SCC 275 Pr 39 [Vol V(N) Pg 599-649]

State of Bombay Vs Hopital Mazdoor Sabha AIR 1960 SC 610 Pr 9 [Vol V(N) Pg 4-17]

67. Recently, this Hon'ble Court in **Jayant Verma Vs Union of India (2018) 4 SCC 743** Pr 21 **[Vol V(N) Pg 1398-1447]** refused to apply this maxim to read down 'relief of agricultural indebtedness' by confining its meaning by reading preceding words ' money lending and money lenders' in Entry 30 List II. It held that such a submission could not be accepted given the law that the widest and most liberal possible meaning must be given to Entry 30 list II. In para 21 while distinguishing ***In Special Reference No.1 of 2001*** **(2004) 4 SCC 489**, the court in footnote held that it would not be possible to extend such an interpretation to a subject matter which is not directly linked with another subject-matter contained in the same entry.

> ***'21.*** *According to Ms Khajuria, the expression "relief of agricultural indebtedness" must take colour from the expression "moneylending and moneylenders" preceding it in Schedule VII List II Entry 30. We are afraid we cannot agree for several reasons. Firstly, purely grammatically, a semicolon separates the two expressions showing that they are not inextricably connected. Also, we have already adverted to several judgments, including Pathumma[2], which state that the widest and the most liberal possible meaning must be given to Schedule VII List II Entry 30. The latter part of this entry cannot be narrowed down by any rule of noscitur a sociis, or taking colour from the former part of the entry.[18] In fact, various State Acts were already in existence at the time of the Constitution, which dealt with the subject of relief of agricultural indebtedness from the point of view of the moneylender. (See, for instance, Sections 8 and 9 of the Assam Money-Lenders Act, 1934, Sections 9 and 10 of the Central Provinces Money-Lenders Act, 1934, Sections 11 and 12 of the Bihar Money-Lenders Act, 1938, Sections 9, 10 and 11 of the Orissa Money-Lenders*

Act, 1939, Sections 31 and 36 of the Bengal Money-Lenders Act, 1940 and Sections 23, 24 and 29 of the Bombay Money-Lenders Act, 1946.) Obviously, the addition of the subject "relief of agricultural indebtedness", for the first time, by the Constitution would refer to relief of agricultural indebtedness not only from moneylenders, but also from all persons who give loans including banks. For otherwise, the subject-matter "relief of agricultural indebtedness" would have been subsumed within "moneylending and moneylenders" and would have been wholly unnecessary to add as a subject-matter separate and distinct from "moneylending and moneylenders". That "moneylending and moneylenders" is separate and distinct from "relief of agricultural indebtedness" is also clear from the fact that moneylending is not restricted to the agricultural sector, but would include, within its scope, money lent to all persons, including purely commercial transactions. Also, there are many subjects in the Seventh Schedule which are contained in one entry, but which deal with divergent matters. For example List III Entry 5 deals with seven completely different subjects, all banded together under Entry 5 and separated by semicolons, making it clear that each subject-matter is separate and distinct from what follows each semicolon. Similarly, List III Entry 6 deals with transfer of property other than agricultural land, separated by a semicolon from registration of deeds and documents. List III Entry 12 deals with evidence and is, thus, separated by a semicolon from recognition of laws, public acts and records and judicial proceedings. Obviously, there is no scientific method involved in placing subjects in the various entries in the lists contained in the Seventh Schedule to the Constitution.

68. A 5 Judge Bench in **Subramaniam Swamy Vs Union of India (2016) 7 SCC 221 Pr 70-75, 80 [Vol V(N) Pg 1014-1145]** rejected the argument to read down the meaning of 'defamation' in Article 19(2) based on this rule of interpretation.

69. This argument is also contrary to the well established rules of interpretation of entries of VIIth Schedule namely that entries should receive widest and most liberal interpretation and there is no overlapping in law since the entries are neatly demarcated. The words in an entry can be said to be clubbed together or grouped together or can be said

to be associated words. But the entries are different fields of legislation referable to Article 245/246. Distinct entries of VIIth Schedule can never be said to be associated words. No explanation has been given why Entry 45,49 and 50 List II are 'neighbouring entries' and why Entry 51 List II which deals with duty of excise on certain goods is not a 'neighbouring entry' or Entry 46,47,48 List II are not neighbouring entries. This concept of 'neighbouring entry' is not only alien to our Constitution but also is dehors the settled principle of interpretation of entries of VIIth Schedule. Even otherwise, this maxim is wrongly invoked, it is applied when words are grouped together in a provision or entry , this is never applied cross entry or cross provision.

70. The tax under Entry 49 List II is also levied with respect to the lessees who hold the land and buildings on a lease from the government. In fact even occupiers can be required to pay tax under Entry 49 List II and hence this contention is misconceived.

VII. <u>GENERALIA SPECIALIBUS NON DEROGANT</u>

71. The submission of the Respondent is that in view of this doctrine, ambit of Entry 50 List II is excluded from Entry 49 List II and therefore the measure of tax cannot be mineral or that the mineral bearing land would fall outside the scope of Entry 49 List II.

72. It is submitted that the word ' land' has been widely construed to cover all kinds of land. See [**paras 49-78 Pg 26-33of W.S in Vol IA**]

73. Even otherwise, Entry 50 List II is tax on mineral rights. It is neither a tax on minerals nor mineral bearing land. Hence, this principle of special being excluded from the general does not assist the Respondents in any manner. Entry 49 List II provides for imposition of tax on land and buildings and Entry 50 List II provides for imposition of tax on mineral rights. They operate in different fields and therefore this doctrine has no

application. It is a settled law that where the two laws or provisions operate in different field this doctrine has no application.

Bangalore International Airport Area Planning Authority VS Birla Super Bulk Terminal (2019) 12 SCC 572 Pr 35 [Vol V(N) Pg 1477-1492]
CCE Vs. Raghuvar (India) Ltd. (2000) 5 SCC 299 Pr 14 [Vol V(N) Pg 65-662]
CIT Vs Shahzada Nand & Sons AIR 1966 SC 1342 Pr 10 & 12 [Vol V(N) Pg 91-103]

VIII. ASPECT THEORY :

74. The Respondents repeatedly asserted that the aspect theory for understanding tax entries in the VIIth Schedule of the Constitution has been held by this Court to be extinct and inapplicable to the Constitution of India. But no observation of any judgment in this regard was placed before the Court. There was some faint allusion to the judgment in Godfrey Philips (2005) 2 SCC 515 . It is submitted that that this assertion is incorrect . The mere fact that two taxes are collected at the same point or based on same measure under two different legislations of Union and State does not mean that the two taxes are identical for the taxes are differentiated based on different taxing events or different objects and activities. For example both excise duty and sales tax may be levied and collected when the manufactured goods are dispatched from the factory. Both these taxes may be based on similar measure i.e. sale price. But the taxable event has been held to be manufacture in one case and sale in another case. Notwithstanding that they relate to the same goods, same price and the levies are at the same point, the taxes are not of the same nature. The aspect theory has been ieterated and reiterated in the following cases.

(i) **State of Kerala Vs Father William Fernandez Vs (2021) 11 SCC 705 Pr 70,75-84,107 [Vol V(A) Pg 930-100]**

(ii) **Union of India Vs Mohit Minerals P Ltd. (2019) 2 SCC 599 Pr 62-65 [Vol V(N) Pg 1652-1770]**

(iii) **All India Federation of Tax Practitioners Vs Union of India (2007) 7 SCC 527 Pr 33 & 36 [Vol V Pg 2375-2403]**

(iv) **Godfrey Phillips India Ltd. Vs State of U.P. (2005) 2 SCC 515 Pr 47-55,57,59,72,83 & 93 [Vol V Pg 2267-2306]**

(v) **Federation of Hotel & Restaurant Vs Union of India (1989) 3 SCC 634 Pr 30-32,38 [Vol V Pg 1073-1116]**

75. In fact in a case where the cost of packaging etc had been added to the sale price for levying excise duty; and where sales tax had been levied on sale price plus excise duty , the measure had been still upheld.

Triveni Glass Ltd. Vs. UOI (2005) 3 SCC 484 [Vol V(N) Pg 833-838]

CCE Vs. Hindustan Safety Glass Works Ltd. (2005) 3 SCC 469 [Vol V(N) Pg 819-832]

McDowell Vs CTO (1985) 3 SCC 230 [Vol V(N) Pg 149-174]

76. ***Godfrey Phillips India Ltd. v. State of U.P., (2005) 2 SCC 515*****,** reiterates aspect theory and does not discard it. It rather reiterates the theory

> ***59.*** *The logical corollary of holding that taxes are imposed only on taxable events is that even when an entry speaks of a levy of a tax on goods it does not include the right to impose taxes on taxable events which have been separately provided for under other taxation entries. The tax in respect of goods has sometimes been referred to as a tax on an aspect of the goods and* 545 *sometimes as the taxable event. (See Federation of Hotel & Restaurant v. Union of India*7*.) Whatever the terminology, because there can be no overlapping in the field of taxation, such a tax if specifically provided for under one legislative entry effectively narrows the fields of taxation available under other related entries. It is also natural "when considering the ambit of an express power in relation to an unspecified residuary power, to give a broad interpretation to the former at the expense of the latter"*

(Madras Province v. Boddu Paidanna[9], AIR at p. 37, per Gwyer, C.J.). For example, the State cannot under the garb of luxury tax under Entry 62 List II impinge on the exclusive power of the Union under Entries 83 and 84 of List I by merely describing an article as a luxury. Of course the States do have the exclusive power under Entry 54 of List II to legislate with respect to "taxes on the sale and purchase of goods other than newspapers", but that power has been explicitly made "subject to the provisions of Entry 92-A of List I". Entry 92-A of List I speaks of:

"92-A. Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce."

77. In **State of Kerala Vs Father William Fernandez Vs (2021) 11 SCC 705 Pr 70,75-84,107**, this court was examining the question whether the State had legislative competence to impose entry tax referable to Entry 52 List II on goods imported from outside India. The argument was that in view of Entry 41 List I and Entry 83 List I which dealt with custom duties, the State lacked legislative competence to levy entry tax on such imported goods. This Hon'ble Court after relying on a catena of judgments of this Hon'ble Court held that custom duty under Entry 82 List I and entry tax under Entry 52 List II constitute two distinct imposts on two distinct taxable events. Reliance was also placed on the judgment of two Learned Judges in 9JJ entry tax case in Jindal Stainless Steel Vs State of Haryana **(2017) 12 SCC 1**

Per Banumathi J Pr

Per Dr DY Chandrachudh J Pr 739-748

IX. <u>DOUBLE TAXATION :</u>

78. The objection of double taxation has been raised now and then by assesees who suffer taxation at the hands of union and State. Such contention has been rejected on every occasion.

Municipal Council Kota Vs Delhi Cloth & General Mills Co. Ltd. (2001) 3 SC 654 Pr 17,19-22 [Vol V(N) Pg 672-690]

Radhakisan Rathi Vs Additional Collector (1995) 4 SCC 309 Pr 5 [Vol V(N) Pg 565-575]

Shi Krishna Das Vs Town Area Committee (1990) 3 SCC 645 Pr 30 [Vol V(N) Pg 233-243]

79. In this context the observations by Justice Krishna Iyer in ***Avinder Singh v. State of Punjab, (1979) 1 SCC 137*** **[Vol V(N) Pg 104-128]** are quoted below"

> **4**…*A feeble plea that the tax is bad because of the vice of double taxation and is unreasonable because there are heavy prior levies was also voiced. Some of these contentions hardly merit consideration, but have been mentioned out of courtesy to counsel. The last one, for instance, deserves the least attention. There is nothing in Article 265 of the Constitution from which one can spin out the constitutional vice called double taxation. (Bad economics may be good law and vice versa). Dealing with a somewhat similar argument, the Bombay High Court gave short shrift to it in Western India Theatres*[1]. ***Some undeserving contentions die hard, rather survive after death. The only epitaph we may inscribe is : Rest in peace and don't be re-born !*** *If on the same subject-matter the legislature chooses to levy tax twice over there is no inherent invalidity in the fiscal adventure save where other prohibitions exist.''*

X. PRESUMPTION THAT STATES ARE GOING TO IMPOSE TAX AT HIGHLY EXORBITANT RATES WHICH WILL ADVERSLY IMPACT MINERAL DEVELOPMENT IS INCORRECT :

80. Another argument has been made that if States are held to be competent to levy tax on mineral rights, they will levy very high rates of taxes which in turn will adversely impact mineral development. This assumption is flawed for reasons more than one. Firstly all laws enjoy presumption of constitutional validity. This presumption is based on the premise that

the elected government is aware of the needs of its people and uses the legislation to meet such needs. Secondly, another important principle is that a responsible government is answerable to its people and inbuilt democratic pressures ensure that the State does not impose unreasonably high rates as suggested by the counsel of the Respondents. Thirdly, the argument is basically an argument of abuse of power which does not affect the competence of the Legislature.

(i) Jindal Stainless Vs State of Haryana (2017) 12 SCC 1 Pr 112-114
Per Shiva Kiri Singh J Pr 193
Per Dr DY Chandrachud J Pr 622
(ii) Video Electronics Vs State of Haryana (1990) 3 SCC 87 Pr 22
(iii) State of Karnataka Vs Hansa Corpn (1980) 4 SCC 697 Pr 8

In M'Culloch Vs Maryland 4 Led 579 : 17 US 316, Marshall CJ held that ' *the only security against the abuse of this power in found in the structure of the government itself . In imposing a tax, the legislature acts on its own constituents. This is, in general, a sufficient security against erroneous and oppressive taxation'.*

Abuse of power

IR Coelho Vs UOI (2007) 2 SCC 1 [Vol V(N) Pg 839-950]

81. It is also to be remembered that the wrong presumption that the assessees are attaching to the States will equally apply to the Parliament.

XI. UNEVEN DISTRIBUTION :

82. The Respondent's contention that there is uneven distribution of mineral resources amongst few States and asserted that if such States exorbitantly increased the rate of tax under Entry 50 List II or Entry 49 List II, it would result in disastrous consequences. The Industrial and Mineral Policy of the Union would be subverted; the Industries engaged

mining and the downstream industries would all be severely impacted; and the inflow of FDI in the mining sector would be adversely affected. All this will be to National detriment.

83. It is submitted that uneven distribution of economic resources is a boon and not a bane. It is the beauty of mother nature that the resources are distributed with differentiation not only in different parts of India but globally. Unevenness is not inequity. Unevenness is the basis of trade and commerce in India as well as global trade and commerce. The resources of respective State/regions becomes subject of trade and commerce. That is why the framers introduced Part XIII of Constitution to ensure free flow of trade and commerce and the limitation was only with regard to discriminatory taxes.

84. The mere fact that the mineral resources are unevenly distribution would not mean that such States would act without regard to the National Interest and would levy tax at exorbitant rates of mineral value. As noted in the several judgments of this Hon'ble Court, the States are subject to political pressures from their constituents and the economic pressure to bring about development of State. Judicial notice can be taken of the competition amongst States to lay down red carpet for investors. That is why in the last 76 years post-Independence no State has imposed a high percentage of tax with regard to any taxing entry much less tax on land . The scare created is misconceived and illusionary.

85. What needs notice is that most of the States which are rich in mineral resources (a) have different resources of minerals and (b) they are poor States having large population of tribals. The Nation ensures a duty to ensure their upliftment. This tryst with destiny has unfortunately not been fulfilled. These States need sufficient tax revenue for State purposes as well as for welfare activities to meet the command of Directive Principles enshrined in Part IV. Judicial notice of historical regional imbalances has been taken in Jindal Stainless

Vs State of Haryana (2017) 12 SCC 1 in the judgment of Justice Banumathi (Pr 409,412-415 & 424).

86. In the spirit of competitive Federalism which has also been recognised by this Hon'ble Court in Union of India (2022) 10 SCC 700, each State should be allowed to exploits potential based on the available resource of whichever nature be it minerals, ports, industries, tourism, agriculture etc within the Constitutional parameters. There is not only disparity in the presence of these resources but also disparity in the stage of development in various States.

87. Matters with respect to which the our framers felt that there should be uniformity were put in List I. The idea of uniformity with respect to subjects falling in List II is contrary to the idea of Federalism. Each State which is answerable to its constituents is entitled to design its fiscal measures to meet is needs. Idea of uniformity in matters relating taxation entries in List II is also detrimental to the goal of economic symmetry. However, if the Parliaments intended to bring in uniform taxation on mineral rights , it could have made a law imposing limitation under later part of Entry 50 List II.

88. Article 246-A was inserted in the Constitution by 101st Constitution Amendment Act, 2016 when the need for uniformity was felt in the case of sales tax and entry tax [Union of India Vs Mohit Minerals (2022) 10 SCC 700 Pr 23-25 & 32]

> ***14.*** *Sub-clause (4) of clause 2 of the Constitution (Application to Jammu and Kashmir) Order, 1954, makes Article 14 of the Constitution of India applicable to the State of Jammu and Kashmir. With respect to the charge of discrimination, it was submitted that such high rates of interest for non-payment of tax are not to be found in the sales tax law of any other State and, therefore, by enacting the said sub-section (2) of Section 8 and providing for payment of interest at the rate*

of two per cent per month when the period of default exceeded three months but did not exceed six months and for interest at the rate of three per cent per month if the default was for a period exceeding six months, dealers in the State of Jammu and Kashmir were hostilely discriminated against as compared with dealers in other States. This argument wholly overlooks the very basis of the scheme of distribution of legislative power contained in our Constitution. Our Constitution is federal in its structure and a salient feature of a federal polity is distribution of legislative and administrative powers between the federated unit and the federating units, that is between the Federal Government and State Governments. Thus, matters in respect of which our Constitution-makers felt that there should be uniformity of law throughout the country have been placed by them in the Union List (List I in the  *Seventh Schedule to the Constitution) conferring exclusive power upon Parliament to make laws with respect thereto, while matters which they felt were of local concern and may require laws to be made having regard to the particular needs and peculiar problems of each State have been assigned to the State Legislatures by placing them in List II of the Seventh Schedule, that is, the State List. Inter-State trade and commerce is a matter which affects all the States in India and thus the whole country. It is for this reason that in the Seventh Schedule to the Constitution the subject of taxes on the sale or purchase of goods taking place in the course of inter-State trade or commerce has been put in List I and made a Union subject. Taxes on the sale or purchase of goods taking place within the State affect only those who carry on the business of buying and selling goods within the State and, therefore, this subject has been put in List II of the Seventh Schedule, namely, the State List. Sales tax is the biggest source of revenue for a State and it is for the State to decide how and in what manner it will raise this revenue and to determine which particular transactions of sale or purchase of goods taking place within that State should be taxed and at what rates, and which particular transactions of sale or purchase of goods should be exempted from tax or taxed at a lower rate having regard to the subject-matter of sale, as for instance, where particular goods constitute necessities for the poorer classes of people or where the goods in question are of such a nature as are required to be exempted from tax or taxed*

at a lower rate in order to encourage a local industry. Consideration of these matters must, from the nature of things, differ from State to State. Similarly, it is for each State to determine the methods it will adopt to collect its revenue from this source and to decide which methods would be most efficacious for this purpose. The provisions of the sales tax law of each State must, therefore, necessarily differ in various respects from the provisions of sales tax laws of other States. If the provisions of the legislation of every State on a particular topic are to be identical in every respect, there is no purpose in including that topic in the State List and it may as well be included in the Union List. Merely because the provisions of a State law differ from the provisions of other State laws on the same subject cannot make such provisions discriminatory.

89. Entry 49 and 50 List II are important for States as for other States. In contrast, one finds the scenario that many States which are not endowed with mineral resources are far richer and developed with a larger consolidated fund of State. So the picture painted by the Respondents is untrue and mythical. Curiously, the contention is raised by the Respondent companies both private and government who are earning super profits.

90. Moreover, the Legislative competence cannot be decided on the basis of a remote possibility of abuse by a resource rich State. Further, RR Engineering Vs UOI (1980) 3 SCC 330 [Pg 133-143 Vol VB] has also taken a view that if measure of a particular involved is exorbitant, nature of tax, that would result in changing the nature of tax (Pr 22) . This tax has also held that tax cannot be confiscatory. Thus, the process of judicial review is always available.

91. The contention about Uniformity of price being the objective of Section 9 is also not entirely correct . Price depends on several factors including demand and supply. And apart from the loading of tax burdens imposed by Union and States. The additional factors would

be the payments for freight , transport etc which would depend upon the industry consuming the mineral . It would also depend upon labour charges prevailing in different states Moreover , in the cases where auction of mineral bearing land is held in Section 8A(5), sub section (7A) inserted 28.03.23 by Act 16 of 2021 requires payment of Additional amount specified in VIth Schedule. The additional ranges between 100 percent to 250 percent of royalty.

92. Union's Affidavit is significantly silent on a crucial aspect. State of WB, has been levying and collecting taxes on mineral bearing land, including coal bearing land for the last twenty years since Kesoram judgement. What has been the impact of the said levy on the price of minerals, especially coal ? What disaster has it spelled on the Nation or other states and industry ? Has it prevented the industry from participating in auctions of mining areas in WB ? What was the impact on the price of electricity ? It has been normal business notwithstanding the levy of tax by Bengal ? Same is the position regarding the levy of UP which was upheld in Kesoram. So the picture of doom is a false scare ?

XII. INDIA CEMENT AND KESORAM :

93. The nature of impugned taxes in India Cement, Kesoram and the levies in the preset batch of cases need to noted as the levies were substantially different in those cases.

(i) In India Cement, the challenge was to the levy of cess on royalty. In this context, the court observed that cess being a tax on royalty the same would have a direct effect on the royalty which is under Section 9 and that the tax was really on income of the State itself. It was also held that the same could

not be justified as a tax on land under Entry 49 List II or tax on mineral rights under Entry 50 list II. There was no issue whether royalty itself is a tax or not. However, as regards nature of royalty, the court has observed in para 22,23 and 31 that royalty is payable for extraction minerals.

(ii) In Kesoram, the impugned levy purported to be a tax on land under Entry 49 List II. Its measure was the annual value of the minerals despatched from the leased area by the lease holder but it expressly excluded royalty and all kinds of taxes. Therefore, the levy was different from that involved in India Cement. However, since Respondents relied upon the observation in India Cement in para 34 saying that royalty is tax, the court examined para 34 of the judgment and found that it is an error which needs correction. The Court proceeded to hold that tax is on land and measure had nexus wit the same.

(iii) In the case of Mineral Area Development Authority under Section 89 of Bihar Mineral Area Development Authority Act, 1992, the imposition of tax is on land and the rate is maximum of Re 1.50 per sq meter. It has nothing to do with royalty or annual mineral value. The tax is squarely on land as unit. The tax has been imposed on all non-residential and non-agricultural land which includes commercial , industrial and mining land.

(iv) In case of State of Orissa Vs NALCO C.A. No. 1883/2006, tax has been imposed on mineral bearing land and the measure is a certain percentage of half of mineral value. Thus, the value of the land has been taken as half of the annual mineral value. The tax is therefore on mineral bearing land and it is therefore not a tax on either mineral or mineral rights.

Dated : 13.03.2024 Filed by

(Ms. Sansriti Pathak)

Advocate for the Appellant

IN THE SUPREME COURT OF INDIA

Transfer Petition (Civil) No. 613 of 2009
Hindalco Industries Limited v. State of U.P.
and
Transfer Petition (Civil) No. 626 of 2009
Kanoria Chemicals and Industries Limited v. State of U.P.

Submission in Rejoinder by Mr. Vijay Hansaria, Sr. Advocate on behalf of Shaktinagar Special Area Development Authority

1. It is submitted that entries in List II of the Seventh Schedule to the Constitution (entries from Sl. No. 1 to No. 66) may be ***classified in 11 categories*** which are hereunder in the chronological order, with restrictions higher in degree placed at the top and entries without restriction at the end.

Entries in List II of the Seventh Schedule

2. Entries in List II of the Seventh Schedule to the Constitution may be categorised under the following headings:

Category 1 : Entries "**subject to"** any law made by Parliament : *Entry 37*

Category 2 : Entries with the expression **"except" :** *Entry 3 and 65*[1]

Category 3 : Entry with expression "**not specified", "subject to",** and **"other than"**: *Entry 13*

Category 4 : Entries with expression **"not including"** : *Entry 1, 51, 54 and 56*

Category 5 : Entries with expression **"other than"** : *Entry 7, 12, 32 and 63*[2]

Category 6 : Entry with expression "**to the extent"** ***:*** *Entry 62*

[1] Entry 29 had similar expression which has been omitted by the Constitution (42nd Amendment) Act, 1976 and shifted to List III as 33A.
[2] Entry 55 had similar expression which has been omitted by the Constitution (101st Amendment) Act, 2016.

Category 7 : Entry "**subject to"** specific entry of List I & III[3]

Category 8 : Entries "**subject to"** specific entry of List I *: Entry 2, 17, 22, 23, 24 and 33*

Category 9 : Entries "**subject to"** specific entry of List III *: Entry 26, 27, 57*[4]

Category 10 : Entry with the expression "**subject to any limitation imposed by Parliament"** : *Entry 50*

Category 11 : Entries without any **"restriction"** : *Entry 4, 5, 8, 9, 10, 14, 15, 16, 18, 21, 25, 28, 30, 31, 34, 35, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 53, 56, 58, 59, 60, 61 and 64*[5]*.*

3. It is submitted that Entry 50 of List II which is "subjected to any limitation imposed by Parliament relating to mineral development" cannot be construed as more restrictive than the entries which are "subject to", "except", "not specified", "not including", "other than" and "to the extent".

4. The limitation under Entry 50 can relate only to mineral development only to law made by the Parliament "relating to mineral development." The Parliament in exercise of its power under Article 246 read with entry 54 List I can make law relating to mineral development which may include prescribing limitations on the taxing power of the State. By way of illustration, such limitations can be in respect of the following :

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[3] Entry 11 had similar expression which has been omitted by the Constitution (42nd Amendment) Act, 1976 and shifted to List III as entry 25.
[4] Entry 36 had similar expression which has been omitted by the Constitution (7th Amendment) Act, 1956.
[5] Entries 19, 20 had similar expression which has been omitted by the Constitution (42nd Amendment) Act, 1976 and shifted to List III as entry 17A and 17B respectively; Entry 52 had similar expression which has been omitted by the Constitution (101st Amendment) Act, 2016.

(a) extent or quantity of minerals that can be extracted;

(b) valuation of mineral for the purpose of taxation, such as,

(i) price fixed by Indian Bureau of Mines,

(ii) pit head price of the mineral,

(iii) the sale price of the mineral,

(iv) tax at the point of extraction of mineral, or

(v) tax at the stage of despatch by the mining company.

(c) The ceiling at which the State can levy taxes on different minerals;

(d) The period of tax exemption for a particular period, or for a particular area, or for a particular mineral.

5. It is submitted that power of limitation cannot be interpreted as power of ***'abrogation'*** or ***'complete exclusion'*** or ***'negation'*** of the taxing power of the State.

6. It is further submitted that the limitation on the taxing power must be ***'precise'***, ***'specific'***, ***'certain'***, ***'definitative'*** and cannot be read by way of ***'implication'***, ***'inference'*** or ***'by a process of judicial interpretation'***. The respondent carves leave to refer and rely upon the judgement of the Constitution Bench of nine Judges in *Jindal Stainless Ltd. v. State of Haryana*, (2017) 12 SCC 1. The majority judgement delivered by *Chief Justice T S Thakur* held thus :

> "**28.** The power to levy taxes, being a sovereign power controlled only by the Constitution, any limitation on that power must be express…."

Hon'ble Ms. Justice R. Banumathi in her concurring judgement held thus :

> **"315.** ….The power of taxation is vested in a sovereign State to carry on with the affairs of the Government. Our Constitution had laid the foundation of a welfare State, very much extending the activities of the

Government and the administration thus making it necessary for the State to impose taxes on a large scale and in much wider fields. The legislative competence of Parliament or of the State Legislatures can only be circumscribed by express prohibition contained in the Constitution itself. The plenary powers of legislation vested in the Union and State Legislatures by the Constitution are not subject to any limitations other than those imposed by the Constitution itself.

316. In *Umeg Singh* v. *State of Bombay*[6], this Court held that since the power of the State to legislate within its legislative competence is plenary and the same cannot be curtailed in the absence of an express limitation placed on such power in the Constitution itself, there is no express prohibition on the legislative powers of the State to levy taxes on the goods entering into a local area for consumption, use or sale therein. Taxes being the lifeblood of the State, they cannot be decimated by implication."

7. Entry 54 List II, prior to the Constitution (101st Amendment) Act, 2016 read thus:

> *"54. Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I."*

Entry 92A List I read thus:

> *"92A. Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce."*

8. It is submitted that prior to insertion of entry 92A in List I by the Constitution (Sixth Amendment) Act, 1956, there was no taxing power with the Parliament to impose the tax on inter-State sale or sale in the course of import or export out of the territory of India.

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[6] *Umeg Singh* v. *State of Bombay*, AIR 1955 SC 540 : (1955) 2 SCR 164.

9. Article 286 of the Constitution, as adopted[7], restricted the imposition of tax by the State on the sale or purchase of goods **'outside'** the State or in the course of **import or export** of the goods. It further created a specific bar that "no law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of any goods where such sale or purchase takes place in the course of inter State trade or commerce." Thus, where the Constitution wanted to limit the taxing power of the State, a specific restriction/ limitation has been provided.

10. The Parliament in its wisdom has made provisions relating to mineral development in section 18 of the MMDR Act, 1957. Thus, the taxing power of the State is limited only to the extent provided in section 18 and not outside the said section.

11. Sections 9, 9A, 9B or 9C of the MMDR Act cannot be interpreted to abrogate, annul or nullify the taxing power of the State under Entry 50 of the List II.

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[7] *Article 286*. Restrictions as to imposition of tax on the sale or purchase of goods.—(1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place—

(a) outside the State; or

(b) in the course of the import of the goods into, or export of the goods out of, the territory of India.

Explanation.—For the purposes of sub-clause (a) a sale or purchase shall be deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that State, notwithstanding the fact that under the general law relating to sale of goods the property in the goods has by reason of such sale or purchase passed in another State.

(2) Except in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of any goods where such sale or purchase takes place in the course of inter-State trade or commerce:

Provided that the President may by order direct that any tax on the sale or purchase of goods which was being lawfully levied by the Government of any State immediately before the commencement of this Constitution shall, notwithstanding that the imposition of such tax is contrary to the provisions of this clause, continue to be levied until the thirty-first day of march, 1951.

(3) No law made by the Legislature of a State imposing or authorising the imposition of, a tax on the sale or purchase of goods as have been declared by Parliament by law to be essential for life of the community shall have effect unless it has been reserved for the consideration of the President and has received his assent.

12. The argument of the other side had been that there need not be a specific provision in the MMDR Act with respect to limitation on the taxing power of the State is erroneous. The Affidavit of Union of India dated 26.02.2024 that entry 49 of List II cannot be given an "***absurdly wide reading***"[8] and that the provisions of the MMDR Act "***must be given a wide and liberal construction***"[9] is contrary to the basic principles of interpretation, namely, the provisions of the Constitution must be interpreted more widely than a Parliamentary legislation.

13. That 'Form K'[10] is only a model form of mining lease under Rule 31 of the Mineral Concession Rules, 1960. Even the Rule 31 says that the lease deed shall be ***"in Form K or in a Form as near thereto as circumstances of each case may require***"[11] shows that the lease deed in Form K is not a mandatory form. In any event, a model form in a subordinate legislation cannot restrict the taxing power of a State specifically conferred under Entry 50 List II of the Constitution. Reliance is placed on the judgement of a Constitution Bench of Five Hon'ble judges of this Hon'ble Court in *LIC v. Escorts Ltd.* (1986) 1 SCC 264 (Page 319, *para 69*) wherein it was held "*Surely, the Form cannot control the Act, the Rules or the directions.*"

[8] Para 24 Common Compilation Volume IV-B PDF page 13.
[9] Para 20 Common Compilation Volume IV-B PDF page 12.
[10] Common Compilation Volume IV, page 1586 at 1644.
[11] Common Compilation Volume IV, page 1605.

14. The report of the Study Group[12] shows that the same is only in respect of "***the revision of rates for royalty and dead rent for minerals***" and is an exercise for the limited purpose of Section 9(3) of MMDR Act which is to enhance or reduce the rate at which the royalty shall be payable in respect of any mineral. Report of a Study Group cannot be relied on to draw an inference prescribing limitation on taxing power of a State under entry 50 of List II of Seventh Schedule.

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[12] Common Compilation Volume II (F), page 212.

Entries in List II of the Seventh Schedule to the Constitution
Arranged in order of restrictions

Entry No.	Particulars
1. Entries '**subject to'** any law by Parliament	
37	Elections to the Legislature of the State ***subject to*** *the provisions of any law* made by Parliament.
2. Entries with the expression **'except'**	
3	Officers and servants of the High Court; procedure in rent and revenue courts; fees taken in all courts ***except*** the Supreme Court
29	Weights and measures ***except*** establishment of standards. *Omitted by the Constitution (42nd Amendment) Act, 1976 and shifted to List III as 33A*[13]
65	Jurisdiction and powers of all courts, ***except*** the Supreme Court, with respect to any of the matters in this List.[14]
3. Entry with expression **'not specified', 'subject to',** and **'other than'**	
13	Communications, that is to say, roads, bridges, ferries, and other means of communication ***not specified*** in List I; municipal tramways; ropeways; inland waterways and traffic thereon ***subject to*** the provisions of List I and List III with regard to such waterways; vehicles ***other than*** mechanically propelled vehicles.
4. Entries with expression **'not including'**	
1	Public order (but ***not including*** the use of any naval, military or air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof in aid of the civil power).[15]
51	Duties of excise on the following goods manufactured or produced in the State

[13] List III - *Entry 33A:* Weights and measures *except* establishment of standards.
[14] List I - *Entry 95 :* Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List; admiralty jurisdiction.
[15] List I - *Entry 2*: "Naval, military and air forces; any other armed forces of the Union"
Entry 2A: "Deployment of any armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any State in aid of the civil power; powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment."

	and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India:— (*a*) alcoholic liquors for human consumption; (*b*) opium, Indian hemp and other narcotic drugs and narcotics; but ***not including*** medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (*b*) of this entry.[16]
54	Taxes on the sale of petroleum crude, high speed diesel, motor spiral (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but ***not including*** sale in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods.[17] *Substituted by 101st amendment - Earlier it read as "Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of Entry 92-A of List I."*
66	Fees in respect of any of the matters in this List, but ***not including*** fees taken in any court.[18]
5. Entries with expression **'other than'**	
7	Pilgrimages, ***other than*** pilgrimages to places outside India.
12	Libraries, museums and other similar institutions controlled or financed by the State; ancient and historical monuments and records ***other than*** those declared by or under law made by Parliament to be of national importance.
32	Incorporation, regulation and winding up of corporations, ***other than*** those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies.
55	*Taxes on advertisements **other than** advertisements published in the newspapers and advertisements broadcast by radio or television* *Omitted by the Constitution (101st Amendment) Act, 2016*

[16] List I - *Entry 84* (Prior to substitution by Constitution (101st Amendment) Act, 2016: "Duties of excise on tobacco and other goods manufactured or produced in India except—
(*a*) alcoholic liquors for human consumption;
(*b*) opium, Indian hemp and other narcotic drugs and narcotics,
but including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (*b*) of this entry."

[17] List I - *Entry 92A* : "Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce."

[18] List I -*Entry 96*: "Fees in respect of any of the matters in this List, but not including fees taken in any court."

63	Rates of stamp duty in respect of documents ***other than*** those specified in the provisions of List I with regard to rates of stamp duty.
6. Entry with expression '**to the extent'**	
62	Taxes on entertainments and amusements ***to the extent*** levied and collected by a Panchayat or a Municipality or a Regional Council or a District Council.
7. Entry '**subject to'** specific entry of List I & III	
11	*Education including Universities,* ***subject to*** *the provisions of entries 63[19], 64[20], 65[21] and 66[22] of List I and entry 25 of List III[23]* *Omitted by the Constitution (42nd Amendment) Act, 1976 and shifted to List III as entry 25[24].*
8. Entries '**subject to'** specific entry of List I	
2	Police (including railway and village police) ***subject to*** the provisions of entry 2A of List I.[25]
17	Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power ***subject to*** the provisions of entry 56 of List I[26].
22	Courts of wards ***subject to*** the provisions of entry 34 of List I[27]; encumbered and attached estates.

[19] List I-*Entry 63:* The institutions known at the commencement of this Constitution as the Benares Hindu University, the Aligarh Muslim University and the [Delhi University; the University established in pursuance of article 371E;] any other institution declared by Parliament by law to be an institution of national importance.

[20] List I-*Entry 64:* Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance.

[21] List I-*Entry 65:* Union agencies and institutions for—
(a) professional, vocational or technical training, including the training of police officers; or
(b) the promotion of special studies or research; or
(c) scientific or technical assistance in the investigation or detection of crime.

[22] List I-*Entry 66:* Coordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

[23] List III-*Entry 25:* Vocational and technical training of labour [Prior to the Constitution (42nd Amendment) Act, 1976].

[24] List III-*Entry 25:* Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.

[25] List I-*Entry 2A:* Deployment of any armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any State in aid of the civil power; powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment.

[26] List I-*Entry 56:* Regulation and development of inter-State rivers and river valleys 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.

[27] List I-*Entry 34:* Courts of wards for the estates of Rulers of Indian States.

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.
24	Industries ***subject to*** the provisions of entries 7[28] and 52[29] of List I.
33	Theatres and dramatic performances; cinemas ***subject to*** the provisions of entry 60 of List I[30]; sports, entertainments and amusements.
9. Entries '**subject to'** specific entry of List III	
26	Trade and commerce within the State ***subject to*** the provisions of entry 33 of List III.[31]
27	Production, supply and distribution of goods ***subject to*** the provisions of entry 33 of List III.[32]
36	Acquisition or requisition of property, except for the purposes of the Union, ***subject to*** the provisions of entry 42 of List III[33] *Omitted by the Constitution (7th Amendment) Act, 1956*
57	Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars ***subject to*** the provisions of entry 35 of List III.[34]
10. Entry with the expression '**subject to any limitation'** imposed by Parliament	
50	Taxes on mineral rights ***subject to any limitations*** imposed by Parliament by law relating to mineral development.
11. Entries without any **'restriction'**	
4	Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other States for the use of prisons and other institutions.

[28] List I-*Entry 7:* Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war.
[29] List I-*Entry 52:* Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.
[30] List I-*Entry 60:* Sanctioning of cinematograph films for exhibition.
[31] List III-*Entry-33: Trade and commerce in, and the production, supply and distribution of,—*
(a) the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products;
(b) foodstuffs, including edible oilseeds and oils;
(c) cattle fodder, including oilcakes and other concentrates;
(d) raw cotton, whether ginned or unginned, and cotton seed; and
(e) raw jute.
[32] *Ibid.*
[33] List III-*Entry 42:* Acquisition and requisitioning of property.
[34] List III-*Entry 35:* Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied.

5	Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, districts boards, mining settlement authorities and other local authorities for the purpose of local self- government or village administration.
6	Public health and sanitation; hospitals and dispensaries.
8	Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors.
9	Relief of the disabled and unemployable.
10	Burials and burial grounds; cremations and cremation grounds.
14	Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases.
15	Preservation, protection and improvement of stock and prevention of animal diseases; veterinary training and practice.
16	Pounds and the prevention of cattle trespass.
18	Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.
19	*Forests* *Omitted by the Constitution (42nd Amendment) Act, 1976 shifted to List III as entry 17A*[35]
20	*Protection of wild animals and birds* *Omitted by the Constitution (42nd Amendment) Act, 1976 and shifted to List III as entry 17B*[36]
21	Fisheries
25	Gas and gas-works.
28	Markets and fairs.
30	Money-lending and money-lenders; relief of agricultural indebtedness.
31	Inns and inn-keepers.
34	Betting and gambling.

[35] List III *Entry 17A* : Forests.
[36] List III *Entry 17B* : Protection of wild animals and birds.

35	Works, lands and buildings vested in or in the possession of the State.
38	Salaries and allowances of members of the Legislature of the State, of the Speaker and Deputy Speaker of the Legislative Assembly and, if there is a Legislative Council, of the Chairman and Deputy Chairman thereof.
39	Powers, privileges and immunities of the Legislative Assembly and of the members and the committees thereof, and, if there is a Legislative Council, of that Council and of the members and the committees thereof; enforcement of attendance of persons for giving evidence or producing documents before committees of the Legislature of the State.
40	Salaries and allowances of Ministers for the State.
41	State public services; State Public Service Commission.
42	State pensions, that is to say, pensions payable by the State or out of the Consolidated Fund of the State.
43	Public debt of the State.
44	Treasure trove
45	Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues.
46	Taxes on agricultural income.
47	Duties in respect of succession to agricultural land.
48	Estate duty in respect of agricultural land.
49	Taxes on lands and buildings.
52	*Taxes on the entry of goods into a local area for consumption, use or sale therein Omitted by the Constitution (101st Amendment) Act, 2016*
53	Taxes on the consumption or sale of electricity.
56	Taxes on goods and passengers carried by road or on inland waterways.
58	Taxes on animals and boats.
59	Tolls
60	Taxes on professions, trades, callings and employments.

61	Capitation taxes
64	Offences against laws with respect to any of the matters in this List.