

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

**CIVIL APPEAL NO. 4056-4064 OF 1999**

**IN THE MATTER OF :**

Mineral Area Development Authority

....APPELLANT

Versus

M/s Steel Authority of India & Others

...RESPONDENTS

**VOLUME-II-(C) (WRITTEN SUBMISSIONS)**

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Submitted by:

Place: New Delhi  
Dated: 28.02.2024

**[SUNIL K. JAIN]**  
Advocate-on-Record

**IN THE SUPREME COURT OF INDIA**

**T.P. (C.) 300-304/2024**

**In the matter of:**

Oil India Limited ...Petitioner

v.

Union of India & Ors. ...Respondents

**AND**

**Transferred Case (C.) No. 232/2020**

**In the matter of:**

Oil India Limited ...Petitioner

v.

State of Assam & Ors. ...Respondents

**ADDITIONAL QUESTIONS OF LAW IN RELATION TO  
OILFIELDS AND MINERAL OIL RESOURCES**

1. The Petitioner is a public sector undertaking engaged in the extraction and production of crude oil and natural gas in the States of Assam and Rajasthan. It pays royalty levied under Section 6A of the Oilfields (Regulation & Development) Act, 1948 (hereinafter “ORDA”), read with the Petroleum and Natural Gas Rules, 1959 (hereafter “PNG Rules”).
2. The State of Assam has levied on it, a “*Land Tax*” on the quantity of crude oil and natural gas extracted/produced, under the Assam Taxation (on Specified Lands) Act, 1990, the constitutional validity of which is the subject matter of Transferred Case No. 232/2020.
3. The Petitioner has also been subjected to levy of Service Tax/GST on the royalty paid by it. It has challenged that demand too, which is the subject matter of T.P.(C.) 300-304/2024.
4. In view of differences in the statutory framework in respect of oilfields and mineral oil resources that provide for the levy of royalty, vis-à-vis the regime under the MMDR Act, 1957 and the delegated legislation made thereunder, it is submitted that this Hon’ble Court may be pleased to frame the two additional questions set out below, so that all the issues are compendiously dealt with, with specific reference to the legal regime that governs the oil and gas industry.
5. In any event, the framework for “*oilfields and mineral oil resources*” under the Seventh Schedule to the Constitution of India, referable to which ORDA was enacted, is also different.

6. The subject matter of “*oilfields*” originally, under Entry 36, List I and Entry 23, List II under the Government of India Act, 1935, was part and parcel of mines and mineral development. This entry contemplated a “*declaration*” as to control being made by the Federal legislature. Oilfields, mines and mineral development were compendiously dealt with, under a single legislation - the Mines and Minerals (Regulation and Development) Act, 1948, Section 2 of which contained the declaration as to control.
7. The legislative field of “*oilfields*” was eventually descopeed out of that entry and placed under Entry 53, List I of the Seventh Schedule under the Constitution of India. At the time of doing so, a wholly new expression “*mineral oil resources*” which did not exist in the Government of India Act, 1935, was created. This legislative field was suffixed to “*oilfields*” in Entry 53, List I. This is important because Entry 53, List I does not even contemplate any declaration by Parliament.
8. In 1957, when the Mines and Minerals (Development and Regulation) Act, 1957, was enacted, Parliament retained the Mines and Minerals (Regulation and Development) Act, 1948, but at the same time omitted the declaration in Section 2 thereof, through Section 32 of the Mines and Minerals (Development and Regulation) Act, 1957, read with the third schedule (*This has since been repealed by Section 2 of the Repealing and Amending Act, 1960 read with Schedule I thereof*). Parliament rechristened that legislation as ORDA and confined its application to oilfields and mineral oil resources. Clearly, the declaration was omitted, as Parliament no longer needed to make a “*declaration*” in relation to “*oilfields and mineral oil resources*”.
9. The expression “*mineral oil resources*” in Entry 53, List I has to be given meaning by this Hon’ble Court. So far as the competence of State Legislatures is concerned, there is no corresponding entry in List II in relation to “*oilfields and mineral oil resources*”. This manifests the intention to completely take away the competence of State Legislatures in relation to “*oilfields and mineral oil resources*”.
10. No interpretation of any of the entries in List II ought to be acceded to, which will either create an overlap with “*oilfields and mineral oil resources*” or in any event, create a backdoor for the State Legislatures to assert competence to tax “*oilfields and mineral oil resources*”, and in the process unduly emasculate Entry 97, List I.

11. This Hon'ble Court may accordingly consider adding the two questions proposed below so that all the issues arising for consideration before the Constitution bench are compendiously dealt with, also with reference to the legal regime governing the oil and gas industry:

- A. Whether State Legislatures are vested with competence to levy a tax on production / extraction of mineral oil resources by way of Entry 49 or Entry 50 of List II under the Seventh Schedule to the Constitution of India?
- B. What is the true nature and character of royalty levied under Section 6A of the Oilfields (Regulation and Development) Act, 1948 read with the Petroleum and Natural Gas Rules, 1959?

**Drawn by:**

Debesh Panda, Advocate

Udbhav Gady, Advocate

**Settled by:**

Arvind P. Datar, Senior Advocate

**FILED THROUGH**



**(DEBESH PANDA)**

Advocate on Record for the Petitioner

28.02.2024

New Delhi

**IN THE SUPREME COURT OF INDIA**

CIVIL APPELLATE JURISDICTION

I.A. NO. 7151 of 2024

IN

CIVIL APPEAL NOS. 4056-4064 of 1999

**IN THE MATTER OF:**

Mineral Area Development Authority Etc. ...Appellant

V/s

M/s Steel Authority of India ...Respondent

**AND**

Vedanta Ltd. ...Applicant/Intervenor

**SKELETON OF ARGUMENTS OF MR. ARVIND P. DATAR, SENIOR  
ADVOCATE****Brief Background:**

1. The Intervenor is *inter alia* engaged in the business of exploration and production of Crude Oil and Natural Gas. For the purpose of the aforesaid activities, it enters into a Production Sharing Contracts ("PSC") with the Government of India along with other consortium members.
2. The Intervenor had filed a Writ Petitions, being W.P. Nos. 15796-15797 of 2018, titled as '*Vedanta Limited Vs Union of India & Ors*' (hereinafter referred to as 'Writ Petition') before the Hon'ble Madras High Court *inter alia* challenging the Show Cause Notice seeking to levy Service tax on statutory payments of Royalty, Dead Rent and Annual License Fee

(hereinafter interchangeably referred to as "Royalty/Royalty and other charges") made to the Central Government/State Government in accordance with the provisions of the Oilfields (Regulation and Development) Act, 1948 ("ORD Act") and the Petroleum and Natural Gas Rules, 1959 ("PNG Rules") read with PSC. The said Show Cause Notice was issued on the premise that payment of Royalty and other charges is a consideration for the service *viz.* assignment of right to use natural resources provided by the Government.

3. *Vide* interim order dated 09.07.2018, the Hon'ble Madras High Court granted an interim stay of imposing Service tax on royalty required to be paid or deposited under the provisions of the ORD Act. However, the Court made it clear that the interim order of stay will not come in the way of the Revenue for conducting and completing the adjudication process.
4. Thereafter, without completing the adjudication process, the Revenue filed Special Leave Petition [SLP (C) Nos. 8683-8684 of 2019] before the Hon'ble Supreme Court challenging the interim order dated 09.07.2018 passed by Hon'ble Madras High Court. At present, the said SLPs are pending for consideration before this Hon'ble Court and are tagged along with the lead matter *viz.* Udaipur Chambers of Commerce & Industry & Ors. v. Union of India & Ors., SLP (C) No. 37326/2017.
5. The Applicant / Intervenor humbly submits that the provisions of ORD Act are *pari materia* with the provisions of Mines and Minerals (Development and Regulation) Act, 1957 ("MMDR Act"). Therefore, the above SLPs and above-captioned Civil Appeals involve similar questions of law, especially on the issue whether statutory payment of Royalty under the provisions of MMDR Act/ORD Act, is in the nature of tax or not.

6. The similarity between Section 9 of the MMDR Act and Section 6A of the ORD Act has been tabulated below:

<b>Relevant Provisions of 1948 Act</b>	<b>Relevant Provisions of MMDR Act</b>
<p><u>Section 6A. Royalties in respect of mineral oils</u></p> <p>(1) <i>The holder of a mining lease granted before the commencement of the Oilfields (Regulation and Development) Amendment Act, 1969, shall, notwithstanding anything contained in the instrument of lease or in any law in force at such commencement, pay royalty in respect of any mineral oil mined, quarried, excavated or collected by him from the leased area after such commencement, at the rate for the time being specified in the Schedule in respect of that mineral oil.</i></p> <p>(2) <u>The holder of a mining lease granted on or after the commencement of the Oilfields (Regulation and Development) Amendment Act, 1969, shall pay royalty in respect of any mineral oil mined, quarried, excavated or</u></p>	<p><u>Section 9. Royalties in respect of mining leases</u></p> <p>(1) <i>The holder of a mining lease granted before the commencement of this Act shall, notwithstanding anything contained in the instrument of lease or in any law in force at such commencement, pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area after such commencement, at the rate for the time being specified in the Second Schedule in respect of that mineral.</i></p> <p><u>2) The holder of a mining lease granted on or after the commencement of this Act shall pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area at the rate for the time</u></p>

collected by him from the leased area at the rate for the time being specified in the Schedule in respect of that mineral oil.

(3) Notwithstanding anything contained in Sub-section (1) or Sub-section (2), no royalty shall be payable in respect of any crude oil, casing-head condensate or natural gas which is unavoidably lost or is returned to the reservoir or is used for drilling or other operations relating to the production of petroleum, or natural gas or both

(4) The Central Government may, by notification in the Official Gazette, amend the Schedule so as to enhance or reduce the rate at which royalty shall be payable in respect of any mineral oil with effect from such date as may be specified in the notification and different rates may be notified in respect of same mineral oil mined, quarried, excavated or collected from the areas covered by different classes of mining leases:

Provided that the Central Government shall not fix the rates

being specified in the Second Schedule in respect of that mineral.

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

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

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



*of royalty in respect of any mineral oil so as to exceed twenty per cent of the sale price of the mineral oil at the oilfields or the oil well-head, as the case may be.*

*(5) If the Central Government, with a view to encourage exploration in offshore areas, is satisfied that it is necessary in the public interest so to do, it may by notification in the Official Gazette, exempt generally, either absolutely or subject to such conditions as may be specified in the notification, mineral oil produced from such areas from the whole or any part of the royalty leviable thereon.*

### **Submissions made in the Intervention Application**

7. Various submissions as stated in the Intervention Application are *inter alia* set-out as under for ease of reference:

- a) The Royalty payment is in the nature of tax and it cannot be treated as a consideration for provision of a service. Hence, it does not fall within the charging provision of Service tax under Section 65B(44) read with Section 66 of the Finance Act, 1994.
- b) There is no service provider–service recipient relationship between the Central Government and the Applicant / Intervenor. The terms of PSC clarify (Articles 1.23, 1.26, 1.60, 1.61, 1.67, 1.68, 1.70, 1.73,

5, 6, 8, 15, 16, 17) that the Central Government is the partner in the petroleum operations and does not render any service to the Applicant / Intervenor.

- c) Royalty is a compulsory exaction and in the nature of statutory levy under Section 6A(2) of the ORD Act and not merely a contractual consideration paid to the Government.
- d) The powers of the Central Government to vary the rates of Royalty and exempt the levy of Royalty under Section 6A(4) and Section 6A(5) of the ORD Act respectively fortify the fact that Royalty is in the nature of a tax and not a consideration for a service.

**Skeleton of Arguments – Royalty paid under the ORD Act is in the nature of tax**

- a) Royalty is a special impost under the ORD Act and therefore, covered under the definition of 'tax' in Article 366(28) of the Constitution of India, 1950 ("Constitution"). **[See *Kesoram Industries*<sup>1</sup> (Para 447)].**
- b) It is a compulsory levy imposed under Section 6A(2) of the ORD Act and not merely a contractual consideration. The Royalty collected is not for endowment of any special benefit or grant of any service.
- c) The nomenclature of the impost being 'Royalty' has no bearing upon the true nature of the levy, which is in the nature of tax.
- d) The Central Government has powers to vary the rates of Royalty in terms of Section 6A(4) of the ORD Act and much like any other tax

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<sup>1</sup> [(2004) 10 SCC 201]

has the power to exempt the levy of Royalty in terms of Section 6A(5) of the ORD Act.

- e) It is a trite law that for a levy of tax to be valid, four essential components, namely (a) taxable event, (b) taxable person, (c) rate of tax and (d) measure of tax, ought to be present in a statute. **{Ref: Govind Saran Ganga Saran v. Commissioner of Sales Tax & Ors., [1985 (Supp) SCC 205]; State of Karnataka v. State of Meghalaya, [(2023) 4 SCC 416]}**
- f) In the present case, Section 6A of the ORD Act fulfils the essential components of taxation viz. –
- (i) Taxable Event – Extraction of minerals by a holder of mining lease.
  - (ii) Taxable Person – The lease holder is the person liable to pay Royalty.
  - (iii) Measure of Tax – The quantum of Royalty to be paid on the quantity of oil extracted from the land.
  - (iv) Rate of Tax – The rate of Royalty is determined under the schedules under the ORD Act *read with* PSC and is changed by means of notifications as and when required.
  - (v) Filing of return – The lease holder is required to furnish a monthly return showing the quantity of crude oil obtained during the preceding month from mining operations conducted pursuant to the lease. **[See Rule 14(2) of PNG Rules]**

- (vi) Power to inspect and frame assessment – If the Central Government or the State Government is not satisfied with the return furnished under Rule 14(2) of the PNG Rules, then Rule 14(3) of the PNG Rules grants them the power to inquire/inspect the records of the lease holder and also empowers them to correctly assess the quantity of crude oil and applicable Royalty on such assessed quantity.
- g) In *India Cement Ltd.*<sup>2</sup>, the Hon'ble Supreme Court was conscious of the fact that Royalty is a central levy which is in the nature of tax and therefore, it is not a typographical error as held by the majority in *Kesoram Industries*. [**See India Cement (Para 34, 40 & 41)**]
- h) The Government of India, Ministry of Mines in January, 2011, brought out a publication named "mineral royalties". Some relevant extract from the said publication of the Government of India are mentioned below:

*"...Royalty in law means payment made to the owner of certain types of rights by those who are permitted by the owners to exercise such rights. Levy of Royalty on minerals is a universal concept based on the premise that mineral resources are "wasting assets". A royalty levied on mineral production has been widely advocated for a number of reasons. The rationale for royalty is that it is a payment to mineral rights holder from mineral producer in consideration for the extraction of valuable and non-renewable natural resource."*

*"Royalty is the payment of tax to the Government for the (owner) mineral right for the privilege granted by him for mining and producing / dispatching of minerals."*

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<sup>2</sup> [(1990) 1 SCC 12]

- i) On perusal of the above, it is evident that the Government of India itself recognizes Royalty as a tax.
- j) A regulating statute (such as MMDR Act, ORD Act) may contain taxing provisions as there is no prohibition under the Constitution regarding the same. There is no limitation on the power of Parliament to make a statute under several entries, one of which may be a taxing entry. **[See Kesoram Industries (Para 308, 312, 313, 314 & 316)].**
- k) Without prejudice, Royalty payment is a regulatory fee for regulation of oilfields and for the development of mineral oil resources, and not a consideration for a service. **{Ref: Vam Organics Chemicals Ltd. & Ors. v. State of U.P. & Ors., [(1997) 2 SCC 715]; P. Kannadasan v. State of Tamil Nadu, [(1996) 5 SCC 670]}**

Drawn by:

Kumar Visalaksh, Advocate

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Settled by:

Arvind P. Datar, Senior Advocate

**FILED THROUGH  
(SUNIL K. JAIN AND SANSRITI PATHAK)**

Court appointed Nodal Counsels

26.02.2024

New Delhi