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

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Submitted by:

Place: New Delhi
Dated: 23.02.2024

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Mineral Area Development Authority …Appellant

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Written Submission on behalf of
Steel Authority of India

I. Issues for Consideration

1. On consolidation of the eleven questions framed for reference[1], the following issues arise for consideration:

i. Whether the expression '*taxes on minerals rights*' occurring in Entry 50 of List II of the Seventh Schedule to the Constitution, can be said to include levies or imposition of any kind, including royalty or levies in relation to royalty, and if it can be so construed, whether the Mines and Minerals (Development and Regulation) Act, 1957 [**MMDRA 1957**] would not be the '*limitations imposed by Parliament by law relating to mineral development*'?

ii. Whether levies or impositions apparently designed to be levied in connection with the land if in substance are levies with reference to mineral rights activities and relate to the value derived from mineral rights, whether the State Legislature is not denuded of the competence to legislate in respect of such

[1] Mineral Area Development Authority and Others vs. Steel Authority of India and Others; (2011) 4 SCC 450

levies in the face of the all-comprehensive parliamentary law relating to mines and minerals development? In other words, the reference to land in the legislations in question will not be a cloak, as in essence the levies are intrinsically linked with mineral rights and mineral rights activities?

iii. Whether the observation in ***Kesoram***[2], that the statement of law in ***India Cements***[3] that *'**royalty is a tax is a typographic error***', runs counter to the reasoning in ***Orissa Cements***[4]**,** as also the observations made in ***Mahalaxmi***[5], and therefore cannot be treated as the correct statement of law?

iv. In the generic sense of all '*impositions*' (other than fees) partaking the character of tax, whether royalty, regardless of historical connotation attached to the term, will be treated as a tax, and if so, enactments of Section 9 and Section 9A in the MMDRA 1957 would not be limitations imposed by Parliament by law relating to mineral development, within the meaning of Entry 50 of List 2 of Seventh Schedule?

SUBMISSIONS

II. Royalty is Tax in the Specific Context of Mineral Rights

2. It is submitted that the statement of law in ***India Cements***[6] that '*royalty is in the nature of tax*' cannot be treated to be a typographical error. Paragraph 34 of the opinion of *Justice Sabyasachi Mukharji* read with paragraph 40 of the opinion of *Justice G. L. Oza*, does suggest that royalty is treated as tax.

[2] State of West Bengal vs. Kesoram Industries Ltd.; (2004) 10 SCC 201
[3] India Cement Ltd. and Others vs. State of Tamil Nadu and Others; (1990) 1 SCC 12
[4] Orissa Cement Ltd vs. State of Orissa and Others; (1991) Supp 1 SCC 430
[5] State of Madhya Pradesh vs. Mahalaxmi Fabric Mills Ltd; (1995) Supp 1 SCC 642
[6] India Cement Ltd. and Others vs. State of Tamil Nadu and Others; (1990) 1 SCC 12

3. The reason for the Court proceeding to treat *royalty as tax* can be gathered from the explanation that was introduced to Section 115 of the Madras Panchayats Act, by way of Tamil Nadu Panchayats (Amendment and Miscellaneous Provisions) Act, 1964 which reads as follows:

> *[Explanation.— In this section and in section 116, 'land revenue' means public revenue due on land and includes water cess payable to the Government for water supplied or used for the irrigation of land, royalty, lease amount or other sum payable to the Government in respect of land held direct from the Government on lease or licence, but does not include any other cess or the sur- charge payable under section 116, provided that land revenue remitted shall not be deemed to be land revenue payable for the purpose of this section.]"*

4. The trilogy of decisions namely, ***Hingir Rampur***[7]***, Tulloch***[8]***, and India Cements***[9], cover the field and in view of the observations made in ***Orissa Cement***[10] and ***Mahalaxmi***[11], there is no room for continuing to engage on the theory of typographical error.

III. Proper Construction of the Expression 'Taxes on Mineral Rights'

5. The expression '*taxes on mineral rights*' occurring in Entry 50 of List II has to be construed as any levy or impost on mineral rights, which can be levied or imposed under law relating to mines and minerals development. This is so because such taxes on mineral rights are subject to limitations imposed by a parliamentary law on the subject of mines and mineral development.

[7] Hingir Rampur Coal Co Ltd vs. State of Orissa; (1961) 2 SCR 537
[8] State of Orissa vs. M. A. Tulloch; (1964) 4 SCR 461
[9] India Cement Ltd. and Others vs. State of Tamil Nadu and Others; (1990) 1 SCC 12
[10] Orissa Cement Ltd vs. State of Orissa and Others; (1991) Supp 1 SCC 430
[11] State of Madhya Pradesh vs Mahalaxmi Fabric Mills Ltd; (1995) Supp 1 SCC 642

6. Entry 54 of List I is a field of legislation for all matters relating to mines and minerals development. The law under Entry 54 of List I can cover the entire gamut of mineral rights, the procedure for granting mineral rights, and the conditions subject to which mineral rights can be granted, and so it can legitimately include the authority to impose any levy in any form on all matters relating to grant of mineral rights.

7. The concept of royalty while has many connotations, depending on the context, it has a long association with the extraction of minerals and the price to be paid for the privilege granted for the extraction of minerals. The concept essentially means a certain value that can be demanded, for the grant of mineral extraction rights.

8. The grant of mineral rights extraction is for a price. Demand of that price can thus legitimately be treated as a demand in the nature of a tax. Such a demand will be treated as, '*limitation imposed by Parliament by law relating to mineral development*'.

9. It is implicit in the constitutional use of the expression, '*taxes on mineral rights*' occurring in Entry 50, that it connotes such a levy or an impost which Parliament can provide under a law relatable to Entry 54 of List I.

10. As will be seen from the distribution of legislative powers, set out herein below, and also keeping in mind the ***Cess and Other Taxes on Minerals (Validation) Act, 1992*** enacted by the Parliament, post ***India Cements,*** the doubt if any stands cleared.

11. Taxes on '*mineral rights*' are taxes on the right to extract minerals and not taxes on the minerals actually extracted [Wanchoo J in ***Hingir Rampur*** (para 53) approved in ***India Cement*** (para 30)].

12. In ***Synthetics and Chemicals Ltd***[12], in a similar context a seven-judge bench categorically held that in view of the declaration made in the Industrial (Development and Regulation) Act, 1951 (as amended in 1956), the whole field relating to industrial alcohol was occupied by the declaration and hence the State was not even competent to levy sales tax in respect of industrial alcohol.

13. The approval by ***India Cement*** of Division Bench judgement of the High Court of Mysore in ***Laxmi Narayana Mining Company***[13]**,** indicated that ***India Cements*** was alive to the subject of royalty being tax.

14. Royalty like any other extraction under a statute is a compulsory exaction of money levied in exercise of the powers under a statute. This extraction is revisable at the option of the Central Government without the consent or concurrence of the lessee. Further, royalty is not in relation to any service and is fixed uniformly applicable throughout the country. Royalty has all the features of an impost and hence a tax.

15. The traditional concept of royalty, being a share of the owner in the produce, does not hold good after the Constitution has come into force. The Land Reform laws enacted by the States divesting all owners of land of their right, if any, in the minerals that may be found in their land is also significant. Thus, values derived from land alone or say land produce are different from values that derive from mineral rights.

[12] Synthetics and Chemicals Ltd. and others vs. State of Uttar Pradesh and others; (1990) 1 SCC 109
[13] Laxmi Narayana Mining Company vs. Taluk Development Board; AIR 1972 Mysore 299

IV. Distribution of Legislative Powers in general and in relation to Mines and Minerals Development

16. Article 246 is one of the sources of authority to legislate under the Constitution of India. It declares that the Parliament and Legislatures of various States have the '*power to make laws with respect to any of the matters enumerated*' in each of the three lists contained in the Seventh Schedule. It also makes clear that the power of the Parliament is exclusive with respect to List I and that of the State Legislature is with respect to List II. List III indicates various fields over which both the Parliament as well as the State Legislatures have authority to legislate concurrently, subject of course, to the discipline of Article 254.

17. This Hon'ble Court has repeatedly held[14] that the entries in various lists of the Seventh Schedule are not sources of legislative power but are only indicative of the fields with respect to which the appropriate legislature is competent to legislate. In other words, the function of the lists is not to confer powers as they merely demarcate the legislative field. Lists demarcate the area over which the appropriate legislatures can operate. It is also well settled[15] that the widest amplitude should be given to the language of the entries in three lists but some of these entries in different lists or in the same list may override and sometimes may appear to be in direct conflict with each other, then and only then comes the duty of the court to find the true intent and purpose and to examine the particular legislation in question. Each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended in it. Therefore, while examining the scope of the entries, the

[14] Harakchand Ratanchand Banthia vs. Union of India, (1969) 2 SCC 166; Union of India vs. Harbhajan Singh Dhillo; (1971) 2 SCC 779
[15] Synthetics and Chemicals Ltd. and others vs. State of Uttar Pradesh and others; (1990) 1 SCC 109

courts must have necessarily to keep in mind the scheme of the Constitution relevant in the context of the entry in question.

18. A broad pattern can be identified from the scheme of the three lists, the silent features of which are:

- **i.** Fields of legislation perceived to be of importance for sustaining the federation, are exclusively assigned to Parliament;
- **ii.** State Legislatures are assigned only specified fields of legislation unlike the US Constitution;
- **iii.** Residuary legislative power is conferred on Parliament;
- **iv.** Taxing entries are distinct from the general entries; and
- **v.** List III does not contain a taxing entry.

19. Further, there is no logical uniformity in the scheme of the three Lists contained in the Seventh Schedule. Power to legislate is conferred by some of the Articles[16] by an express grant either on Parliament or the State Legislature to make laws with reference to certain matters specified in each of those articles but there is no corresponding list indicating the field of such legislation.

20. However, there are certain entries in List I through which the framers of the Constitution have carved out certain areas of legislation which otherwise are exclusively within the domain of the competence of the State Legislatures. For example, by virtue of the enumeration in Entry 24 of List II, industries would be a subject matter falling exclusively within the competence of the State Legislation.

[16] Articles 2, 3, 11, 15(5), 22(7), 32(3), 33, 34, 59(3), 70, 71(3), 98(2), 326 etc. of the Constitution of India

21. However, Entry 52 of List I indicate that Parliament would be competent to legislate with respect to '*industries*'; *the control of which by the Union of India is declared by Parliament to be expedient in the public interest*'.

22. Similarly, regulation and development of mines and minerals would be a matter which is exclusively within the competence of the State Legislature under Entry 23 of List II but for Entry 54 of List I which clearly stipulates "Regulation of mines and minerals development would be a matter which is exclusively within the competence of the State Legislature under Entry 23 of List II but for Entry 54 of List I.

23. In the present case, the issues arose in the context of law enacted by the Parliament in terms of Entry 54[17] of List I i.e. MMDRA 1957 *vis a vis* competence of the respective States Legislature to enact the following law under Entries 23[18] or 49[19] or 50[20] of List II:

i. **The Bihar (Coal Mining) Area Development Authority Act 1986, as amended** (**BADA Act**):

Section 89 provides for *levy of tax on use of land* for other than agricultural and residential purposes. *Such tax shall be levied*, by notification published in official gazette, *on land being used by any* person, group of persons, *company*, the Central Government or the State Government, local or Corporate Body *for mining*, Commercial or Industrial purposes with the prior approval of the State

[17] **List I Entry 54**: Regulation of mines and minerals development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.
[18] **List II Entry 23**: Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.
[19] **List II Entry 49**: Taxes on lands and buildings
[20] **List II Entry 50**: Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development.

Government. However, such tax shall not exceed Rs. 1.50 per square meter annually for such land but such tax shall not be levied on land which is subject to Holding Tax.

ii. The Orissa Rural Infrastructure and Socio-Economic Development Act, 2004 (**ORISD Act**)

Section 3:

(1) On and from commencement of this Act, there shall be levied and collected a rural infrastructure and socio-economic development tax on all mineral bearing land in the manner hereinafter provided:

Explanation - For the removal of doubts, it is hereby declared that any land which is subject to levy of tax under sub-section (I), shall not be liable to Cess under the Orissa Cess Act. 1962.

(2) The rural infrastructure and socio-economic development tax shall be levied annually on all mineral bearing land at such rate, not exceeding twenty percent of the annual value of such mineral bearing land, as the State Government may, by notification, fix in that behalf, and different rates may be fixed for different mineral bearing land:

Provided that where in case of any mineral bearing land, there is no production of mineral for two consecutive years of more, such land shall be liable for levy of tax at such rate, not exceeding the dead rent payable under the law for the time being in force on that mineral bearing land, as may be prescribed:

Provided further that the State Government shall notify the rate of tax in respect of any such mineral bearing land, once during any period of two years.

(3) The State Government, before fixing the rate of tax under subsection (2), shall appoint a Committee, in such manner as may be prescribed who shall recommend to the State Government the annual value of mineral bearing lands and the rate at which the tax may be levied.

(4) Every notification issued under sub-section (2) shall be laid before the State Legislature for a total period of fourteen days which may be comprised in one or more sessions.

iii. <u>Chhattisgarh (Adosanrachna Vikas Evam Paryavaran) Upkar Adhiniyam, 2005</u> (CUA 2005):

a. Section 3 of the Act *levies infrastructure development cess*, at the rates specified in Schedule-I of the Act, *on the lands on which land revenue and rent, by whatever name called is levied*. As per Schedule-I, rate of this cess on *land covered under mining leases* shall be 5% of the amount of *royalty payable annually*.

b. Section 4 levies environment cess, at the rates specified in Schedule-II of the Act, on the *land on which land revenue or rent, by whatever name called is levied*. As per Schedule-II, rate of this cess on *land covered under mining leases* shall be 5% of the amount of *royalty payable annually*.

iv. <u>The Madhya Pradesh Gramin Avsanrachna Tatha Sadak Vikas Adhiniyam, 2005</u> (MPGATSVA 2005).

a. The said *Act levies*, in terms of Section 3, a *rural infrastructure and roads development tax on all mineral bearing land*. The said tax is levied annually on all mineral bearing land at such rate, not exceeding *20% of the annual value of such mineral bearing land*, as the State Government, by notification, fix in that behalf and

different rates may be fixed for different mineral bearing land. However, where in case of any mineral bearing land, there is no production of mineral for two consecutive years or more, such land shall be liable for levy of tax at such rate, as may be prescribed. Further, the State Government is not empowered to enhance the rate of tax in respect of any such mineral bearing land more than once during any period of three years.

b. Section 2(e) defines *"mineral bearing land" to mean* any land which bears minerals, as defined in Section 3(a) of the MMDR Act and held for carrying on mining operation and includes coal bearing land.

c. Section 2(a) defines *"Annual value of mineral bearing land"* in relation to a financial year, *means ½ of the value of mineral produced from mineral bearing land during the two years immediately preceding that financial year*, the value of mineral being that as could have been fetched by the entire production of mineral during the said two immediately preceding years, had the owner of such mineral bearing land sold such mineral at the price or prices excluding the amount of tax, duty, royalty, crushing charge, washing charge, transport charge or any other amount as may be prescribed, that prevailed on the date immediately preceding the first day of that financial year.

24. The *BADA Act* provides for the levy of tax for the use of land by a company for mining purposes.

25. The *ORISD Act* provides for the levy of tax on all mineral-bearing land at a rate not exceeding twenty per centum of the annual value of such mineral-bearing land or where no production of mineral for two consecutive years or more, such

land shall be liable for levy of tax, not exceeding the dead rent payable under the law.

26. The *CUA 2005* provides for levies of Infrastructure Development Cess and Environment Cess on the land covered under mining leases on which land revenue or rent, by whatever name called, is levied which is at the rate 5 per cent [each cess] of the amount of royalty payable annually.

27. Through *MPGATSVA 2005*, rural infrastructure and roads development tax on all mineral-bearing land i.e. land which bears mineral as defined u/s 3(a) of MMDR Act, is levied not more than @ 20% of the annual value of such mineral-bearing land. This is directly related to the sale price of the mineral excluding taxes, royalties etc. payable on such mineral.

28. In all the four State Acts referred to hereinabove, the levy is directly related to the land used for mining purposes. Since the control of mines and the development of minerals are the areas that fall under Entry 54 List I and, in the exercise of which, the Parliament has enacted MMDRA 1957, the issue that arises is whether the levy or the impost by the respective State Legislature can be justified or sustained either under Entries 23, 49 or 50 of List II. All these aspects stand unequivocally answered in ***India Cements.***

29. Entry 23 List II read with Article 246(3) of the Constitution confers legislative power on the State legislatures in respect of '*Regulation of mines and mineral development*' but that power is '*subject to the provisions of List I with respect to regulation and development under the control of the Union*'.

30. Similarly, Entry 50 List II confers power on the State legislatures in respect of '*Taxes on mineral rights subject to any limitations imposed by Parliament by law*

relating to mineral development'. However, Entry 54 List I enables Parliament to acquire legislative power in respect of '*Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by the Parliament by law to be expedient in the public interest*'.

31. Thus, a combined reading of Entries 23 and 50 in List II and Entry 54 of List I establish that as long as the Parliament does not make any law in the exercise of its power under Entry 54, the powers of the State legislature in Entries 23 and 50 would be exercisable by the State legislature. But when once the Parliament makes a declaration by law that it is expedient in the public interest to make regulation of mines and minerals development under the control of the Union, to the extent to which such regulation and development is undertaken by the law made by the Parliament, the power of the State legislature under Entries 23 and 50 of List II are denuded.

32. Section 2 of the Act declares that it is expedient in the public interest that the Union of India should take under its control the regulation of mines and the development of the minerals to the extent provided in the Act i.e. with respect to minerals other than minor minerals.

33. The Act provides, inter alia, for general restrictions on undertaking prospecting and mining operations, the procedure for obtaining prospecting licences or mining leases in respect of lands in which the mineral vest in the government, the rule-making power for regulating the grant of prospecting licences and mining leases, special powers of Central Government to undertaking prospecting or mining operations in certain cases, and for development of minerals. Sections 2, 3(a), 3(d), 9, 9-A, 13(1), 18, 21, 25 and Second and Third Schedules to MMDR Act clearly point out the taxation on mineral and mineral rights.

34. Section 9 read with the Second Schedule to the Act prescribes the rates of royalty payable by the lessees in respect of each mineral. Section 9A provides for payment of dead rent which is in the nature of a minimum royalty.

35. Section 25(1) specifically refers about '*any rent, royalty, tax, fee or other sum due to the government under this Act or the rules made thereunder*'" and about realisation thereof as arrears of land revenue. Section 21(5) also provides for recovery of '*rent, royalty or tax, as the case may be*'.

36. Therefore, once the Parliament has enacted MMDRA 1957 with the requisite declaration in the public interest making regulation of mines and minerals development under the control of the Union, to the extent to which such regulation and development is undertaken through the MMDRA 1957, the power of the State legislature to make law under Entry 23 or Entry 50 of List II are denuded. Further, the taxing power of the State in Entry 50 of List II is fully covered by the Central Legislation [MMDRA 1957] enacted under Entry 54 of List I and, in view of express provisions of the MMDRA 1957, States are fully denuded to make any law under Entry 50 of List II[21].

37. Land in Entry 49 of List II cannot possibly include minerals[22]. Tax on mineral rights is expressly covered by Entry 50 of List II. Therefore, assuming such tax on mineral rights would be covered under the head taxes under Entry 49 of List II, it would render Entry 50 of List II redundant and, the same is not permissible[23].

[21] India Cement Ltd. and Others vs. State of Tamil Nadu and Others; (1990) 1 SCC 12
[22] Waverly Jute Mills Co Ltd v Raymon & Co. (I) Pvt Ltd; (1963) 3 SCR 209
[23] India Cement Ltd. and Others vs. State of Tamil Nadu and Others; (1990) 1 SCC 12

38. In ***India Cements*** this Hon'ble Court has also overruled its earlier view[24] taken while dealing with the legislative competence of Sections 78 & 79 of the **Madras District Boards Act** by which land cess was made payable on the basis of royalty. As per the earlier view the cess therein related to land and, would, therefore, be covered by Entry 49 of List II and, thus it was held that land cess paid on royalty has a direct relation to the land and only a remote relation within mining.

39. This Hon'ble Court[25] held that its earlier view that "it is not necessary to consider the meaning of the expression 'tax on mineral right' following under Entry 50 of List II inasmuch Parliament has not made any tax on mineral rights" is not the correct approach.

V. Analysis of Entries relating to Taxes: Entry 49 Of List II - Tax On Land

40. While the land may generally include the minerals underneath it, the subject matters of land and minerals have been separately dealt with under Entries 18 and 23 of List II. Thus, separation has significance. By such separation, distinct land produces with their differential feature are made apparent. All consequential results based on such separation will have to follow.

41. The taxation entries are distinct, being Entries 49 and 50 respectively. Entry 50 deals with taxes on 'mineral rights', which is independent of the subject matter covered by Entry 49 – '*taxes on lands and buildings*'. Entry 49 could not be so interpreted so as to render Entry 50 of List II redundant (vide pg. 94, para 25 of India Cement).

[24] H.R.S. Murthy vs. Collector of Chittoor; (1964) 6 SCR 666
[25] India Cement Ltd. and Others vs. State of Tamil Nadu and Others; (1990) 1 SCC 12

42. Tax on land under Entry 49 could only be a levy on land as a unit and not on anything and everything traceable to land and the levy must be directly imposed on land and must also bear a definite relationship to the land (pg. 93-94, paras 22-23 of ***India Cement***).

43. A tax on land also presupposes the continued existence of the land - the subject matter of the levy. Minerals, once extracted cease to be part of the land. Levy in relation to things that have ceased to be land cannot fall under Entry 49.

VI. M. Kesoram suffers from inconsistencies as may be evident from the following:

44. The following principles, are in consonance with earlier decisions of the Court.

Principle 3 '*The mechanism and method chosen by the legislature for quantification of tax is not decisive of the nature of tax though it may constitute one relevant factor out of many for throwing light on determining the general character of the tax*'.

Principle 5 '*In which entry the impugned legislation falls by finding out the pith and substance of the legislation?*'

Principle 7 **'***To be a tax on land, the levy must have some direct and definite relationship with the land*'.

45. Under all the impugned Acts, the measure of levy is calculated with reference to the '*annual value of mineral bearing land*'.

46. It is clear that under the impugned Acts, the measure of the levy relates only to the production of minerals and the value of minerals so produced and has no bearing or nexus with the land as such. As a result, the enquiry has to be, whether a levy on mineral rights cloaked as a levy on land does not fall outside Entry 49. The necessary enquiry thereafter will be whether such a levy by whatever name called will not fall within the scope of the MMDRA 1957.

VII. On the basis of the 'aspect theory', Royalty is Tax from one aspect

47. As submitted above royalty is in the nature of a demand on mineral rights. And in so far as such a demand is dealt with by the MMDRA 1957, the authority available to the State Legislature under Entry 50, stands denuded.

48. It is immaterial that Entry 54 of List I does not expressly talk about taxes on mineral rights. It is also immaterial that there are no other entries in List I providing in regard to taxes on mineral rights. Entry 54 of List I read with the latter part of Entry 50 of List II, namely '*limitation imposed by Parliament by law relating to mineral development*' clearly suggests that Entry 54 of List I is wide enough to include the competence of Parliament to demand any levy in relation to mineral rights.

49. Demands by any description which, directly or indirectly, relate to the value arising out of mineral rights activities will fall under the expression, 'taxes on mineral rights' in the first part of Entry 50 of List II. To that extent, the provisions of various State Legislature under review in this case will fall foul of the second part of Entry 50 of List II.

50. If all matters relating to demand in any aspect whatsoever relating to mineral rights will fall under Entry 54 of List I, it cannot be canvassed that the power to impose taxes on mineral rights is withheld from the scope of such entry only because royalty is not expressly dealt with as a tax.

51. It is well settled that it is the true nature and character of the legislation that matters and not its impact. Therefore, without prejudice to the stand that royalty is a tax, whether royalty may not be treated as a tax from any other aspect or

from any other consideration, will be wholly irrelevant for the purposes of construing Entry 54 of List I and the width of its power.

52. The question as to whether royalty is a tax or not has implications not only in the context of MMDRA 1957, but generally for the purposes of devising many tax regimes. The statement of law in ***India Cements*** holds the field. The doubts raised in ***Kesoram***, are not appealing enough to reverse the India Cements opinion. However, since the question of royalty as tax, has arisen only in the context of Entry 54 of List I and Entry 50 of List II, it must be taken to be confined only to the domain of mineral rights and its impact on any other possible aspect of the conception of royalty need not be the subject of enquiry in these proceedings.

53. The issue of conflict between the competence of State Legislatures to impose any levy with reference to the value of mineral rights and the parliamentary law under Entry 54 of List I arose prior to the year 2015. Post-2015, all mineral rights are now granted by the auction process. Under this process, the sharing of proceeds of the auction has been provided for. Therefore, as far as the need, if any for the State to seek avenues of levy in relation to mineral rights, may not exist at all.

VIII. Hingir Rampur and Tulloch wrongly distinguished in Kesoram

54. The **MMRDA 1948** contained specific provisions in Section 6(2) thereof, which authorised the Central Government to frame rules providing for the levy and collection of taxes and fees in respect of minerals mined, quarried, excavated or collected. No rules were, however, framed by the Central Government.

a. *"...Amongst the matters covered by S. 6(2) is the levy and collection of royalties, fees or taxes in respect of minerals mined, quarried, excavated or collected. It is true that no rules have in fact been framed by the Central*

Government in regard to the levy and collection of any fees; but, in our opinion, that would not make any difference..."

b. *"... Therefore, if a Central Act has been passed for the purpose of providing for the conservation and development of minerals and if it contains the requisite declaration, then it would not be competent to the State Legislature to pass an Act in respect of the subject-matter covered by the said declaration. In order that the declaration should be effective it is not necessary that rules should be made or enforced; all that this required is a declaration by Parliament that it is expedient in public interest to take the regulation and development of mines under the control of the Union. In such a case the test must be whether the legislative declaration covers the field or not. Judged by this test there can be no doubt that the field covered by the impugned Act is covered by the Central Act LIII of 1948".*

55. In Tulloch's case, the Court analyzed the provisions of the Orissa Mining Areas Development Fund Act, 1952 vis a vis the MMDRA 1957, which did not contain any specific provisions like Section 6(2) of the MMRDA 1948, but contained provisions like Sections 13, 18 and 25 (MMDRA 1957), which contemplated levy of fee, royalty and taxes etc. under that Act but again rules had not been framed till then. Rejecting the contention that the absence of a specific provision like Section 6 of the MMRDA 1948 (which empowered the Central Government to make rules for levy of taxes), in the MMDRA 1957, was an important point of distinction between the two Acts, the Court held (at pg. 1291, para 12):

"...It was suggested that whereas S.6 of the Act of 1948 empowered rules to be made for taxes being levied, there was no specific power to impose taxes under that of 1957. It is not necessary to discuss the materiality of this point because what we are concerned with is the power to levy a fee, and there is express provision therefor in S.13 of the Central Act of 1957 apart from the implication arising from S.25 thereof, which runs:

"25. Any rent, royalty, tax, fee or other sum due to the Government under this Act or the rules made thereunder or under the terms and conditions of any prospecting license or mining lease may, on a certificate of such officer as may be specified by the State Government in this behalf by general or special order, be recovered in the same manner as an arrear of land revenue.""

56. The Court further held (at pg. 1291, para 12):

"We ought to add that besides we see considerable force in Mr. Setalvad's submission that sub-ss. (1) and (2) of S. 18 of the Central Act of 1957 are wider in scope and amplitude and confer larger powers on the Central Government than the corresponding provisions of the Act of 1948."

57. It was, therefore, clearly held that the MMDRA 1957 covered even a wider area than that covered by the provisions of the MMRDA 1948.

Submitted by:

Place: New Delhi
Date: 23.02.2024

[SUNIL K. JAIN]
Advocate on behalf of the Respondent/SAIL

BEFORE THE HON'BLE SUPREME COURT OF INDIA

C.A. NO. 1883 OF 2006

IN THE MATTER OF:

STATE OF ORISSA

...APPEALLANT

VERSUS

NATIONAL ALUMINIM CO. LTD AND ANR

… RESPONDENTS

WRITTEN SUBMISSIONS ON BEHALF OF MR. HARISH SALVE, SENIOR ADVOCATE

ASSISTED BY MR. OMAR AHMAD, ADVOCATE

PARTY: RESPONDENT NO. 2 I.E. EASTER ZONE MINING ASSOCIATION

ADVOCATE ON RECORD: RITIKA GAMBHIR KOHLI

A. INTRODUCTION

1. This matter was referred to a bench of nine learned Judges by order dated 30 March 2011 ("**Reference Order**")[1]. The Reference Order framed 11 questions of law to be decided by this Hon'ble Bench.

2. The legislative competence of the tax levied by the State Government which is computed on an *ad valorem* basis as a percentage of the Royalty paid for extraction of ore is in issue. The State Governments, rely on Entries 23, 45, 49, and 50 of List II of the Seventh Schedule to the Constitution of India, 1950, to justify the imposition of tax. The Respondent's case is that:

   a) The fasciculus of the entries for imposition of tax on mineral rights [Entry 50 of List II] and for the regulation and development of mines [Entry 54 of List I] is that the taxing power of the state is inhibited by any *regulatory* laws i.e., non-tax laws made by Parliament;

   b) The Mines and Minerals (Development and Regulation) Act, 1957 ("**MMDR Act**")[2] provides for an exaction – by way of Royalty for the exercise of mineral rights that vest in the State and are leased to the Lessees, and this is at the rate fixed by Parliament and cannot be increased by the State Legislature; and

   c) The mineral rights, under the present legal system in India, in most cases, vest in the State and thus a tax on mineral rights as such cannot be imposed, over and above the exaction by law made by Parliament for working these very mineral rights. Thus, the provisions of the MMDR Act, that provide for the payment of Royalty and provide an exclusive mechanism for increase in the

[1] Mineral Area Development Authority and Ors vs. Steel Authority of India and Ors. [Civil Appeal Nos. 4056-64/1999], (2011) 4 SCC 450 [PDF Pg. 7-10/Vol. V/Pg. 1-4]
[2] Pg. 910-1011/Vol. IV

rates of Royalty are the exaction for creation of mineral rights in favor of private parties and there cannot again be a tax on mineral rights.

3. As a paraphrase of the points set out above, the contention of the Respondents, and which has been referred to the Constitution Bench is whether Royalty is a tax on mineral rights.

B. WHETHER ROYALTY IS A TAX: FROM INDIA CEMENT TO KESORAM - BACKGROUND LEADING TO THE REFERENCE ORDER

4. On 25 October 1989, this Hon'ble Court in ***India Cement Ltd. and Ors. vs. State of Tamil Nadu and Ors, (1990) 1 SCC 12*** ("**India Cement**") held the tax to be unconstitutional. One of the reasons given was that Section 9 of the MMDR Act covers the field and in the context of the interplay between the entries in List I and List II, **royalty imposed under the MMDR is a tax**. Thus, the cess on royalty being a tax on royalty, was beyond the legislative competence of the State Legislature. ***India Cement*** further ruled that given the Union's occupation of the entire field, the State Legislature was denuded of its competence under Entry 23 of List II.

5. Several judgments[3] of this Hon'ble Court followed the law laid down in ***India Cement***.

6. In a judgment delivered on 15 January 2004 in ***State of W.B. vs. Kesoram Industries Ltd. and Ors, (2004) 10 SCC 201*** ("**Kesoram**"), a bench of five judges held that Royalty is not a tax[4] and that the State Legislatures were within their legislative competence to impose the tax in question. The majority in ***Kesoram*** concluded that

[3] Orissa Cement Ltd. vs. State of Orissa and Ors., 1991 Supp (1) SCC 430 [PDF Pg. 1329-1402/Vol. V/Pg. 1323-1396]; State of M.P. vs. Mahalaxmi Fabric Mills Ltd and Ors., 1995 Supp (1) SCC 642 [PDF Pg. 1567-1595/Vol. V/Pg. 1561-1589]; Saurashtra Cement & Chemical Industries Ltd and Anr. vs. UOI and Ors., (2001) 1 SCC 91 [PDF Pg. 1937-1963/Vol. V/Pg. 1931-1957]

[4] See paragraphs 56 - 71/Kesoram [PDF Pg. 2111-2116/Vol. V/Pg. 2105-2110]

"[r]oyalty is not a tax"[5] and declared that "*even in India Cement it was not the finding of the Court that royalty is a tax*"[6].

7. Sinha J. delivered a detailed dissenting opinion[7] and criticised the approach of the majority for having disregarded the larger bench decision of ***India Cement***. Sinha J. held that the majority "*may be setting a wrong precedent*".[8]

8. At paragraphs 445 – 454, Sinha J., dealt with the substantive issue as to *"[w]hether royalty is a tax*". Sinha J. held that this issue did not strictly arise for consideration since Royalty was a **statutory impost**. Sinha J. referred to the definition of "*taxation*" in Article 366(28) of the Constitution of India and held that royalty being a statutory impost would come within the purview of "*taxation*".[9] Noting that Royalty may not be a tax "*in its usual sense*" the question whether it was a tax within the meaning of Article 366(28) had not been considered by any of the prior judgments[10].

9. Sinha J. concluded that the impost in ***Kesoram*** would come within the purview of Article 366(28) "*being a special impost on a class of citizen who are mining lessees*"[11].

C. LEGISLATIVE COMPETENCE AND POWER TO TAX

10. One of the problems in these cases has been that the proposition about whether royalty is a tax has been considered in a somewhat abstract way and not in the Constitutional context in which the matter needs to be considered. The real issue

[5] See paragraph 147/Kesoram [PDF Pg. 2151-2152/Vol. V/Pg. 2145-2146]
[6] See paragraph 71/Kesoram [PDF Pg. 2116/Vol. V/Pg. 2110]
[7] See pages 333 – 436/SCC/Kesoram [PDF Pg. 2152-2255/Vol. V/Pg. 2146-2249]
[8] See paragraphs 310, 315, 351, 352, 353/Kesoram [PDF Pg. 2191, 2192, 2198/ Vol. V/Pg. 2185, 2186, 2192]
[9] Paragraphs 445 – 447/ Kesoram [PDF Pg. 2219-2220/Vol. V/Pg. 2213-2214]
[10] Paragraph 449/Kesoram [PDF Pg. 2220/Vol. V/Pg. 2214]
[11] Paragraph 454/Kesoram [PDF Pg. 2221/Vol. V/Pg. 2215]

relates to the effect of the Parliamentary declaration in the MMDR Act and the fixing of Royalty under Section 9 upon the taxing power of State under Entry 50 of List II.

11. The issue can be reformulated as:

> Whether, on account of the interplay between Entry 50 of List II and Entry 54 of List I, the imposition of "Royalty" under Section 9 of the MMDR Act is a limitation by Parliament "*...by a law relating to mineral development*" on the competence of the State to impose a tax on mineral rights.

12. Entry 50 of List II is a taxing entry. Generally, taxing entries and entries relating to the fields of legislation for regulation of activities operate in separate areas.[12] Exceptionally, Entry 54 of List I imposes a limitation on the right of the State to impose a tax on mineral rights and this was with reference to a limitation which may be imposed by Parliament "*by law relating to mineral development*" i.e., a non-tax entry.

13. Entry 50 of List II provides for "*taxes on mineral rights*". Whatever may have been the position under the Government of India Act, 1935[13] (there was a similar entry 44 in list II - the Provincial List), since 1950, minerals vest in the state. In the context of Article 297[14] of the Constitution, which relates to mineral oils which vest in the Union, it is now settled that these are held in trust by the Union and State

[12] M.P.V. Sundararamier & Co. v. State of A.P., 1958 SCC OnLine SC 22 (paragraphs 51, 55) [PDF Pg. 93-141/Vol. V/Pg. 87-135], State of Karnataka v. State of Meghalaya, (2023) 4 SCC 416, paragraphs 72-92 [PDF Pg. 3767-3848/Vol. V/Pg. 3761-3842]

[13] Pg. 545-780/Vol. IV

[14] Reliance Natural Resources Ltd. v. Reliance Industries Ltd., (2010) 7 SCC 1 (paragraphs 72, 114-116, 247); Natural Resources Allocation, In Re, Special Reference No.1 of 2012, (2012) 10 SCC 1 (paragraphs 88-95)

Governments to be used for public good. This is one step removed from the classical right of a sovereign of ownership over all natural resources.

14. The ownership of minerals in most cases vests in the State on account of the succession under Article 294 of the Constitution save and except those cases where the Crown had created private land tenures which included the minerals.[15] The State has been held to have a sovereign right to demand royalty on the mining of minerals. In the case where the State is the owner of the minerals, this sovereign right to demand a "royalty" coalesces with the right to impose a tax on mineral rights. The power to exact a sum for exercise of mineral rights in relation to minerals that vest in the State (in its sovereign capacity and held as a trustee of a *public trust*) is regulated by Section 9 of the MMDR Act. Where the mineral rights vest in private hands, the sovereign power of the State would only be available under a law made under Entry 50 of List II.

15. Thus, the proposition that Royalty is like a tax and there cannot be a further tax on mineral rights rests on this scheme of the Constitution. It is not a general proposition that Royalty under a mining lease is a tax per se – that cannot be right generally nor even where under the Mineral Concession Rules, 1960[16], the lease has to be in a statutory form but the Royalty is payable to a private owner of minerals.

16. The State is, as the sovereign, the owner of mineral rights but may part with these rights under a lease which is in accordance with the MMDR Act. Wanchoo J in his dissent in ***Hinger-Rampur Coal Co. Ltd vs. State of Orissa, (1961) 2 SCR 537***,

[15] Raja Anand Brahma Shah v State of UP, (1967) 1 SCR 373, Monnet Ispat & Energy Ltd. v. Union of India, (2012) 11 SCC 1 [PDF Pg. 2760-2915/Vol. V/Pg. 2754-2909], Thressiamma Jacob v. Deptt. of Mining and Geology, (2013) 9 SCC 725, State of Kerala v. Kerala Rare Earth & Minerals Ltd., (2016) 6 SCC 323, State of Meghalaya vs. All Dimasa Students Union, (2019) 8 SCC 177 [PDF Pg. 3607-3709/Vol. V/Pg. 3601-3703]

[16] Pg. 1586-1703/Vol. IV

said[17] "….***<u>There should therefore be no difficulty in holding that taxes on mineral rights are taxes on the right to extract minerals and not taxes on the minerals actually extracted.</u>*** **…**". Although the judgment goes on to refer to Royalty also, it makes a distinction between a tax on the GRANT of mineral rights and a tax on the minerals produced by working those rights. At the stage of the "grant", where the grant is by the State, there cannot be the imposition of any tax on mineral rights as until the mineral is extracted, it continues to vest in the State. It is only after the mineral is removed and royalty is paid that title to the mineral passes to the owner.

17. After the framing of the Mineral (Auction) Rules, 2015[18], a mining lease is granted by auction for the entire mineral in the area, and the lessee has to pay the price of the mineral upon despatch. However, royalty continues to be payable under Rule 13 read with the MMDR Act and the Rules made for this purpose. The grant of mineral rights in their entirety now takes place upon the auction, and lessee has to pay the amount bid for at the time of despatch. However, the State continues to get Royalty – such a royalty can, in law, only be in the nature of a tax and is not the price of the mineral extracted.

18. The new legal regime under the Mines and Minerals (Development and Regulation) Amendment Act, 2015[19], undermines entirely the legal premise on which the ***Kesoram*** judgment held that royalty was paid for the mineral rights, and thus, a tax on mineral rights could still be levied and royalty paid could constitute a measure for the imposition of such a tax.

[17] Paragraph 53/ Hinger-Rampur Coal Co. Ltd vs. State of Orissa, (1961) 2 SCR 537 [PDF Pg. 172-173/Vol. V/Pg. 166-167]
[18] Pg. 2176-2204/Vol. IV
[19] Pg. 1043-1054/Vol. IV

19. In the constitutional context, the imposition of royalty on a mining lease granted under the statute with respect to minerals that vest in a state and are owned by the State and are held under public trust is a limitation on the exercise of power to tax mineral rights.

20. Where mineral rights vest in a sovereign, royalty is an exaction by the sovereign for the exercise of mineral rights. Royalty is thus of the same genus as a tax on mineral rights in that both are an exaction by the sovereign, and that too in exercise of statutory power. In this context it is important to keep in mind that royalty in respect of mineral rights is not imposed under a contract but is imposed under the statute.[20]

21. Section 9 of the MMDR Act decouples royalty from the exercise of contract rights that may flow under a mining lease. The Central Government is not the owner of any mineral rights and therefore an imposition of royalty under a Union law cannot be contractual in nature. Section 9 is a statutory impost on the holder of a mining lease – the qualifying words are clearly indicative of the exaction by way of royalty being a sovereign exaction akin to a tax on mineral rights. The royalty may be by way of mineral removed or consumed, but the tax is clearly on mineral rights. The GRANT of the lease – which creates the mineral rights was, until the amendments made in 2015, not subject to any premium – nor was the holding of the lease.

22. Having provided for a statutory impost on mineral rights and having provided in sub- section (3) that it is the Central Government who alone can enhance or reduce the rate of royalty, Parliament has clearly imposed a limitation on any exaction by a State with respect to taxes or enactments on mineral rights.

[20] M/s. Laxminarayana, Mining Co., Bangalore and another v. Taluk Development Board and another., AIR 1972 Mys 299 - Paragraph 17 [PDF Pg. 538-549/Vol. V/Pg. 532-543] (see India Cement at paragraph 27).

23. The view of Venkatramiah J. in ***M/s. Laxminarayana Mining Co., Bangalore and another v. Taluk Development Board and another; AIR 1972 Mys 299*** ("**Laxminarayana**"), that generically Section 9 and tax on mineral rights are the same and, in that sense, royalty is a tax on mineral rights as it were for purposes of the limitation provided Entry 50, is clearly right.

24. Paragraphs 17 and 18 of ***Laxminarayana*** reads as under:

> "*17.* ***Entry 50 in List II which authorises the levy of tax on mineral rights is subject to limitations imposed by Parliament by law relating to mineral development made in exercise of its power under Entry 54 of List I. It was contended on behalf of the respondents that in the instant case the tax was not on mineral rights, but on the activity of mining carried on in certain areas. We find it difficult to accept the said contention. As observed by the Supreme Court in State of Orissa v. M.A. Tulloch, AIR 1964 SC 1284 by making a declaration under Section 2 and enacting Section 18 of the Central Act, the intention of the Parliament to cover the entire field of mineral development including tax on mineral rights is made clear. The levy of royalty under Section 9 of the Central Act and the provision for making rules with regard to the fixation and collection of dead rent, fines and fees or other charges and the collection of royalties on prospecting licence and mining lease and the provisions of Section 25 of the Central Act authorising the recovery of any tax payable under the Central Act as arrear of land revenue, clearly shows that the Parliament***

intended that the power to legislate with regard to taxation on mineral rights also should be assumed by it to the exclusion of the State Legislatures. The expression 'royalty' is used differently in different contexts. Sometimes it is used as equivalent to a tax also and in some other cases it is used as representing the amount payable by a lessee in respect of minerals removed by the lessee even though the lessor is not the sovereign Government we are of the opinion that the expression 'royalty' in Section 9 which requires payment of royalty to the State Government as prescribed in the II Schedule connotes the levy of a tax. Vide Laddu Mal v. The State of Bihar, AIR 1965 Pat 491. It is a levy falling outside the scope of Entry 84 in List I which provides for levy of excise duty by Parliament but within the scope of the expression 'tax on mineral rights' within the meaning of that expression in Entry 50 of List II. To us it appears the expression 'tax on mineral rights' includes within its scope the royalty payable on minerals extracted. Mineral rights and mining activity carried on in exercise of those mineral rights appear to us to be indistinguishable in the above context. That appears to be the true intendment of the declaration contained in Section 2 of the Central Act and that it is so enacted in order to see that throughout the 'Indian Union, the rents, royalties and other taxes payable in respect of mining and minerals are uniform. It may be recalled here that in Hingir Rampur Coal Company's case, AIR

1961 SC 459 the Supreme Court has stated that the scope of the Central Act is wider than the scope of the Central Act LIII of 1948 which by Section 6(2) provided for making rules regarding levy and collection of royalties fees or taxes on minerals mined, quarried or excavated (vide paragraph 24 of the judgment).

18. **We are, therefore, of the opinion that by the enactment of the Central Act, the State Legislature lost its legislative power under Entries 23 and 50 of List II to the extent indicated in the Central Act. Hence, we cannot accept the contentions of the respondents that even after the passing of the Central Act, the State Legislature by enacting Section 143 of the State Act intended to confer power on the respondents to levy tax on the mining activities carried on by persons holding mineral concessions.** ***It follows that levy of tax on mining by respondents as Per the impugned notification is Unauthorised and is liable to be set aside.*** *It was however argued that such a declaration cannot be made without pronouncing upon the validity of Section 143 of the State Act we do not agree. Section 143 of the State Act is not inconsistent with the Central Act, It does not in express terms authorise a levy of fee or tax on mining of manganese or iron ore. It cannot also be construed as Conferring such a power on the respondents to levy a tax or fee on mining, in view of the well settled rule of statutory construction that a court construing a provision of law must presume that the intention of the authority in making it*

was not to exceed its power but to enact it validly. Where therefore two constructions are possible, the one which sustains the constitutional validity must be preferred. Section 143 so construed cannot be held to be unconstitutional. What is however liable to be set aside is the notification issued by respondent 1 in exercise of its power under Section 143 of the State Act to the extent it levies a tax on mining of manganese or iron ore." [Emphasis Added]

25. A tax on land and buildings under Entry 49 of List II can never encompass a tax on mineral rights. Under the Indian Constitution, all minerals vest in the state and the ownership of land gives no right to the owner in relation to subsoil minerals – major or minor. A tax on land and buildings cannot tax aircrafts, ships or cars parked on the land. By the same token, a tax on land and buildings cannot tax the mineral lying under the surface.

26. The measure of a tax must have nexus with the nature of the tax.

27. If a tax with reference to mineral rights could be imposed under Entries 45, 49 or 54, then Entry 50 was unnecessary. Moreover, once there is a specific entry for taxes on mineral rights, such a power cannot be included in any other entry[21]. Besides a tax on cars cannot be levied with reference to the value of a house owned by the owner of the car or a ship or aircraft owned by the owner of the car. Similarly, a tax on land cannot be imposed on the basis of the value of the mineral lying in the subsoil.

[21] M.P.V. Sundararamier & Co. v. State of A.P & Ors., 1958 SCC OnLine SC 22 (Paragraphs 51, 55) [PDF Pg. 93-141/Vol. V/Pg. 87-135], Jindal Stainless Ltd & Anr v. State of Haryana & Ors, (2017) 12 SCC 1 (Paragraphs 119, 120, 237.5, 639)[PDF Pg. 2937-3557/Vol. V/Pg. 2931-3551], All-India Federation of Tax Practitioners v. Union of India, (2007) 7 SCC 527 (paragraphs 30, 31) [PDF Pg. 2375-2403/Vol. V/Pg. 2369-2397]

28. Absent a statutory lease, the owner of the land has no right to excavate the land for winning mineral. Admittedly, no tax on the value of the mineral lying in the subsoil can be imposed upon an owner who does not have a statutory lease. The moment the measure is linked to the leasehold rights under a statutory lease, it loses nexus with the nature of the tax, the same way the production in a factory or the income of a factory cannot be the basis even for being adopted as the measure for imposition of tax on buildings.

29. In ***Govind Saran Ganga Saran v. CST, (1985) Supp SCC 205***, this Hon'ble Court held:

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

30. In ***CCE v. Grasim Industries Ltd., (2018) 7 SCC 233***[22], it was held:

[22] See also Union of India vs. Bombay Tyre Intl. Ltd. (1984) 1 SCC 467 (paragraph 14)

"6. On first principles, there can be no dispute. Excise is a levy on manufacture and upon the manufacturer who is entitled under law to pass on the burden to the first purchaser of the manufactured goods. The levy of excise flows from a constitutional authorisation under Schedule VII List I Entry 84 to the Constitution of India. The stage of collection of the levy and the measure thereof is, however, a statutory function. ***So long the statutory exercise in this regard is a competent exercise of legislative power, the legislative wisdom both with regard to the stage of collection and the measure of the levy must be allowed to prevail. The measure of the levy must not be confused with the nature thereof though there must be some nexus between the two. But the measure cannot be controlled by the rigors of the nature. These are some of the settled principles of laws emanating from a long line of decisions of this Court which we will take note of shortly.*** Do these principles that have withstood the test of time require a rethink is the question that poses for an answer in the present reference."

24. Accordingly, we answer the reference by holding that the measure of the levy contemplated in Section 4 of the Act will not be controlled by the nature of the levy. ***So long a reasonable nexus is discernible between the measure and the nature of the levy both Sections 3 and 4 would operate in their respective fields as indicated above. The view expressed in Bombay Tyre International Ltd. is the correct exposition of the law in this***

> ***regard.*** *Further, we hold that "transaction value" as defined in Section 4(3)(d) brought into force by the Amendment Act, 2000, statutorily engrafts the additions to the "normal price" under the old Section 4 as held to be permissible in Bombay Tyre International Ltd.] besides giving effect to the changed description of the levy of excise introduced in Section 3 of the Act by the Amendment of 2000. In fact, we are of the view that there is no discernible difference in the statutory concept of "transaction value" and the judicially evolved meaning of "normal price".*" [Emphasis Added]

31. The judgement of five judges in ***Kesoram*** is clearly wrong when it holds that a tax based on the exercise of mineral rights can be justified as a tax under Entry 45 or Entry 49, treating the value of the minerals only as a measure of the tax[23].

32. Equally, ***Kesoram*** is also clearly wrong as it does not notice that the mineral rights vest in the sovereign for public good, and that royalty is imposed under a statute enacted by Parliament – the Union is not the owner of the mineral rights on which royalties imposed (except mineral oils). Thus, the statutory impost is under a Union legislation in respect of mineral rights vested in a state and such an impost is of the same legal pedigree as a tax on mineral rights.

33. ***Kesoram*** also overlooks the significance of the words of "*limitation*" in Entry 50 and the feature of an exceptional limitation being cast on a taxing power with reference to the regulatory power of the Union.

[23] Paragraph 52 and summary of the majority at paragraphs 129, 143 [PDF Pg. 2109, 2141-2144, 2150/Vol. V/Pg. 2103, 2135-2138, 2144]

34. Sinha J. in his dissent does notice Entry 50 of List II. At paragraph 410, Sinha J. held that the expression "*any limitations*" in Entry 50 "*should not be given a restricted meaning*...". Paragraphs 410 and 444 read as under:

> "*410.* ***The expression "any limitations" in Entry 50 of List II should not be given a restricted meaning as contended by the appellant. In fact, the rule of interpretation that the language of the entries should be given widest scope, should equally apply to the interpretation of the said words. So read, the limitations on "taxes on mineral rights" could be in any form, including occupying the entire field of legislation under Entry 50 of List II by a parliamentary legislation and providing for levy of taxes. The MMRD Act, 1957 precisely achieves the said objectives by occupying the entire field of legislation covered by both Entries 23 and 50 of List II.*** *(See India Cement.)*
>
> *444.* ***Taxes on mineral rights must be different from taxes on minerals which are goods produced. A tax on mineral would be in the nature of excise duty****. Thus, there exists a difference between taxes on mineral rights and duties of excise imposable in terms of Entry 84 of List I.*" [Emphasis Added]

35. The interpretation given by the five judges ***in Kesoram*** also renders Parliamentary control over the regulation and development of mineral rights ineffective. The purpose of giving an overarching power to Parliament in matters of mineral development, particularly enabling Parliament to limit the taxing power of the states in relation to mineral rights, was to create a federation and discourage states from

exploiting natural resources within their geographical confines to the detriment and prejudice of other states which are not similarly endowed.

36. In relation to the rationale of the Parliament's declaration in Section 2, this Hon'ble Court in ***State of T.N. v. Hind Stone, (1981) 2 SCC 205***, held:

> "*6.* ***Rivers, Forests, Minerals and such other resources constitute a nation's natural wealth. These resources are not to be frittered away and exhausted by any one generation. Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation in the best possible way. It is in the interest of mankind. It is in the interest of the nation. It is recognised by Parliament. Parliament has declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals. It has enacted the Mines and Minerals (Regulation and Development) Act, 1957.*** .... ***The public interest which induced Parliament to make the declaration contained in Section 2 of the Mines and Minerals (Regulation and Development) Act, 1957, has naturally to be the paramount consideration in all matters concerning the regulation of mines and the development of minerals. Parliament's policy is clearly discernible from the provisions of the Act. It is the conservation and the prudent and discriminating exploitation of minerals, with a view to secure maximum benefit to the community.*****…** [Emphasis Added]

37. Also, in ***Monnet Ispat***[24], it was held:

> "***293. Mines and minerals are a part of the wealth of a nation. They constitute the material resources of the community. Article 39(b) of the directive principles mandates that the State shall, in particular, direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good.*** *Thereafter, Article 39(c) mandates that State should see to it that operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.* ***The public interest is very much writ large in the provisions of the MMDR Act and in the declaration under Section 2 thereof. The ownership of the mines vests in the State of Jharkhand in view of the declaration under the provisions of the Bihar Land Reforms Act, 1950 which Act is protected by placing it in Schedule IX added by the First Amendment to the Constitution.*** *While speaking for the Constitution Bench in Waman Rao Chandrachud, C.J. had the following to state on the correlationship between Articles 39(b) and (c) and the First Amendment: (SCC p. 387, para 26)*
>
> *"26.* ***Article 39 of the Constitution directs by clauses (b) and (c) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good; that the operation of the economic system does not result in***

[24] (2012) 11 SCC 1 [PDF Pg. 2914/Vol. V/Pg. 2908]

the concentration of wealth and means of production to the common detriment. These twin principles of State policy were a part of the Constitution as originally enacted and it is in order to effectuate the purpose of these directive principles that the First and the Fourth Amendments were passed." [Emphasis Added]

38. The Government of India Act, 1935, similarly empowered the federal legislation to limit the powers of the provincial legislatures in the matter of taxes on mineral rights. The distribution of mineral wealth in India is not uniform of the states and states may for raising resources resort to measures which may put other states at a disadvantage and that is why the legislative lists were structured by giving Parliament control over the taxing power of the State – her unusual feature of the Constitution. If the States are allowed to tax mineral rights, the limitation imposed by Section 9 of the MMDR Act in economic terms would be eviscerated. In ***Orissa Cement Ltd. vs. State of Orissa and Ors., 1991 Supp (1) SCC 430***, this Hon'ble Court held:

"***53. …Read as a whole, the purpose of the Union control envisaged by Entry 54 and the MMRD Act, 1957, is to provide for proper development of mines and mineral areas and also to bring about a uniformity all over the country in regard to the minerals specified in Schedule I in the matter of royalties and, consequently prices.***" [Emphasis Added]

39. Sinha J. in his dissent in ***Kesoram*** noted in relation to Entry 50 List II that the said entry had been copied verbatim from Entry 44 of List II of the Seventh Schedule of the Government of India Act, 1935. Sinha J. held[25]:

"***The entry has been copied verbatim from Entry 44 of List II of the Seventh Schedule of the Government of India Act, 1935. Such an entry was evidently necessary when mineral rights remained vested in private persons by reason of any grant or otherwise. Even now in certain situations, a mineral right may be vested in an individual.***" [Emphasis Added].

40. Thus, the answer to the question in the reference, it is submitted, has to be that once Royalty is imposed by the MMDR Act upon the exercise of mineral rights, the competence of the State to impose mineral rights tax on leases granted by the State (albeit under the discipline of the MMDR Act) stands overridden by Parliamentary legislation relating to the development and regulation of minerals, and the tax on royalty is thus unconstitutional.

[25] Paragraph 435/Kesoram [PDF Pg. 2218/Vol. V/Pg. 2212]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1883/2006

IN THE MATTER OF:-

State of Orissa ……. Appellant

Versus

Steel Authority of India Limited & Ors. ……Respondents

WRITTEN SUBMISSIONS BY MR. S.K. BAGARIA ON BEHALF OF STEEL AUTHORITY OF INDIA LTD (RESPONDENT)

1. In the referral order reported in (2011) 4 SCC 450, following questions have been formulated for being considered by a Bench of 9 Hon'ble Judges of this Hon'ble Court:

   I. Whether "royalty" determined under Sections 9/15(3) of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957 as amended) (in short, MMDR Act) is in the nature of tax?

   II. Can the State Legislature while levying a tax on land under List II Entry 49 of the Seventh Schedule of the Constitution adopt a measure of tax based on the value of the produce of land? If yes, then would the Constitution al position be any different insofar as the tax on land is imposed on mining land on account of List II Entry 50 and its interrelation with List I Entry 54?

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

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

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

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

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

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

IX. Whether List II Entry 50 read with List I Entry 54 of the Seventh Schedule to the Constitution constitute an exception to the general scheme of entries relating to taxation being distinct from other entries in all the three Lists of the Seventh Schedule to the Constitution as enunciated in M.P.V. Sundararamier & Co. v. State of A.P.?

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

XI. What is the effect of the expression "… subject to any limitations imposed by Parliament by law relating to mineral development" on the taxing power of the State Legislature in List II Entry 50, particularly in view of its uniqueness in the sense that it is the only Entry in all the entries in the

three Lists (Lists I, II and III) where the taxing power of the State Legislature has been subjected to "any limitations imposed by Parliament by law relating to mineral development?"

2. To avoid repetitions, the appellant has grouped together some of the said questions in these written submissions. The relevant facts relating to the appellant's case and the applicable legal provisions are mentioned after the submissions on the aforesaid questions.

RE: QUESTIONS 1, 4 – NATURE OF ROYALTY/DEAD RENT

3. Firstly, some dictionary meanings of the expression "royalty" as noticed in different judgements of this Hon'ble Court are reproduced below:

a. Black's Law Dictionary (7th Edn., p. 1330)

> "Royalty – A share of the product or profit from real property, reserved by the grantor of a mineral lease, in exchange for the lessee's right to mine or drill on the land.
>
> Mineral royalty – A right to a share of income from mineral production."

b. Jowitt's Dictionary of English Law, 2nd Edn., at p. 1595

> "Royalty, a payment reserved by the grantor of a patent, lease of a mine or similar right, and payable proportionately to the use made of the 532right by the grantee. It is usually a payment of money, but may be a payment in kind, that is, of part of the produce of the exercise of the right. See Rent."

c. Wharton's Law Lexicon, 14th Edn., at p. 893

"Royalty, payment to a patentee by agreement on every article made according to his patent; or to an author by a publisher on every copy of his book sold; or to the owner of minerals for the right of working the same on every ton or other weight raised."

d. Words and Phrases, Permanent Edn. (Vol. 37-A, p. 597)

"'Royalty' is the share of the produce reserved to owner for permitting another to exploit and use property. The word 'royalty' means compensation paid to landlord by occupier of land for species of occupation allowed by contract between them. 'Royalty' is a share of the product or profit (as of a mine, forest etc.) reserved by the owner for permitting another to use his property."

e. Stroud's Judicial Dictionary of Words and Phrases (6th Edn., 2000, Vol. 3, p. 2341)

"The word 'royalties' signifies, in mining leases, that part of the reddendum which is variable, and depends upon the quantity of minerals gotten or the agreed payment to a patentee on every article made according to the patent. Rights or privileges for which remuneration is payable in the form of a royalty."

f. Words and Phrases, Legally Defined (3rd Edn., 1990, Vol. 4, p. 112)

"A royalty, in the sense in which the word is used in connection with mining leases, is a payment to the lessor proportionate to the amount of the demised mineral worked within a specified period."

g. Mozley & Whiteley's Law Dictionary (11th Edn., 1993, p. 243)

> "A pro rata payment to a grantor or lessor, on the working of the property leased, or otherwise on the profits of the grant or lease. The word is especially used in reference to mines, patents and copyrights."

h. Halsbury's Laws of England, 4th edition, para 236

> "Royalties, means a royalty, in the sense in which the word is used in connection with mining leases, is a payment to the lessor proportionate to the amount of the demised mineral worked within a specific period."

4. Insofar as MMDR Act is concerned, Royalty/dead rent are statutory levies under sections 9 and 9A of the MMDR Act. Subsection (1) relates to a mining lease granted before the commencement of MMDR Act and sub-section (2) relates to a mining lease granted thereafter. In both the situations, the mining leaseholder is statutorily liable to pay royalty in respect of any mineral removed or consumed by him from the leased area at the rate for the time being specified in the 2nd schedule. The 2nd schedule of MMDR Act specifies rates of royalty in respect of different minerals and these are either on ad-valorem basis at the specified percentage of average sale price or at specific rates on per tonne basis.

5. Section 9A of MMDR Act mandates payment of dead rent at the rates specified in the 3rd schedule. The proviso to section 9A (1) of the Act provides that where the holder of a mining lease becomes liable to pay royalty for any mineral removed or consumed from the leased area, he shall be liable to pay either such royalty,

or the dead rent in respect of that area, whichever is greater. The 3rd schedule provides about the rates of dead rent in "Rupees per Hectare per annum". 'Dead rent' is thus calculated on the basis of the area leased while royalty is calculated on the quantity of minerals removed or consumed. Thus, while dead rent is a fixed return, royalty is a return which varies with the quantity of minerals removed or consumed.

6. Under both the said provisions of section 9 and section 9A, the Central Government shall not enhance the rate of royalty or dead rent more than once during any period of 3 years. Section 25 of MMDR Act provides for recovery of the said dues as arrears of land revenue.

7. A mining lease confers upon the lessee the right to extract minerals from the land and to appropriate the same for his own use or benefit and under MMDR Act, the lessee is required to pay the amounts called royalty or dead rent calculated as above and it is an integral part of the concept of a mining lease.

Re: Questions 3, 7, 8 and 9 – "Taxes on Mineral Rights subject to any limitations imposed by Parliament by law relating to mineral development" – scope and ambit of Entry 50/II and its inter-relation with Entry 54/I

8. For the sake of convenience relevant entries are set out below:

> **"Entry 54/I**. Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest."
>
> **"Entry 97/I.** Any other matter not enumerated in List II or List III including any Tax not mentioned in either of those Lists."
>
> **"Entry 23/II**. Regulation of mines and mineral development subject to the provisions of List 1 with respect to regulation and development under the control of the Union."
>
> **"Entry 49/II**. Taxes on lands and buildings."
>
> **"Entry 50/II.** Taxes on minerals rights subject to any limitation imposed by Parliament by law relating to mineral development. "

9. Entry 54/I confers power on the Parliament to have regulation of mines and mineral development under control of the Union, as declared by Parliament by law to be expedient in the public interest. MMDR Act has been enacted by the Parliament in exercise of such powers conferred upon it under Entry 54/1 and in Section 2 thereof, there is a declaration that the Union should take under its control the regulation of mines and the development of minerals to the extent provided under the Act.

10. The expression used Entry 50/II is "taxes on mineral rights". Mineral rights are the rights to extract minerals in accordance with law.

Entry 50/II empowers State Legislatures to levy taxes on mineral rights subject to any limitations imposed by

Parliament by law relating to mineral development. Thus, there is inbuilt limitation in the entry itself. This power of the State Legislature to have taxes on mineral rights gets denuded to the extent the MMRD Act has taken it over.

11. The expression "mineral development" finds place in Entries 54/I, 23/II and 50/II. Entry 23/II is "subject to the provisions of List 1 with respect to regulation and development under control of the Union" and Entry 50/II is "subject to any limitations imposed by Parliament by law relating to mineral development". When MMDR Act, being the law stipulated in Entry 54/I was enacted by the Parliament and the required declaration was made in section 2 of MMDR Act, its immediate effect was that in accordance with the Constitutional scheme of the aforesaid 3 Entries, the State Legislature was denuded of its powers on the subjects covered by Entries 23/II and 50/II to that extent. MMDR Act is a law made by the Parliament under Entry 54/I with respect to regulation and development of mines and mineral development. MMDR Act has the effect of imposing limitations on the power of the State Legislature under Entry 50/II which, in its own terms, is "subject to any limitations imposed by Parliament by law relating to mineral development." In view of the provisions of MMDR Act and the declaration contained therein, the field of legislation to that extent gets occupied and the State Legislature does not have legislative competence to impose a tax or levy under

entry 50/2 as the field is occupied by the provisions contained in MMDR Act.

12. A perusal of MMDR Act makes the aforesaid position quite clear. Sections 2, 3(a) and 3(d), Sections 9, 9-A, 13(1), 13, 18, 21, 25 and Second and Third Schedules to MMDR Act clearly point out that taxation on mineral and mineral rights, viz., any tax, royalty, fee or rent, are provided in the said Act. Sections 9 and 9A relate to statutory liability for payment of royalty or dead rent. Section 9B relates to payment of further amounts in addition to royalty, to District Mineral Foundation of the district in which the mining operations are carried on. Section 13 empowers the central government to make rules inter alia relating to various fees and other levies. Section 21 (5) inter alia provides for recovery of "rent, royalty or tax" in the circumstances specified in the said section. Section 25 (1) provides about "any rent, royalty, tax, fee or other sum due to the government under this Act or the rules made thereunder" and about realisation thereof as arrears of land revenue. No tax on mineral right can be imposed by State Legislature as the entire field of legislation is occupied by Parliament in view of different provisions of MMDR Act and the declaration contained in Section 2 thereof.

13. There is no Entry in List II or List III providing for levy of taxes on minerals. Taxes on mineral rights are different from taxes on goods produced. Taxes on mineral rights are taxes on the right to extract minerals and not taxes on the minerals actually extracted.

14. Amendments of MMDR Act by Act 10 of 2015 further support the aforesaid position. Section 9B mentioned above was inserted in MMDR Act inter alia for establishing District Mineral Foundation and mining leaseholders were required to pay, in addition to royalty, an amount equivalent to the specified percentage as prescribed by the Central Government. Section 9C was inserted providing for establishment of National Mineral Exploration Trust. Section 20A was inserted conferring power on the Central Government to issue directions as required for conservation of mineral resources or on any policy matter in the national interest and for scientific and sustainable development and exploitation of mineral resources and such other matters as necessary for the purposes of implementation of the Act.

15. Since exhaustive provisions as also the Parliamentary declaration, contemplated by Entry 54/I have been made in MMDR Act regarding all kinds of taxation on minerals and mineral rights, the State Legislature is denuded of the power to enact any law imposing any tax or other levy with reference to Entry 50/II.

16. The expression "any limitations" in Entry 50/II is a broad expression and does not have a restricted meaning. The limitations on "taxes on mineral rights" can be in any form, including occupying the entire field of legislation under the said Entry by a parliamentary legislation and providing for levy of taxes. The MMRD Act precisely does that by occupying the entire field of

legislation relating to mines and mineral development and providing for taxes as mentioned above. Once the entire field of legislation is occupied by Parliament in view of MMDR Act and the declaration contained therein, Entry 50/II cannot be attracted. By virtue of the said declaration, the States are totally denuded of the power to levy any taxes with reference to entry 50/2. The denudation of the States is total and not partial.

17. Similarly, by a reading of Entry 23/2, it is clear that Entry 23 is subject to the provisions of List I with respect to regulation and development of mines and mineral development under the control of the Union. Section 2 of MMDR Act makes a declaration that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent provided in the said Act. To the extent to which the Parliament has provided in MMDR Act that the Union should take under its control the regulation of mines and the development of minerals, to that extent the State legislatures' power under entries 50/2 and 23/2 gets superseded and is rendered ineffective.

RE: QUESTION 11 – UNIQUENESS OF ENTRY 50/II

18. Submissions on inter-play between Entry 50/II and Entry 54/I have already been made above.

19. Several entries in List II have specifically been made "subject to" the specified entries of List 1. Some such entries in List 2 are Entries 2, 13, 17, 22, 23, 24, 33

and 54 (before its substitution by the Constitution (101 Amendment) Act, 2016. Entry 37 relating to elections to the legislature of the State is "subject to the provisions of any law made by Parliament". Entry 50/II also follows similar scheme and makes it subject to any limitations imposed by Parliament by law relating to mineral development. Scope and effect of the said limitations has already been explained above.

RE: QUESTION 6 – TAXES ON LAND – SCOPE OF ENTRY 49/II

20. For properly appreciating the scope and ambit of Entry 49/II, it is important to consider other relevant entries of the 7th Schedule to the Constitution, namely, Entries 54 of List I and 23, 49 and 50 of List II.

21. Entry 54/I pertains to regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest. The said declaration by Parliament has been made in the MMDR Act as stated above.

22. MMDR Act contains detailed provisions as regards regulation of mines and mineral development and to the extent to which it is taken under control of the Union, the legislative competence of State Legislature gets denuded. Entry 23/II is subject to the provisions of List I with respect to regulation and development under the control of the Union and Entry 50/II is also subject to

any limitations imposed by Parliament by law relating to mineral development.

23. Entry 49/II reads "taxes on lands and buildings". This Entry has nothing to do with regulation of mines and mineral development (specifically covered by Entry 23/2) and taxes on mineral rights (specifically covered by Entry 50/2) and the field covered by the said entries 23/2 and 50/2 gets carved out of Entry 49/2. Consequently, the aforesaid fields separately and specifically covered by the said entries 23/2 and 50/2 cannot be covered by the expression "lands" in Entry 49/2.

24. This Entry uses the expression "taxes on lands". This expression itself signifies that the Entry relates to levy of tax directly "on land" as a unit. To be a tax on land, the levy must have some direct and definite relationship with the land.

25. "Tax on land" is different from tax "on use of land". In the latter case, the taxing event is not "land" as a unit. On the other hand, the taxing event is the particular use to which land is subjected by the holder. Such use is an "activity" and the tax is on that activity.

26. It is true that Entry 49 is not subject to any other Entry. However, the scope and ambit of Entry 49 is expressly and specifically limited by its own plain language which provides for "taxes on land" and the levy thereunder cannot be on an activity like use of land. It is also true that entries in the Lists are to be construed widely but

at the same time, the specific and clear language of the Entry cannot be ignored or bypassed.

27. The expression "lands" in Entry 49/II cannot include minerals or mineral rights. Though in ordinary sense the word "land" may include everything whether above or below the surface. However, such ordinary meaning cannot be ascribed to the said world "land" as used in Entry 49/II. There are several reasons for the same. Entry 49/II provides for taxes on lands and buildings. The very next Entry 50/II provides for "taxes on mineral rights". If "land" in Entry 49/2 would have included within its fold "mineral rights" also, there would not have been any necessity for a separate Entry 50/II. When "mineral rights" have been separately covered by Entry 50/II, the same must be taken to have been carved out and excluded from the scope and ambit of the word "land" in Entry 49/II. Secondly, Entry 23/II deals with "regulation of mines and mineral development" and this also manifestly makes it clear that the word "land" in Entry 49/II does not include "mines and mineral development" or their regulation. Thirdly, Article 297 of the Constitution separately uses the expressions "lands" and "minerals" and this also is a pointer to the aforesaid effect of "land" in Entry 49/II not including minerals.

28. Principles of interpretation of different entries in the 7th Schedule to the Constitution are well settled and such principles, insofar as relevant for the present matter, are inter-alia the following effect.

a. Where one Entry is made "subject to" another Entry, the field covered by the latter Entry is reserved to be specially dealt with by appropriate Legislature.

b. In case of any apparent conflict between two entries, first endeavour of the court would be to reconcile the same and in case of apparent overlapping, the doctrine of "pith and substance" has to be applied to find out the true nature and character of the legislations.

c. In spite of the fields of legislation having been demarcated, the question of repugnancy between law made by Parliament and a law made by the State Legislature may arise and if there is repugnancy due to overlapping found between List II on the one hand and List I or List III on the other, the State law will be ultra vires and shall have to give way to the Union law.

d. The name given by the legislature to the legislation is immaterial. Regard must be had to the enactment as a whole, its main objects and the scope and effect of its provisions. Incidental and superficial encroachments are to be disregarded.

29. Scope and ambit of Entry 49/II has been gone into by this Hon'ble Court in several judgements and it has been consistently held that the said Entry contemplates tax directly on land, must bear a definite relation to land

and must be levied on land as a unit. Entry 49/II contemplates a tax directly levied by reason of the general ownership of lands and building. (Buckingham & Carnatic Co. Ltd. (1969) 2 SCC 55, Sudhir Chandra Nawn AIR 1969 SC 59 = 1969 (1) SCR 108, D.H. Nazareth (1970) 1 SCC 749 and H.S. Dhillon (1971) 2 SCC 779).

30. The said issue was considered by the 7-Judge Bench of this Hon'ble Court in (1990) 1 SCC 12 India Cements Ltd vs. State of Tamil Nadu (CB) and it was inter alia held as under:

> 22…….But in the instant case, royalty being that which is payable on the extraction from the land and cess being an additional charge on that royalty, cannot by the parity of the same reasoning, be considered to be a tax on land. But since it was not a tax on land and there is no Entry like Entry 46 in the instant situation like the position before this Court in the aforesaid decision, enabling the State to impose tax on royalty in the instant situation, the State was incompetent to impose such a tax. There is a clear distinction between tax directly on land and tax on income arising from land. ……..Construing the said Entry, this Court observed that Entry 49 List II contemplated a levy on land as a unit and the levy must be directly imposed on land and must bear a definite relationship to it. Entry 49 of List II was held to be more general in nature than Entry 86, List I, which was held to be more specific in nature and it is well settled that in the event of conflict between Entry 86, List I and Entry 49 of List II, Entry 86 prevails as per Article 246 of the Constitution .
>
> "23. In Asstt. Commissioner of Urban Land Tax v. Buckingham & Carnatic Co. Ltd.[15] this Court reiterated the principles laid down in S.C. Nawn case[14] and held that Entry 49 of List II was confined

to a tax that was directly on land as a unit. In Second Gift Tax Officer, Mangalore v. D.H. Nazareth[16] it was held that a tax on the gift of land is not a tax imposed directly on land but only on a particular user, namely, the transfer of land by way of gift. In Union of India v. H.S. Dhillon[7], this Court approved the principle laid down in S.C. Nawn case[14] as well as Nazareth case[16]. In Bhagwan Dass Jain v. Union of India[17] this Court made a distinction between the levy on income from house property which would be an income tax, and the levy on house property itself which would be referable to Entry 49 List II. It is, therefore, not possible to accept Mr. Krishnamurthy Iyer's submission and that a cess on royalty cannot possibly be said to be a tax or an impost on land. Mr. Nariman is right that royalty which is indirectly connected with land, cannot be said to be a tax directly on land as a unit. …….. It appears that in the instant case also no tax can be levied or is leviable under the impugned Act if no mining activities are carried on. Hence, it is manifest that it is not related to land as a unit which is the only method of valuation of land under Entry 49 of List II, but is relatable to minerals extracted. Royalty is payable on a proportion of the minerals extracted. It may be mentioned that the Act does not use dead rent as a basis on which land is to be valued. Hence, there cannot be any doubt that the impugned legislation in its pith and substance is a tax on royalty and not a tax on land.

24. ……. Even though minerals are part of the State List they are treated separately, and therefore the principle that the specific excludes the general, must be applied. See the observations of Waverly Jute Mills Co. Ltd. v. Raymon & Co. (I) Pvt. Ltd.[19], where it was held that land in Entry 49 of List II cannot possibly include minerals.

25. ……The expression 'land' according to its legal significance has an indefinite extent both upward and downwards, the surface of the soil and would include not only the face of the earth but everything under it

> or over it. See the observations in Anant Mills Co. Ltd. v. State of Gujarat[20]. The minerals which are under the earth, can in certain circumstances fall under the expression 'land' but as tax on mineral rights is expressly covered by Entry 50 of List II, if it is brought under the head taxes under Entry 49 of List II, it would render Entry 50 of List II redundant. Learned Attorney General is right in contending that entries should not be so construed as to make any one Entry redundant. It was further argued that even in pith and substance the tax fell to Entry 50 of List II, it would be controlled by a legislation under Entry 54 of List I.
>
> 33. In any event, royalty is directly relatable only to the minerals extracted and on the principle that the general provision is excluded by the special one, royalty would be relatable to Entries 23 and 50 of List II, and not Entry 49 of List II.
>
> (Emphasis supplied in all the aforesaid extracts)

31. Based on the aforesaid principles, the following legal position about the scope and ambit of Entry 49/II becomes clear:

i. Entry 49/II contemplates a levy on land as a unit and the levy must be directly imposed on land and must bear a definite relationship to it. Entry 49/II is confined to a tax that is directly on land as a unit. A levy which is indirectly connected with land, cannot be said to be a tax directly on land as a unit.

ii. A levy on annual value based on value or volume of minerals extracted from the land cannot be considered to be a tax on land. In such cases, the levy is directly relatable to the activity of mining and no tax is leviable if no mining activities are carried on. Hence, it is

manifest that it is not related to land as a unit which is the only method of valuation of land under Entry 49/II, but is relatable to the minerals extracted or to the activity of extracting minerals. Such a levy is not a tax on land but in effect and substance it is intrinsically on minerals and is beyond the legislative competence of the State Legislature.

iii. Even though mines and mineral development and taxes on mineral rights are part of the State List, they are treated separately and specifically in entries 23/II and 50/II, and therefore the principle that the specific excludes the general, must be applied and these are not covered by the scope and ambit of Entry 49/II.

Re: Question No. 2 – Can the State Legislature while levying a tax on land under Entry 49/II adopt a measure of tax based on the value of the produce of land?

32. In respect of taxing entries, following well settled principles are relevant:

a. Identification of the subject matter of tax is primarily to be found in the charging section as distinguished from the mode of assessment or the machinery by which it is assessed.

b. The name given by the Legislature is not always decisive or conclusive and it is the substance of the levy and not the form that determines the nature of the tax.

c. Intrinsic character of a tax is not to be determined by the mode of measurement or the standard of calculation prescribed for assessing the amount of tax. The mechanism and method chosen by legislature for quantification of tax is not decisive of the nature of tax though constitutes a relevant factor for throwing light on character of tax.

33. With regard to "measure of tax", the following principles have been laid down in the judgements of this Hon'ble Court:

a. The standard adopted as the measure of assessment may throw light on the nature of the levy but is not determinative of it. When a statutory measure for assessment of the tax is contemplated, it "need not contour along the lines which spell out the levy itself", and "a broader based standard of reference may be adopted for the purposes of determining the measure of the levy". Any statutory standard which maintains a nexus with the essential character of the levy can be regarded as a valid basis for assessing the measure of the tax. (Ujagar Prints (II) v. Union of India, (1989) 3 SCC 488)

b. The measure to which tax rate is to be applied must have a nexus to taxable event of sale and not divorced from it. (State of Rajasthan v. Rajasthan Chemists Assn., (2006) 6 SCC 773)

c. It is true that the standard adopted as a measure of the levy may be indicative of the nature of the tax, but it does not necessarily determine it.

For the purpose of determining the nature of tax, the measure with reference to which a tax is calculated is a relevant factor although not conclusive.

In determining the nature of the tax, consideration may be given to the standard on which tax is levied but that is not the determining factor. The measure of tax is not the sole test.

(State of W.B. v. Kesoram Industries Ltd., (2004) 10 SCC 201)

d. While the measure of the levy may indicate the nature of the tax, it does not necessarily determine it. (Govt. of India v. Madras Rubber Factory Ltd., (1995) 4 SCC 349)

e. Any standard which maintains a nexus with the essential character of the levy can be regarded as a valid basis for assessing the measure of the levy. (Union of India v. Bombay Tyre International Ltd. (1984) 1 SCC 467)

34. Based on the aforesaid principles relating to measure of tax, since Entry 49/II contemplates a levy directly on land as a unit and such levy must bear a definite relationship to land, the measure must maintain a nexus with the aforesaid essential character of the levy. If the

measure is annual value based on value or volume of minerals extracted from the land, the aforesaid necessary prerequisite for justifying the levy under Entry 49/II are not satisfied and the required nexus with the essential character of the levy under entry 49/2 totally disappears. In such cases, no tax is leviable if no mining activities are carried on. Such a tax is not related to land as a unit which is the only method of valuation of land under Entry 49/II but is relatable to minerals extracted. Such a levy is not a tax on land but in effect and substance it is intrinsically on minerals. From such a measure only one inference is deducible that such a levy is not directly a tax on land as a unit but is directly and inextricably related to minerals extracted. When tax is based on annual value of the produce of land, such a measure is completely divorced from the essential character of the levy contemplated under Entry 49/II. The levy is directly and immediately related to there being or not being a produce and the extent, value and quantity of such produce. Such a levy is not a tax "on land" as a unit and is not directly imposed on land and bears no definite relationship to it.

35. There is a clear distinction between tax directly on land on the one hand and tax on income arising from land or on use of land or on produce of land or on activity undertaken on land. In all such cases, the tax is not directly on land as a unit but it is on income or use or produce or activity and if these events do not take place, there is no tax. The tax is directly relatable to

and depends on taking place of the aforesaid events and the extent thereof. In such cases, tax is not on land as a unit which is the only method of evaluation of land under Entry 49/II. Having regard to the nature of the levy in such cases, it is not a tax on land. There is a clear distinction in the concepts of "tax on land" on the one hand and on the other hand a tax on "use of land" or "activities on land" or "produce of land".

RE: QUESTION 10 – EFFECT OF DECLARATION UNDER SECTION 2 OF MMDR

36. This aspect has already been dealt with above while making submissions on Questions 3, 7, 8 and 9. Under MMDR Act, power vests from all spectrums in the Central Government in respect of major minerals and the entire field gets occupied as explained above and the State Legislature gets denuded of its power under entries 23/2 and 50/2.

BRIEF FACTUAL POSITION RELATING TO CIVIL APPEAL MENTIONED ABOVE

CA No. 1883/2006 (State of Orissa vs Steel Authority of India Ltd)

37. This appeal arising out of a common judgement dated 05/12/2005 of the Hon'ble Orissa High Court titled (National Aluminium Co Ltd and others vs State of Orissa and others). By the said judgement the High Court was pleased to strike down the Orissa Rural Infrastructure and Socio-Economic Development Act,

2004 (2004 Act) and the rules framed and notifications issued thereunder. By following the ratio of the judgements of this Hon'ble Court it was held that if a tax is not directly relatable to land as a unit but to minerals extracted, then it cannot be held to be a tax on land under entry 49/2. It was held that in the present case the impugned tax was sought to be levied on mineral bearing land but in effect and in pith and substance it was on value of minerals extracted and had absolutely no nexus with land within the meaning of entry 49/2 or with mineral right under entry 50/2. It was held that incidence of the levy is directly on value of minerals extracted and that it is manifest that the impugned levy is not a tax on land so as to be covered by entry 49/2. It was held that the standard provided in the impugned Act for assessing the levy also unmistakably revealed the essential characteristics of the said tax as a levy on minerals. It was held that "taxes on mineral rights" are the taxes on right to extract minerals and not taxes on minerals actually extracted and that in the present case, in the name of providing a standard or measure for assessing the tax either on land or on mineral rights, what is actually taxed is minerals extracted and that this is a forbidden area for the State Legislature. It was held that "taxes on minerals" is not a subject specified in any of the 3 lists of the 7th schedule and the impugned levy was not covered by entry 49/2 as tax on land or by entry 50/2 and was beyond competence of the State Legislature.

38. In support of the submissions made above, the appellant craves leave of this Hon'ble Court to rely on the following judgements which are part of the common compilation of judgments (Vol.V): -

S.NO.	PARTICULARS	PAGE NOS.
2.	AIR 1949 FC 81; Ralla Ram Versus The Province of East Punjab	5 – 25
6.	1958 SCR 1422 = AIR 1958 SC 468 M.P.V. Sundararamier & Co. Vs State of A.P. & Anr.	87-135
7.	1961 (2) SCR 537 = AIR 1961 SC 459 Hingir Rampur Coal Co.Ltd. vs. State of Orissa	136-168
9.	1963 (1) SCR 220 = AIR 1962 SC 1563; Raja Jagannath Baksh Singh Vs. State of U.P. & Ors.	189–202
14.	1964(4) SCR 461 = AIR 1964 SC 1284 State of Orissa Vs M.A. Tulloch	272-289
15.	1965 (3) SCR 47 = AIR 1965 SC 1561; Ajoy Kumar Mukherjee Vs. Local Board of Barpeta.	290-295
16.	1964(6) SCR 666 = AIR 1965 SC 177 H.R.S. Murthy Vs Collector of Chittoor	296-304
19.	1969(1) SCR 108 = AIR 1969 SC 59; Sudhir Chandra Nawn Versus Wealth Tax Officer, Calcutta & Ors.	378-383
20.	1969 (2) SCC 55 Asstt Comr of Urban Land Tax Vs Buckingham & Carnatic Co. Ltd.	384-399

22.	(1969) 3 SCC 838 Baijnath Kadio Vs State of Bihar	406-419
24.	(1970) 1 SCC 749; Second Gift Tax Officer Vs D.H. Nazreth	440-444
26.	(1971) 2 SCC 779; Union of India Vs H.S. Dhillon	451-531
30.	1975 (2) SCC 175; Anant Mills Co. Ltd. Vs. State of Gujarat & Ors.	562-594
38.	1982(1) SCC 125; Western Coalfields Limited Vs. Special Area Development Authority & Anr.	766-783
39.	1983(4) SCC 45; M/s Hoechst Pharmaceuticals Ltd. & Ors. Versus State of Bihar & Ors.	784-843
43.	1986 (Suppl) SCC 20, D.K. Trivedi & Sons Vs. State of Gujarat.	989-1047
45.	1989 (3) SCC 211, Buxa Dooars Tea Co. Ltd. Versus State of West Bengal	1056-1066
48.	1990 (1) SCC 12; India Cement Ltd. & Ors. Vs. State of Tamil Nadu & Ors.	1145-1168
49.	1990 (1) SCC 109; Synthetics and Chemicals Ltd. Vs. State of U.P. & Ors.	1169-1226
54.	1991 (4) SCC 139; State of U.P. Versus Synthetics Chemicals Ltd.	1295-1322
55.	1991 Supp (1) SCC 430; Orissa Cement Ltd. Vs. State of Orissa & Ors.	1323-1396
62.	1995 Supp (1) SCC 707; Goodricke Group Ltd. & Ors. Vs. State of W.B. & Ors.	1506-1539

63.	1995 Supp (2) SCC 686; State of Orissa & Ors. Vs. Mahanadi Coalfields Ltd.	1540-1560
64.	1995 Supp.(1) SCC 642 ; State of M.P. Vs. Mahalaxmi Fabric Mills Ltd.	1561-1589
68.	1997 (8) SCC 360; State of Bihar & Ors. Vs. Indian Aluminum Company & Ors.	1638-1650
72.	2000 (8) SCC 655; Quarry Owners Association Vs. State of Bihar & Ors.	1889-1930
78.	(2004) 10 SCC 201; State of W.B. v. Kesoram Industries Ltd.	2014-2249
80.	(2005) 2 SCC 515; Godfrey Philips India Ltd. Vs State of U.P.	2261-2300

SUBMITTED BY:

[SUNIL K. JAIN]
ADVOCATE ON RECORD
FOR RESPONDENT(S)

PLACE: NEW DELHI
DATE: 22.02.2024

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. 8753 OF 2017

IN THE MATTER OF:

WONDER CEMENT LIMITED … PETITIONER

Versus

STATE OF RAJASTHAN & ORS. … RESPONDENTS

WRITTEN SUBMISSIONS ON BEHALF OF THE PETITIONER

RISHI MATILOYA

ADVOCATE FOR THE PETITIONER

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IN THE SUPREME COURT OF INDIA

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PETITIONER

Versus

STATE OF RAJASTHAN & ORS. …

RESPONDENTS

WRITTEN SUBMISSIONS ON BEHALF OF THE PETITIONER

Most Respectfully Showeth:-

1. That the Petitioner preferred the instant Special Leave Petition against the impugned order dated 06.10.2016 passed by the Hon'ble High Court of Judicature for Rajasthan at Jodhpur vide which the D.B Civil Writ PetitionNo.9102/2013 preferred by the Petitioner was dismissed by the Hon'ble Division Bench of the High Court in terms of the Common Final Judgment and Order dated 12.10.2011 ("Relied Upon Judgment") passed by the Hon'ble Division Bench of the Hon'ble

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Rajasthan High Court, Jodhpur Bench in the lead petition namely Madhyabharat Phosphate Pvt. Ltd. Vs. State of Rajasthan and Other connected petitions. It is submitted that vide the said Relied Upon Judgment, the Hon'ble High Court, had inter alia held that the Act of 2008 with provisions contained in Chapter VII of the Rajasthan Finance Act, 2008 ("Act of 2008") as well as Rajasthan Environment and Health Cess Rules 2008 ("Rules of 2008") framed thereunder, could not be said to be ulta vires the competence of the State Legislature. However, pertinently, it was also held that levy of such cess could not be made retrospectively and set aside the retrospective operation of the Act of 2008. Therefore, resultantly, the Petitioner is also challenging the Relied Upon Judgment passed by the Rajasthan Hon'ble Court, Jodhpur Bench.

2. It is submitted that the Relied Upon Judgment has already been challenged before this Hon'ble Court in SLP (Civil) No.930 of 2012 (now Civil Appeal No.8267 of 2013) wherein this Hon'ble Court vide its interim

order dated 10.09.2013 inter alia granted leave in the matter and restrained the Respondents from taking any coercive steps for recovery of any amount in pursuance of the present proceedings, as and when the demand was raised. The said SLP (Civil) No.930 of 2012 (now Civil Appeal No.8267 of 2013) was also directed to be tagged with Civil Appeal No.4056-4064 of 1999 i.e. Mineral Area Development Authority etc. Vs. M/s Steel Authority of India & Ors. which has now been referred to a 9 Judge Bench of this Hon'ble Court along with other connected petitions and is pending adjudication. Similar petitions have also been filed before this Hon'ble Court by other aggrieved parties wherein similar interim orders have been passed.

3. It is further submitted that in the present matter this Hon'ble Court vide order dated 27.03.2017 was pleased to grant leave & tagged the present matter along with Civil Appeal No. 4056- 64 of 1999 and further directed that in the meantime, no coercive steps shall be taken to recover any amount in

pursuance of the present proceedings as and when any demand is raised.

4. The brief facts of the present case are that the Petitioner is a company incorporated under the Indian Companies Act and holds a Mining Lease for mineral limestone of Cement Grade to be used in its captive cement manufacturing plant at Nimbahera district Chittorgarh. The petitioner pays royalty on dispatch of mineral from Mining Lease area as per Schedule-I appended to Mines & Minerals (Development & Regulation) Act, 1957 as required by Covenants of Mining Lease Deed.

5. So far as the mineral limestone is concerned, the consumer thereof in accordance with the provisions of Limestone and Dolomite Mines Labour Welfare Fund Act, 1972 (Central Act No. 62 of 1972) is required to pay duty of excise on each tonne of limestone used. The said Act of 1972 had been enacted by the Ministry of Labour, Government of India in order to provide levy and collection of a cess on limestone for financing of

activities to promote the welfare of persons employed in the limestone mines.

6. The State Legislature thereafter enacted Rajasthan Finance Act, 2008 wherein Chapter VII providing for levy of cess on dispatch of certain minerals and the levy has been named as Environment and Health Cess on mineral rights. The State, before actually enacting the Act relating to imposition of environment and health cess on mineral rights, had issued a Notification dated February, 2008 in Official Gazette in exercise of powers conferred by Section 16 of the Rajasthan Finance Bill, 2008 and Section 3 of the Rajasthan Provisional Collection of Tax Act, 1958, the list of minerals and rates of environment and health cess on minerals rights including on cement grade limestone.

Section 16 of the Chapter VII of Rajasthan Finance Act, 2008 whereby environment and health cess on mineral rights has been levied reads as under:-

"Levy and collection of cess on mineral right-subject to any limitation imposed by Parliament by law relating to

mineral development, there shall be levied and collected, in such manner as may be prescribed, an environment and health cess on mineral and at such rates, not exceeding rupees five hundred each tonne of mineral dispatched, as may be notified by the State Government from time to time."

7. The State Government in exercise of the powers conferred by Chapter VII of Rajasthan Finance Act, 2008, Section 19 thereto, has framed Rajasthan Environment and Health Cess Rules, 2008. The said rules inter alia provide for payment of cess, notice of demand, etc. The rules further provide for penalty for contravention of the Rules to the extent of double the amount of cess. The Rules further provide for constitution of Rajasthan Environment and Health Administrative Board for effecting Management of Rajasthan Environment and Health Care Fund for mining areas. It is significant that the rules provide for deposit of cess under head of stamp and registration

fee also. Section 17 of the Act of 2008 provides for crediting the cess levied under Chapter VII to the consolidated fund of the State and may, if the State Legislature by appropriation made by law in this behalf so provides, be utilized for protection of environment and health and maintenance of ecological balance, especially in mining areas of the State.

8. The Parliament has enacted the Mines and Minerals (Developmentand Regulation) Act, 1957 and in exercise of the powers conferred by Section 13 of the said Act, the Central Government has framed Mineral Concession Rules, 1960 where under the present mining lease stands granted in favour of the petitioner. Section 9 of the M.M.D.R Act, 1957 reads as under:-

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

commencement, at the rate for the time being specified in the Second Schedule in respect of that mineral.

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

(2A) The holder of a mining lease, whether granted before or after the commencement of 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.}"

From the aforesaid, it is evident that the petitioner is required to pay royalty on each tonne of mineral dispatched as per the provisions of Section 9 of the Act

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1957 as also the covenants of the Mining lease deed which the petitioner is paying.

9. THE ISSUES BEFORE THIS HONBLE COURT FOR CONSIDERATION AS UNDER:-

I. Chapter VII of the Rajasthan Finance Act, 2008 and the Rajasthan Environment and Health Cess Rules, 2008 framed thereunder are ultra vires the powers of the State Legislature inasmuch as that the power to legislate with regard to major minerals is the exclusive domain of the parliament;

II. In view of MMRD Act and declaration made under Section 2 thereunder which states that in public interest, control should rest in the Central Government, the State Government, to the that extent, can exercise powers with respect to the subject of Act of 2008 and Rules of 2008;

III. A legislation by the State Government, after such declaration under Section 2 of MMRD Act,

trenches upon the filed occupied by the Central Legislation;

IV. The cess is in the nature of fee and is covered under Section 13 of MMRD Act;

V. Scope and ambit of powers of the State Government under Entry 50 of List II of Schedule VII of the Constitution of India and whether such powers permit the State Government to levy environment and health Cess on major minerals;

VI. The State Government is competent to impose tax on minerals in view of the limitation provided under the Entry 23 and 50 of List II of the Schedule VII of the Constitution of India.

10. SUBMISSIONS BY THE PETITIONER FOR CONSIDERATION:-

I. The Union parliament has already enacted Environment (Protection) Act, 1986 Water (Prevention and Control of Pollution) Act, 1974 and All (Prevention and Control of Pollution) Act, 1981 with regard to prevention of all kinds of

pollution. Further the State Government in the Environment Department has already framed Rajasthan Air (Prevention and Control of Pollution) Rules, 1983 which inter-alia provide for payment of afees at exorbitant rates by holders of mining leases in the State based on categorization of mines of major as well as minor minerals to be paid to the Rajasthan State Pollution Control Board for obtaining consent to establish and consent to operate from the Board which the petitioner is already obtaining regularly after payment of huge consent fees every year. The additional legislation by way of impugned Act and Rules is wholly illegal and unauthorized.

II. The section 16 of Chapter VII of Rajasthan Finance Act, 2008 seeks to impose tax/cess on the quantity of the mineral excavated and dispatched. Further once the Central Government under the powers conferred on it by the Mines and Minerals (Development & Regulation) Act,

1957 has already imposed royalty on the mineral limestone dispatched, and the Act of 1957 having been enacted by the Union Parliament in exercise of powers conferred on it under Entry 54 of the clearly denuded of any such power to impose further tax/cess on dispatch of mineral. The State Legislature, therefore, has no jurisdiction to impose any cess on the excavated mineral limestone as the entire field is under the control of Union.

III. This Hon'ble Court in the case of India Cement Ltd. &Ors. Vs. State of Tamil Nadu & Ors. (1990) 1 SCC 12 (a Constitution Bench Judgment) has already declared such levy based on based on per tonne of mineral dispatched to be ultra-vires the Act of 1957 and therefore , the present levy in the name of Mineral Rights Cess also cannot sustain in law and is ultra vires the act of 1957.

IV. The State Government in the name of "Land Tax" has already imposed heavy tax on mineral

bearing lands and now the impugned cess has directly been imposed on mineral dispatched from the mines per metric tonne. The tax named as cess makes it confiscatory in nature: therefore; also it deserves to be declared illegal and ultra vires Constitution of India.

V. The Act of recovery of deposit cess in consolidated fund of the State and this fact alone proves that the impugned levy is not cess but a tax on royalty which already is being paid while dispatching mineral from the mine, the colorable exercise of powers by the State is writ large.

VI. The impugned cess being violative of Article 14 of the Constitution of India, is liable to be struck down being highly discriminatory in nature. Inasmuch as there are plenty of other minerals available in the State and large mining lease areas are held by the other lease holders but the State has chosen this mineral for imposition of cess levied.

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VII. In the respectful submission of the Petitioner, even as regards to dead rent, it is the Central Government which in exercise of powers under Section 9A of the MMDR Act fixes the rate of dead rent which shall be payable in respect of any lease area by the lessee at the rates specified in the Third Schedule appended to MMDR Act. The proviso further provides that in case where a holder of mining lease is to pay royalty under Section 9, he shall be liable to pay either royalty under Section 9 or dead rent as provided in Section 9A whichever is greater. Section 9A further enables the Central Government to enhance or reduce the rate of dead rent by amending the Third Schedule. The Second and Third Schedule appended to the MMDR Act provide varying rates of royalty for different minerals.

VIII. In the respectful submission of the Petitioner, from Entry 02C of the List I of the Schedule VII as

well as Entry 40 and 50 of List II of Schedule VII to the Constitution of India, it is itself clear that power to regulate mineral development including imposition of tax and fees exclusively vest with the Central Government and cess imposed by the Act of 2008 cannot be treated to be tax on land because a tax on land has already been imposed by the State Government by Chapter VII of the Finance Act, 2006.

11. In the referral order reported in (2011) 4 SCC 450, following questions been formulated for being considered by a Bench of 9 Hon'ble Judges of this Hon'ble Court:

- Whether "royalty" determined under Sections 9/15(3) of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957 as amended) (in short, MMDR Act) is in the nature of tax?

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- Can the State Legislature while levying a tax on land under List II Entry 49 of the Seventh Schedule of the Constitution adopt a measure of tax based on the value of the produce of land? If yes, then would the Constitution al position be any different insofar as the tax on land is imposed on mining land on account of List II Entry 50 and its interrelation with List I Entry 54?

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

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

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

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

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

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

- Whether List II Entry 50 read with List I Entry 54 of the Seventh Schedule to the Constitution constitute an exception to the general scheme of entries relating to taxation being distinct from other entries in all the three Lists of the Seventh Schedule to the Constitution as enunciated in M.P.V. Sundararamier & Co. v. State of A.P.?

- Whether in view of the declaration under Section 2 of the Mines and Minerals (Development and Regulation) Act, 1957 made in terms of List I Entry 54 of the Seventh Schedule to the Constitution and the provisions of the said Act, the State Legislature is

denuded of its power under List II Entry 23 and/or List II Entry 50?

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

In addition to the aforesaid, on the said limestone, various central statutes have been enacted by the Parliament which are applicable in respect of the said mining.

a) On 15.03.1952 the Central Government enacted the Mines Act, 1952 with the object of providing health and safety of workers working in the Mines. (Vol.IV Sl.No.22, pp. 1057-1130).

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b) On 02.07.1955, The Central Government in exercise of the powers conferred by Section 58 of the Mines Act, 1952 framed "The Mines Rules, 1955" with the object of providing health and sanitation. (Vol.IV Sl.No.23, pp. 1131-1177).

c) On 02.12.1972, The Central Government enacted The Limestone and Dolomite Mines Labour Welfare Fund Act, 1972 for the levy and collection of a cess on limestone and dolomite for the financing of the activities to promote the welfare of persons employed in the limestone and dolomite mines. (Vol.IV Sl.No.33, pp. 1648-1654). Under the said Act of 1972 the Appellant is required to pay duty of excise on each tonne of lime stone used for manufacture of cement.

d) On 23.03.1974, the Central Government enacted the Water (Prevention and Control of Pollution) Act, 1974 for the purpose of prevention and control of water pollution and maintaining or restoring the wholesomeness of water. (Vol.IV Sl.No.36, pp. 1739-1768)

e) On 07.12.1977, the Central Government enacted the Water (Prevention and Control of Pollution) Cess Act, 1977 to provide for the levy and collection of a cess on water consumed by persons carrying on certain

industries and by local authorities with a view to augment the resources of the Central Board and the State Board for the prevention and control of the water pollution constituted under Water (Prevention and Control of Pollution) Act, 1974. (Vol.IV Sl.No.37, pp.1769-1775).

f) On 29.03.1981, the Central Government enacted The Air (Prevention and Control of Pollution) Act, 1981 for the purpose of prevention, control and abatement of air pollution. (Vol.IV Sl.No.40, pp.1816-1838).

g) On 23.05.1986, the Central Government enacted The Environment (Protection) Act. 1986 for the protection and improvement of environment. (Vol.IV Sl.No.41, pp.1839-1864)

h) On 25.05.2007, by Notification issued by Respondent No.1 in the exercise of the powers conferred by Section 64 of the Water (Prevention and Control of Pollution) Act, 1974 (Central Act No. 6 of 1974) it has amended the Rajasthan Water (Prevention and Control of Pollution) Rules, 1975 and has framed Rajasthan Water (Prevention and Control of Pollution) Amendment Rules, 2007. (Vol.IV Sl.No.36, pp.1739-1768). Under the said notification the State Government has enhanced the fees.

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12. In view of the above submissions the impugned order is liable to be set aside.

Drawn By
H D THANVI
Advocate

Filed by

(RISHI MATOLIYA)
Advocate for the Appellant

IN THE SUPREME COURT OF INDIA
I.A. NO. 43061 OF 2024
IN
CIVIL APPEALS NO. 4056-4064 OF 1999

In the matter of:

Mineral Area Development Authority Etc. …Appellant

versus

M/s. Steel Authority of India & Ors. …Respondents

And in the matter of:

M/s. Mateshwari Minerals …Applicant/Intervenor

WRITTEN SUBMISSIONS ON BEHALF OF APPLICANT/INTERVENOR M/S. MATESHWARI MINERALS

PAPER-BOOK

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ADVOCATE FOR APPLICANT: ANAND VARMA

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WRITTEN SUBMISSIONS ON BEHALF OF APPLICANT/INTERVENOR: M/S. MATESHWARI MINERALS

1. The Applicant/Intervenor herein is concerned with the issues referred to the 9 Judges' Bench vide this Hon'ble Court's reference order dated 30.03.2011.[1]

2. It is respectfully submitted that the use and import of the expression *"mineral development"* in three of the legislative entries germane to the present matter i.e., Entry 54 of List I and Entries 23 and 50 of List II, is of critical significance in the present matter.

3. The principle and intent which emerges from the abovesaid legislative entries (which represent subject matters or fields of legislation, and not sources of legislative power) is the Union's overarching *control* over the *regulation* and *development* of mines and minerals, by virtue of Parliament's declaration by and under Section 2 of the MMDR Act, 1957 and *to the extent* so provided under the said Act. As elaborated *infra*, the said legislative entries are unique inasmuch as they completely reserve an entire subject matter, otherwise included in List II, for

[1] (2011) 4 SCC 450 – **Vol. V**, # 1, pg. 1-4.

the Union's control towards regulation and development. Such regulation will necessarily include, it is respectfully submitted, ***fiscal regulation***.

4. It is submitted that the terms '*regulation'*, '*development'* and '*control'*, used both in Entry 54/I and Entry 23/II, are of significance. The said legislative entries enable and empower Parliament to frame law vis-à-vis minerals otherwise belonging to States or private owners as incidents of land ownership.[2]

5. The *sui generis* nature of Entry 54 of List I and Entries 23 and 50 of List II is reflected from the following, *inter alia*:

   (i) While numerous entries in List I (23, 24, 27, 52, 62, 63, 64, 67) enable, upon Parliamentary declaration, the declared entities/items (highways, waterways, major ports, industries, institutions) to come within the Union's legislative ambit; Entry 54/I is unique to the extent of bringing the entire subject-area within the Union's control for regulation and development. Entries 53 and 56 of List I are similar to Entry 54.

   (ii) A number of entries in List II (13, 17, 22, 24, 33) are subject to entries in List I; however, Entry 50/II is the only taxation entry in List II where the State's taxing power is subjected to a general entry in List I (particularly with the amendment of Entry 54/II by the Constitution (101st) Amendment Act, 2016).

6. The abovesaid scheme within the Seventh Schedule renders Entry 54 of List I and Entries 23 and 50 of List II *sui generis*. The said scheme also makes apparent the

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[2] *Thressiamma Jacob v. Dept. of Mining & Geology,* (2013) 9 SCC 725 – paras 39-41 & 55-58. This Hon'ble Court recognized the distinction between Articles 294 and 297 of the Constitution to hold that "*… mineral wealth obtaining in the land mass (territory of India) is not vested in the State in all cases … proprietary rights in minerals (subsoil) could vest in private parties who happen to own the land"*.

intent of the Constitution framers to impart primacy upon the Union in terms of Entry 54/I.

7. The rationale behind enabling Parliament to declare such overarching power with the Union is discernible from the public and national interest to have a common and central policy for development and regulation of mines and minerals, without impacting the State and private ownership of minerals.[3]

8. Therefore, it has been declared in Section 2 of the MMDR Act, 1957 that "… *it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent hereinafter provided*". The provisions of the MMDR Act, including in particular Sections 9, 9B, 9C, 13, 13A, 17, 17A, 18, 18A, 21, 25 evidence the widest amplitude towards regulation[4] and development pursuant to the declaration under Section 2 and lead to the conclusion, as also held by this Hon'ble Court, that the MMDR Act contains a complete code in respect of mining leases in lands belonging to the Government as well as lands belonging to private persons.[5]

9. The wide import of Section 2 has been interpreted time and again by this Hon'ble Court,[6] and it has been well-settled that (i) the subject of legislation to the extent laid down in the MMDR Act becomes an exclusive subject for legislation by

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[3] In *P Kannadasan v. State of TN*, (1996) 5 SCC 670, this Hon'ble Court agreed with the proposition that the idea behind enacting the MMRD Act (as titled pre-amendment in 1999) "…*was to bring about uniformity in taxes and royalties throughout the country"* and held that *"Uniformity in the rates of tax is an objective set out by Parliament in the MMRD Act*". The judgment in *P Kannadasan* was partly overruled on a different aspect in *District Mining Officer v. TISCO*, (2001) 7 SCC 358.

[4] See *Tara Prasad Singh v. UOI*, (1980) 4 SCC 179 on Section 18 of the MMDR Act.

[5] *State of Assam v. Om Prakash Mehta*, (1973) 1 SCC 584.

[6] *State of Orissa v. M/s M.A. Tullock* AIR 1964 SC 1284 – **Vol. V**, # 14, pg. 272; *Baijnath Kadio v. State of Bihar* (1969) 3 SCC 838 – **Vol. V**, # 22, pg. 406; *Sandur Manganese & Iron Ores Ltd. v. State of Karnataka* (2010) 13 SCC 1 – **Vol. V**, # 90, pg. 2580.

Parliament,[7] (ii) both the Central and State Government act as mere delegates of Parliament while exercising powers under the MMDR Act and the MC Rules,[8] and (iii) the State Government is denuded of all legislative and executive power under Entry 23 of List II read with Article 162 after passing of the MMDR Act.[9]

10. It is therefore submitted that Entry 54 of List I and Entries 23 and 50 of List II represent a unique subset of legislative entries, whereby the Union is empowered to regulate and develop mineral assets otherwise in lands belonging to State Governments and private persons. It is further submitted that Entry 50/II ought to be interpreted consistent with the said scheme and overall holistic intent and purpose, and any other interpretation would render the very purport behind the Union's control otiose. Moreover, the term 'limitation' as occurring in Entry 50/II ought to be interpreted in the context of the provisions of the MMDR Act (which is obviously the limitation envisaged thereunder). The MMDR Act having been held to be a complete code and being a fiscal statute as well, by virtue of Sections 9, 9A, 9B, 9C, 15(3), 15A, 21(5) and 25, the States' legislative power under Entry 50/II stands completely denuded.

11. The States' taxing power of mineral rights, once denuded as per the express terms of Entry 50/II, cannot be re-introduced through the indirect and inapplicable pathways of Entries 45 and 49 of List II. Mineral rights and land have been recognized as distinct aspects of legislation under the Seventh Schedule.

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[7] *Baijnath Kadio* (supra), para 13.

[8] *Quarry Owners' Association v. State of Bihar* (2000) 8 SCC 655 – **Vol. V**, # 72, pg. 1889.

[9] *Sandur Manganese* (supra), paras 79-81.

12. It is submitted that the Union's role and function, as Constitutionally contemplated, is one of a national regulator to develop and regulate all mines and mineral resources towards national interests and ensure their uniform taxation. This Hon'ble Court may take judicial notice of the Union's recent policy and legislative endeavors in this regard, including the National Mineral Policy of 2019, the amendments to the MMDR Act in 2015 and 2021 (including for imposition of amounts towards District Mineral Foundation and the National Mineral Exploration Trust),[10] as well as the distinct regimes for different classes of minerals by way of recent subordinate legislation. It would therefore be incongruous with the Union's contemplated role as a national regulator to read Entry 50/II, or even Entries 45 and 49 of List II, so as to confer separate and independent taxing powers upon States vis-à-vis mineral rights.

13. This Hon'ble Court's judgments in *India Cement Ltd. v. State of Tamil Nadu,* (1990) 1 SCC 12,[11] *Orissa Cement Ltd. v. State of Orissa,* 1991 Suppl (1) SCC 430,[12] *and State of Madhya Pradesh v. Mahalaxmi Fabric Mills Ltd.* 1995 Suppl (1) SCC 642[13] were rendered in the factual background of number of States imposing different taxes and cesses having different rates and points of taxation and thus leading to distorted taxation policies, impeding mineral development and regulation.

14. It is therefore submitted, in conclusion, that a conjoint reading of the legislative entries and the abovesaid principles leaves no manner of doubt of the importance of uniform fiscal regulation under the MMDR Act throughout the country. The

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[10] Sections 9B and 9C of the MMDR Act, 1957 as amended in 2015.

[11] **Vol. V**, # 48, pg. 1145 - 1168

[12] **Vol. V**, # 55, pg. 1323 - 1396

[13] **Vol. V**, # 64, pg. 1561 - 1589

legislative entries have to be so interpreted in a manner consistent with the intent therein. It is thus submitted that:

With reference to issues (1) and (4) as framed in the reference order, royalty determined under Sections 9 and 15(3) of the MMDR Act, 1957 is indeed in the nature of tax.

With reference to issues (3), (7), (8) and (10), the MMDR Act, 1957 operates a complete limitation on States' powers under Entry 50/II and the power to levy taxes on mineral rights is completely denuded from States and vested only with the Union by virtue of its overarching regulatory empowerment.

With reference to issues (9) and (11), Entry 50/II r/w. Entry 54/I does constitute an exception to the general scheme of entries relating to taxation. Furthermore, the scheme within the Seventh Schedule renders Entry 54 of List I and Entries 23 and 50 of List II *sui generis*.

With reference to issue (5), the majority decision in *State of WB v. Kesoram Industries Ltd*. (2004) 10 SCC 201, does depart from the law laid down by the 7 Judge Bench in *India Cement* (supra) without considering or dealing with the rationale spelt out in the latter.

With reference to issues (2) and (6), the States' taxing power of mineral rights, once denuded as per the express terms of Entry 50/II, cannot be re-introduced through the indirect and inapplicable pathways of Entries 45 and 49 of List II.

15. On facts, briefly stated, the Applicant was awarded contracts by the Government of Rajasthan under its extant Minor Mineral Concession Rules (earlier framed in 1986, and later repealed and superseded in 2017) for collection of mineral royalty on behalf of the State Government. The Applicant's royalty collection contracts

operated from 2013 till 2019. From 2016 onwards, the Applicant was subjected to proceedings for alleged non-payment of service tax on the mineral royalty collected. The Applicant's challenge to the said proceedings for imposition of service tax on royalty was rejected by the Hon'ble Rajasthan High Court, Jaipur Bench vide order dated 26.07.2021 by relying upon its earlier judgment dated 24.10.2017 in DBCWP No. 14758 of 2016, Udaipur Chambers of Commerce and Industry v. UOI. The Applicant's SLP against the said order dated 26.07.2021, being SLP (C) No. 13066/2021 is pending consideration before this Hon'ble Court alongwith connected matters wherein this Hon'ble Court is considering the issue of levy of service tax, and later the Goods and Services Tax, on royalty amounts collected pursuant to the imposition under Sections 9 and 15(3) of the Mines and Minerals (Development and Regulation) Act, 1957.

Respectfully submitted.

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NEW DELHI
22.02.2024

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (CIVIL) NO. 3849 OF 2006

IN THE MATTER OF:
OIL & NATURAL GAS CORPORATION LIMITED .....PETITIONER

VERSUS

GOVT OF ANDHRA PRADESH & ORS ....RESPONDENTS

BRIEF WRITTEN SUBMISSIONS ON BEHALF OF PETITIONER (ONGC)

1. The statute involved in the present case is the **Andhra Pradesh Mineral Bearing Land (Infrastructure) Cess Act, 2005** ("**AP Cess Act**") (***@CC Volume IV, Page 2339-2342***) passed by the State Legislature of the then unified State of Andhra Pradesh ("**State Govt**").

I. BRIEF BACKGROUND & PROCEDURAL HISTORY

2. Pursuant to the five-judge decision in ***State of West Bengal v. Kesoram Industries Ltd and Ors,*** **2004 (10) SCC 201** ("**Kesoram Industries**"), the State Govt notified the **Andhra Pradesh Mineral Bearing Land (Infrastructure) Cess Ordinance, 2005** (***@CC Volume III, Page 21431-21438).*** This was subsequently enacted as AP Cess Act.

3. Under the said law, the State Govt issued Demand Notices dated 14.11.2005 and 31.12.2005 **(*@CC Volume III, Page 21454- 21458)*** on ONGC for recovery of Rs. 3,08,18,199/- as cess on crude oil and Rs. 2,56,05,598/- towards cess on natural gas.

4. ONGC challenged the vires of the AP Cess Act and the demand notices before the AP High Court by way of Writ Petition 2362/2006. By Order dated 02.02.2006 ***(@CC Volume III, Page 21409-21412)***, the Division Bench of the AP High Court admitted the writ for hearing. However, by separate Order dated 02.02.2006 ***(@CC Volume III, Page 21409-21412)***, the AP High Court rejected ONGC's prayer for interim relief, although it accepted that ONGC had made out a prima facie case.

5. ONGC challenged the Order dated 02.02.2006 ***(@CC Volume III, Page 21409-21412)*** refusing interim relief by way of the present SLP, where this Hon'ble Supreme Court by Order dated 06.03.2006 (***@CC Volume III, Page 21386)*** granted interim stay. Later on, by Order dated 04.08.2009 (***@CC Volume III, Page 21371)*** the present SLP was tagged with the larger batch matter in *MMRA v. SAIL & Ors*, Civil Appeal Nos. 4056-4064/1999 which had been referred to the Nine Judge Bench.

II. BRIEF SUBMISSIONS

A. AP CESS ACT IS A RE-INCARNATION OF THE UNCONSTITUTIONAL AP 1975 ACT AND IS ULTRA-VIRES TO THE CONSTITUION OF INDIA

6. In the Statement of Objectives of the AP Cess Act, the following background facts have been stated:

> "*Whereas, the Andhra Pradesh (Mineral Rights) Tax Act, 1975 (Act 14 of 1975) has been enacted to levy and collect tax in addition to the royalty from the holder of mining lease on the mineral rights in respect of minerals specified in the Schedule thereto with a view to raising money for providing and improving the infrastructure facilities for rapid exploitation of vast mineral resources of the State;*
>
> *And whereas, the said Act has been declared by the Hon'ble High Court of Andhra Pradesh as ultra vires in its judgement in W.P.No.3238 of 1990 and its batch dated 12.4.1990 mainly relying on the judgement of the Supreme Court of India in India Cements Ltd., Vs., State of Tamil nadu (India Cements Case);*
>
> *And whereas, the Hon'ble Supreme Court of India in State of West Bengal Vs., Kesoram Cements Ltd., has held that royalty is not a tax and clarified the position as held by seven Judges Bench of the Supreme Court in the said judgment and accordingly further held that the cess levied on the land by West Bengal Primary Education Act, 1973 and West Bengal Rural Employment and Production Act, 1976 as amended by West Bengal Taxation Laws (Amendment) Act, 1992 covered by Entry 49 and 50 of List II of the VII th Schedule to the Constitution of India and the said amendment Act, 1992 is a valid legislation as it is intra vires the Legislative competence of the State;*
>
> *And whereas, the Apex Court has not overruled or set aside the judgment of the Hon'ble High Court of A.P. in W.P.No.3238/90 wherein the Andhra Pradesh (Mineral Rights) Tax Act, 1975 has been declared ultra vires based on the ratio laid down in the said India Cements Case;*

And whereas, it is expedient to enact a law to levy on mineral produce from the mineral bearing land to provide and improve infrastructural facilities for exploitation of the mineral resources in the State."

7. From the above, it would appear as follows:

   a. The AP Cess Act was introduced subsequent to and relying upon this Hon'ble Court's five judges decision in *Kesoram Industries***,** which decision is in apparent contradiction and conflict with a seven judges decision of this Court in ***India Cements Limited v. State of Tamil Nadu,*** **1990 (1) SCC 12** ("**India Cements**")**.**

   b. The Andhra Pradesh (Mineral Rights) Tax Act, 1975 ("**AP 1975 Act**") had been declared as ultra vires by a Division Bench of High Court of Andhra Pradesh in by Judgement dated 12.04.1990 in ***WP 3238 of 1990*** ("**1990 APHC Judgement**") relying upon the seven judges ratio laid down in ***India Cements.***

   c. The State Govt has enacted a new law (i.e., AP Cess Act) to levy cess on mineral produce (including petroleum and natural gas) from the mineral bearing land.

   d. Therefore, the State Govt has directly or indirectly sought to reintroduce its earlier legislation being the AP 1975 Act that sought for levy of cess on minerals, (inclusive of mineral oils).

8. Notably, the AP 1975 Act was struck down in the 1990 APHC Judgement as being unconstitutional and beyond the taxing power of the State Govt under Entry 50 of List-II, since the field was already occupied by a Central Legislation, namely, section 9 of the Mines & Minerals (Regulation & Development) Act. This decision had not been challenged by the State Govt and has become final.

9. It is stated that the State Govt has re-incarnated the unconstitutional AP 1975 Act basis the decision in *Kesoram Industries*. The State Govt has proceeded on the basis that it can reintroduce a cess or a levy, which had been declared unconstitutional because of *Kesoram Industries*. *Kesoram Industries*, even if affirmed by this Bench, does not provide that an

unconstitutional cess or levy can be brought back in the manner done by the State Govt, particularly when the AP High Court's Judgement dated 12.04.1990 declaring the cess under the AP 1975 Act had not been overruled by a superior Court.

10. For the same reason as is contained in the AP High Court's Judgement dated 12.04.1990 declaring the cess under the AP 1975 Act as unconstitutional, the present AP Cess Act also suffers from the same vice and would be unconstitutional.

B. THE AP CESS ACT, BY LEGISLATING IN RESPECT OF CRUDE OIL AND NATURAL GAS, IMPINGES ON THE PARLIAMENT'S EXERCISE OF POWER TO MAKE LAWS AND IS ULTRA-VIRES TO THE CONSTITUION OF INDIA

11. The AP Cess Act under Section 3 provides for a levy of 'cess' on mineral resources. 'Mineral resources' has been defined in Section 2(d) r/w the Schedule appended thereto which encapsulates mineral oil, petroleum and natural gas under its ambit.

12. Entry 53 of List I (Seventh Schedule) of the Constitution provides for the regulation and development of oil fields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable. Being part of List I, the Parliament exercises sole legislative powers in respect thereof.

13. Under Article 73 r/w Article 256-257, the executive power of the Central Government extends to the matters with respect to which Parliament has power to make laws. Therefore, in respect of all matters concerning inter alia petroleum and petroleum products, it is the Parliament and Central Government that exercise all powers, and not the State Legislature or State Government.

14. The expression 'petroleum and petroleum products' occurring in Entry 53 of List I includes **'**natural gas' and the State Legislature has no legislative competence to pass any legislation in respect of petroleum and petroleum products or natural gas.

[*Kindly refer*:

i) ***Re Special Reference No.1 of 2001*** **(2004) 40 SCC 489**), para 41 to 44;

ii) ***Reliance Natural Resources v. Reliance Industries Limited*** **(2010) 7 SCC 1**, para 77 & 78;

iii) ***Adani Gas v. Union of India*** **(2022) 5 SCC 210**, para 55 to 57]

15. Further, there is no contractual or otherwise legal basis for levy of cess.

16. Further, in the definition of mineral produce, the State Government has included mineral oils, petroleum and natural gas. Mineral oils, petroleum and natural gas do not come within the definition of "minerals" under the Mines & Minerals (Regulation & Development) Act, 1957, which is relatable to Entry 54 of List I. ln fact, a land from which mineral oil, natural gas and petroleum is explored is called an 'oilfield' and regulation and development of such oilfields would come under the purview of Oilfields (Regulation and Development) Act, 1948. As such, AP Cess Act is bad in law, insofar as it includes mineral oils, natural gas and petroleum within the meaning of mineral produce from mineral bearing land.

17. Insofar as mineral oil is concerned, the field of legislation with respect to regulation, development and taxation is also. entirely covered by the Central •legislation and there is no scope for the State Government to make any provision to ·tax and regulate the mineral oils. Central statutes such as the Petroleum Act, 1934, Oilfields (Regulation & Development) Act, 1948, the Oil Industry (Development) Act, 1974, the Petroleum and Natural Gas Regulatory Board Act, 2006 and the Petroleum & Natural Gas Rules, 1959 occupy the entire field. All these legislations have been passed by the Union of India on the basis of the legislative competence under Entry 53 of List-I. Notably, under Section 8 of the 1948 Act, Central Government has been empowered to make Rules for "*collection of fees or taxes in respect of mineral oils*".

18. Irrespective as to whether the nature of the cess is a royalty or tax, the State Govt has no authority or jurisdiction to enact any law whatsoever relating to crude oil or natural gas, much less for directly or indirectly levying any tax or cess or royalty on the mineral produce comprising crude oil or natural gas. Therefore, the AP Cess Act is ultra vires the constitutional scheme.

C. THE AP CESS ACT, BEING FOR COLLECTION OF TAX ON MINERAL OIL AND NOT TAX ON LAND, IS BEYOND THE STATE LEGISLATURE'S COMPETENCE TO MAKE LAWS AND IS ULTRA-VIRES TO THE CONSTITUION OF INDIA

19. Under the AP Cess Act, the levy is directly on minerals and not on land. The AP Cess Act when read in its entirety contemplates levy of cess on crude oil and natural gas and is wholly unrelated to land as a unit. The State Govt's aforesaid intentions are clear vide the usage of the term *"cess on mineral produce"* (definition of which includes natural gas and petroleum) throughout the legislation. Further, the charging Section 3 also states that "there shall be levied and collected· by the Government, a cess on the mineral produce". Section 4(2) of the Act states that "*amount of cess on mineral produce shall be paid in advance*".

20. The notifications issued under the Act specify different rates of cess for different minerals. No cess can be levied or is leviable, if mineral oils are not produced. For a levy to be classified as a tax on land, there must exist a direct and definite relationship between the two. It is not open to adapt any of the methods of valuation to camouflage the essential nature of the levy. Mere adoption of such a method does not hide the essential character of the levy, being in the nature of production as opposed to the land itself.

21. Hence, the levy under the AP Cess Act is directly on minerals and is wholly unrelated to land as a unit, which is the only method of valuation of land under Entry 49 of List II. Thus, the levy under AP Cess Act in its pith and substance is a tax on mineral oils and not a tax on land at all and would not be covered under Entry 49 of List- II.

22. Looking at the issue from another angle, if vires of the AP Cess Act is upheld, it would mean that there would be no difference between legislating by Parliament under Entry 53 of List-I and by State Legislature under Entry 49 of List-II. By further implication, there would be no difference between levy of tax/royalty/cess on land and on mineral produce. In that scenario, since the State Govt could levy such tax/royalty/cess on crude oil and natural as being products of the land, the converse would also necessarily be true. In doing so, the

delicate constitutional balance and the separation of subject matters under the Seventh Schedule would be rendered redundant and otiose.

23. There has to be a reasonable and balanced limit placed on the power to legislate the subjects under different Lists in the Seventh Schedule or entries in the Lists in the Seventh Schedule, so that the exercise of legislative or executive power in respect of a subject under one entry does not encroach upon the subjects under other Lists or other entries in the Lists.

24. Irrespective as to whether the nature of the cess is a royalty or tax, the State Govt has wrongly exercised its legislative power to make law relating to crude oil or natural gas in the guise of making a law for purportedly taxing the land. Therefore, the AP Cess Act is ultra vires the constitutional scheme.

D. STATE GOVT'S RELIANCE ON *KESORAM INDUSTRIES* TO JUSTIFY THE LEGALITY OF THE AP CESS ACT IS MISPLACED AND MISCONCEIVED

25. AP Cess Act seeks to draw strength and legality from the judgement in *Kesoram Industries*. This reliance is misplaced insofar as *Kesoram Industries* is distinguishable on both facts and law and has no application to the present case.

26. Factually, Entry 53 of List I was not the issue before the Bench in *Kesoram Industries* nor was crude oil or natural gas.

27. Legally, *Kesoram Industries* is in conflict with the seven judge Bench decision in *India Cements* regarding the interpretation of tax on land, cess and royalty. The two judgements also differ in their interpretation of Entry-23 and 50 in List-II vis-a-vis Entry 54 in List-I, and as to whether Section 9 of the Mines & Minerals (Regulation & Development) Act would occupy the field or not. All the above and many more inconsistencies between the two judgments need to be resolved.

28. Since AP Cess had been promulgated with the objective of levying tax on mineral produce on the premise that royalty is not a tax, whereas what is actually being levied under the AP

Cess Act is cess on mineral produce, which in itself is in nature of a tax, thereby making the foundation of the AP Cess Act to be bad in law.

29. In view of the aforesaid, AP Cess Act is ultra vires the Constitution and liable to be struck down by this Hon'ble Court.

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8273 OF 2013

IN THE MATTER OF:

WOLKEM INDUSTRIES LTD. ... APPELLANT

VERSUS

STATE OF RAJASTHAN & ANR. ... RESPONDENTS

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8273 OF 2013

IN THE MATTER OF:

WOLKEM INDUSTRIES LTD. ... APPELLANT

VERSUS

STATE OF RAJASTHAN & ANR. ... RESPONDENTS

WRITTEN SUBMISSIONS BY MR. ABHIMANYU BHANDARI, COUNSEL FOR THE APPELLANT

1. While enacting the Rajasthan Finance Act, 2008 **("2008 Act")**[1] the State Legislature of Rajasthan introduced Chapter VII providing for levy of cess being **"environment and health cess"** viz. Section 16. The Rajasthan Finance Bill, 2008 received the assent of the Governor of Rajasthan on 03.04.2008 and came into force on the said day, however the state of Rajasthan issued the Notification dated 25.02.2008 and gave effect to the same. The said notification was issued in exercise of the powers conferred by Section 16 of the Rajasthan Finance Bill, 2008, even before the said Bill received assent and came into force.[2]

2. Consequently, the State Government issued a notification imposing cess on Wollastonite @ Rs. 40/- per tonne of the mineral dispatched. It will not be out of place to mention here that Wollastonite is a "**Major Mineral**" as it finds mention at Serial No. 53[3] of the Second Schedule appended to the MMDR Act.

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[1] Page No. 3164 of the Compilation of Statutes Vol-IV
[2] Notification annexed at Page No. 8956 of the Compilation of Documents Vol-III
[3] Page 892 of Compilation of Statutes Vol-IV.

3. The Appellants and various other similarly situated parties challenged the imposition of "Environment and Health Cess" before the Hon'ble High Court of Rajasthan, on inter alia the following grounds:-

A. That the Act of 2008 and the Rules of 2008 are unconstitutional and violative of Article 304 as the law relating to environment including imposition of cess can only be framed by the Parliament.

B. Law in respect of major minerals has exclusively been vested in the Parliament by virtue of declaration made by the Parliament in Section 2 of the MMDR Act, 1957.

C. The tax/fees on the mineral or mineral rights are totally within the domain of the Parliament. Under such circumstances, the Act of 2008 which imposes cess on all the minerals including the major minerals, is ultra vires the powers of the State Legislature particularly, in respect of major minerals.

D. That the Act of 1957 and the Rules framed thereunder, the field regarding environment and health is occupied by the Legislations framed by the Central Government in the form of the Act of 1974 (Water), the Act of 1981 (Air) and the Act of 1986 (Environment Protection).

E. The Parliament could only, therefore, frame law of levy of cess or tax in respect of environment and health. The Act of 2008 is, therefore, beyond the legislative competence of the State and is therefore, liable to be struck down.

F. The State Legislature has already imposed huge tax in the form of land tax and now in the name of environment cess, again levy has been imposed on the mineral rights.

4. The Hon'ble High Court vide order dated 12.10.2011 disposed of the batch of Writ Petitions in Writ Petition No. 4345 of 2009 titled as *'M/s Madhyabharat Phosphate Pvt Ltd vs State of Rajasthan'*[4] and connected matters and upheld the imposition of *'Environment and Health Cess'* under Chapter VII of the Rajasthan Finance Act, 2008.

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[4] Page 11763 of the Compilation of Documents Vol-III

5. Against the judgment dated 12.10.2011, the Appellant has preferred the present Civil Appeal, by special leave, which have been tagged with the present bunch of matters referred to bench of 9 Hon'ble Judges of the Court pursuant to a Reference order dated 30.03.2011 in ***Mineral Area Development Authority v. Steel Authority of India*, (2011) 4 SCC 450**[5], where the 11 questions have been referred to a bench of 9 Judges. To avoid repetition, the said questions have not been reproduced here.

6. The issue involved in the present reference ***Mineral Area Development Authority (Supra)*** is regarding the purported divergence in opinion between the seven-judge bench matter i.e., *India Cement Ltd & Ors vs State of Tamil Nadu & Ors (1990) 1 SCC 12* ("**India Cement**")[6] and a five-judge bench matter i.e., *State of West Bengal vs Kesoram Industries Ltd & Ors (2004) 10 SCC 201* (**"Kesoram"**).[7] It is most respectfully submitted at the outset that the majority view in *Kesoram* is incorrect, and the view taken by ***India Cement*** (supra) is correct and ought to be affirmed. The conclusion reached by the majority in ***Kesoram*** (supra) that the judgment of ***India Cement*** suffers from a typographical error (in para 34) is also contrary to reasoning of the preceding paragraphs of ***India Cement*** (supra) itself. Bearing in mind binding precedent of ***India Cement*** having been rendered by a bench of 7 judges, the majority in *Kesoram* was bound to follow the ***India Cement***.

7. The skeleton of submissions by the Appellant herein – Wolkem Industries is as follows:-

   A. It is submitted that "Royalty" is a tax, as has been held by a 7 Judges Bench in ***India Cement (Supra).*** Law laid down by ***Kesoram*** (supra)ought to be overruled and the law laid down by India Cement ought to be affirmed by this Hon'ble Court of 9 Judges. There was no reason for the

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[5] Page 15 of Compilation of Documents Vol-III
[6] India Cement Judgement at Page No. 1145 of the Compilation of Judgments Vol-V
[7] Kesoram Industries Judgment at Page No. 2014 of the Compilation of Judgments Vol-V

majority in ***Kesoram*** (supra) to depart from a binding view of 7 Judges in ***India Cement.***

[RE: Question 1, 4 and 5]

I. Whether "royalty" determined under Sections 9/15(3) of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957, as amended) is in the nature of tax?

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

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

B. There is no Legislative Competence of State Government to levy tax on "Minerals" under Entry 50 (List II) as Entry 50 refers to "Mineral Rights" i.e. right to extract minerals. Further, as per Entry 97, List I, the power to levy tax on "minerals" ought to vest with the Central Government.

[RE: Question 7]

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

C. ***Re: Legislative Competence*** / Entry 54 (List I) read with Entry 50 (List II) read with Section 2, 9, 13, 15 of the MMDR Act and 1988 Rules, makes it abundantly clearly that the State Government is denuded of its power to enact law or levy tax with respect to "Major Minerals". Intention of the Legislature i.e. Parliament.

[RE: Question 3, 8, 9, 10, 11]

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

particular, whether Section 9 of the aforementioned Act denudes or limits the scope of List II Entry 50?

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

IX. Whether List II Entry 50 read with List I Entry 54 of the Seventh Schedule to the Constitution constitute an exception to the general scheme of entries relating to taxation being distinct from other entries in all the three Lists of the Seventh Schedule to the Constitution as enunciated in M.P.V. Sundararamier & Co. v. State of A.P. [AIR 1958 SC 468 : 1958 SCR 1422] [AIR p. 494 : SCR at p. 1481 (bottom)]?

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

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

D. The cess in questions cannot be justified under Entry 49 (List II) by the State Government.

[RE: Question 2 & 6]

II. Can the State Legislature while levying a tax on land under List II Entry 49 of the Seventh Schedule of the Constitution adopt a measure of tax based on the value of the produce of land? If yes, then would the constitutional position be any different insofar as the tax on land is imposed on mining land on account of List II Entry 50 and its interrelation with List I Entry 54?

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

SUBMISSIONS:-

A. IT IS SUBMITTED THAT "ROYALTY" IS A TAX, AS HAS BEEN HELD BY A 7 JUDGES BENCH IN INDIA CEMENT (SUPRA). LAW LAID DOWN BY KESORAM (SUPRA) OUGHT TO BE OVERRULED AND THE LAW LAID DOWN BY INDIA CEMENT OUGHT TO BE AFFIRMED BY THIS HON'BLE COURT OF 9 JUDGES. THERE WAS NO REASON FOR THE MAJORITY IN KESORAM (SUPRA) TO DEPART FROM A BINDING VIEW OF 7 JUDGES IN INDIA CEMENT.

1. In ***Kesoram (supra)***, a bench of five judges (4:1) held that Royalty is not a tax **[Para 147]**[8] and that the State Legislatures were within their legislative competence to impose the tax in question. The majority in ***Kesoram*** concluded that "*royalty is not a tax*" and declared that "*even in India Cement it was not the finding of the Court that royalty is a tax*" **[Para 71]**[9]**.** The conclusions is based on a purported "typographical error" that has cropped in due to either "sheer inadvertence" or the "stenographer's devil". **[Para 56-57**[10]**]**

2. It is submitted that the conclusion reached by the majority in ***Kesoram*** (supra) that the judgment of ***India Cement*** suffers from a typographical error (in para 34)[11] is contrary to reasoning of the preceding paragraphs of ***India Cement*** (supra) itself.

3. The Hon'ble Court in ***Kesoram*** (supra) most unfortunately ignores that the question as to whether there was any typographical error in the judgment of the Constitution Bench in *India Cement* was squarely addressed by the Bench of three Hon'ble Judges in ***State of M.P. Vs. Mahalaxmi Fabric Mills Ltd. 1995 Suppl (1) SCC 642***[12], after extensively analyzing the judgment in *India Cement*, categorically held that:-

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[8] Page No. 2145 of the Compilation of Judgements Vol-V
[9] Page No. 2110 of the Compilation of Judgements Vol-V
[10] Page No. 2105 of the Compilation of Judgements Vol-V
[11] Page No. 2097 of Compilation of Statutes Vol-V
[12] Page No. 1561 of the Compilation of Judgements Vol-V

> *"...in view of what we have discussed above it becomes absolutely clear that there was no typographical error but on the contrary the said conclusion logically flew from the earlier paragraphs of the judgement referred to by us hereinabove."*[13]

4. The judgment of ***Kesoram*** (per majority) comes to a conclusion that there is a typographical error in **Para 34** of *India Cement* on a complete misreading of the judgment of the Hon'ble High Court of Mysore in ***M/s. Laxminarayana Mining Co. Bangalore v. Taluk Dev Board, AIR 1972 Mysore 299***[14]. A very important aspect of ***Laxminarayana Mining (Supra)*** has been completely overlooked by the majority in ***Kesoram (Supra)***. The Hon'ble High Court in ***Laxminarayana Mining (Supra)*** has specifically with respect to Section 9 of the MMDR Act, 1957 has held as follows:-

> *"..... The expression 'royalty' is used differently in different contexts. Sometimes it is used as equivalent to a tax also and in some other cases it is used as representing the amount payable by a lessee in respect of minerals removed by the lessee even though the lessor is not the sovereign Government we are of the opinion that the expression 'royalty' in Section 9 which requires payment of royalty to the State Government as prescribed in the II Schedule connotes the levy of a tax....."*

5. Further, in this respect it is important to Para 27[15] of ***India Cement*** (Supra), where the aforesaid judgment in ***Laxminarayana Mining*** (supra) is dealt with. It reads as follows:

> *"27. ..... There the court was concerned with the Mysore Village Panchayats and Local Boards Act, 1959. Thus, it was held that it could not, therefore, be said that even after passing of the Central Act, the State legislature by enacting Section 143 of the Act intended to confer power on the Taluk Board to levy tax on the mining activities carried on by the persons holding mineral concessions. It followed that the levy of tax on mining by the Board as per the impugned notification was unauthorised*

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[13] Page No. 1575 of the Compilation of Judgements Vol-V
[14] Page No. 532 of the Compilation of Judgements Vol-V
[15] Page No. 1161 of the Compilation of Judgements Vol-V

and liable to be set aside. ***At page 306 of the said report, it was held that royalty under Section 9 of the Mines and Minerals Act was really a tax."***

6. In such a circumstance, it is submitted that by no stretch of imagination can it be held that the conclusion in ***India Cement*** (supra) that royalty under Section 9 of the MMDR Act was really a tax was a typographical error.

7. It is submitted that since the purported typographical error was not an issue raised in ***Kesoram***, the dissenting/minority view, does not rightly advert to this issue at all. The finding in the majority decision on this issue therefore could not be considered as the ratio of ***Kesoram***.

8. The decision of the majority in ***Kesoram*** *(Supra)* therefore, does depart from the decision in ***India Cement*** *(Supra)*, and to that extent is in the teeth of the judgment of this Hon'ble Court in ***Central Board of Dawoodi Bohra Community v. State of Maharashtra*, (2005) 2 SCC 673**[16] where it has been expressly held that the decision of a larger bench of this Hon'ble Court is binding on subsequent benches of this Hon'ble Court which have a coequal or smaller quorum:

> *"The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength.*
>
> ...
>
> *A Bench of lesser quorum cannot disagree or dissent from the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration."*

9. Hence, it is settled law that a judgement of the Hon'ble Supreme Court cannot be overruled by another bench of a lesser strength.

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[16] Page No. 2250 of the Compilation of Judgements Vol-V

10. In such a situation, it is submitted that questions **I, IV and V** ought to be answered in the following terms:-

I. The majority decision in ***State of W.B. v. Kesoram Industries Ltd. [(2004) 10 SCC 201]*** could be read as departing from the law laid down in the seven-Judge Bench decision in ***India Cement Ltd. v. State of T.N. [(1990) 1 SCC 12]***. And as such ***Kesoram (Supra)*** being inconsistent with the binding precedent of a 7 Judges Bench in ***India Cement (Supra),*** ought to be overruled.

II. As a consequence, the position as enunciated by ***India Cement (Supra)*** i.e. "royalty is a tax" ought to be restored.

III. Further, the royalty payable under S.9/S.15 of the MMDR Act, is in nature of a tax.

B. MEANING OF "MINERAL RIGHTS" FALLING IN ENTRY 50 (LIST II). NO LEGISLATIVE COMPETENCE OF STATE GOVERNMENT TO LEVY TAX ON "MINERALS" UNDER ENTRY 50 (LIST II).

11. It is submitted that the legislative power of the State to enact a particular law/levy is to be traced from Article 246[17] and Article 248[18] of the Constitution of India. The entries in List I (Union List), List II (State List), and List III (Concurrent List) in Schedule VII are only fields of legislation.

12. To understand the legislative scheme and competence, it is pertinent to firstly note that Entry 54 of List I (Union List) of Schedule VII, provides for as follows:-

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[17] Page No. 188 of Compilation of Statutes Vol-IV
[18] Page No. 189 of Compilation of Statutes Vol-IV

> *"**54**. Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest."*[19]

13. Thereafter, Entry 50 of List II (State List), which is sought to be relied upon by the State Governments to justify the imposition of the cess in question reads as under:-

> *"**50**. Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development."*[20]

14. Furthermore, Entry 23 of List II also reads as follows:-

> *"**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."*[21]

15. It is submitted that there is no such entry relating to the levy of tax on *"minerals"* and hence, the Parliament alone has the competence to levy such tax under Article 248 of the Constitution read with Entry 97 of List I. Therefore, the Parliament alone is competent to levy tax on the minerals under its residuary power under Article 248(2) read with Entry 97 of List I. Entry 97 of List I[22] also reads as follows:

> *"**97**. Any other matter not enumerated in List II or List III including any Tax not mentioned in either of those Lists."*

16. A co-joint reading of the aforesaid entries reveals that so far as the Central Government is concerned, the power to regulate "mineral development" including imposition of tax and fees exclusively vests with the Central Government.

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[19] Page No. 357 of Compilation of Statutes Vol-IV
[20] Page No. 364 of Compilation of Statutes Vol-IV
[21] Page No. 362 of the Compilation of Statutes Vol-IV
[22] Page No. 360 of Compilation of Statutes Vol-IV

17. This Hon'ble Court has in ***Hingir-Rampur Coal Co. v. State of Orissa, AIR 1961 SC 459***[23], held that taxes on mineral rights are distinct from taxes on minerals themselves. This Hon'ble Court in ***India Cement*** (Supra) also approved the minority judgment in ***Hingir-Rampur*** (Supra) and held that Entry 50 of List II *"pertains only to a tax that is leviable for the grant of the right to extract minerals and is not a tax on minerals as well. On that basis, a tax on royalty would not be a tax on mineral rights and would therefore in any event be outside the competence of the State Legislature."*

18. Further, the Seven Judges Bench in ***India Cement*** (Supra) duly approved the decision taken by the Hon'ble High Court of Mysore in ***M/s. Laxminarayana, Mining Co., Bangalore and another v. Taluk Development Board and another., AIR 1972 Mys 299***[24] that held that:

> *"severance of mineral rights would not amount to severance of land rights and would amount only to the severance of the profits from the land".*

19. It is further submitted that the Minority in ***Kesoram*** at para 400[25] has correctly held that if the intention of the framers was to confer on the State legislatures, the absolute power to levy tax whether on mineral rights or minerals, the language of Entry 50 of List II would not have been restricted in the manner it has been. Similarly, the difference is explained in Para 424 as follows:-

> *"424. "Mineral rights" and "mineral" connote two different things. A mineral may be embedded in earth or is extracted. When it is extracted, it may be a culmination of the right to deal in mineral but the **mineral rights would not include a right to dispatch extracted minerals**."*[26]

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[23] Page No. 136 of the Compilation of Judgements Vol-V
[24] M/s. Laxminarayana, Mining Co., Bangalore and another v. Taluk Development Board and another., AIR 1972 Mys 299 - Paragraph 17 (see India Cement at paragraph 27)
[25] Page No. 2202 of the Compilation of Judgments Vol-V
[26] Page No. 2209 of the Compilation of Judgments Vol-V

20. It is contended that the dissenting opinion accurately reflects the correct legal stance. When considering its application to the present case, specifically regarding the phrase "taxes on mineral rights" in Entry 50 of the State List, it grants legislative authority concerning the imposition of taxes on minerals that remain embedded in the earth and have not yet been extracted, without any further implications.

21. In ***Orissa Cement Ltd. vs. State of Orissa and Ors., 1991 Supp (1) SCC 430***[27] this Hon'ble Court held that the purpose of the Union control envisaged by Entry 54 and the MMRD Act, 1957, is to provide for proper development of mines and mineral areas and also to bring about a uniformity all over the country in regard to the minerals specified in Schedule I in the matter of royalties and, consequently prices.

22. Further, the State of Rajasthan had earlier enacted the Rajasthan Land Tax Act of 1985 which also purported to impose tax on mineral bearing lands, which was struck down by this Hon'ble Court in ***Federation of Mining Association v. State of Rajasthan, 1992 Supp (2) SCC 239***[28], wherein this Hon'ble Court inter alia held as under:

> *"5....For the reasons set out in India Cement and Orissa Cement cases, we are of the opinion that the State legislature did not have the competence to legislate for the levy of a tax on mineral bearing lands based on the royalty derived from the land."*

23. As the cess under the Finance Act, 2008 is on minerals that have already been extracted and does not pertain to the grant of the right to extract minerals, the said cess is not on mineral rights and hence not a tax contemplated under Entry 50 of List II. Therefore, the present cess is not a tax on mineral rights; it is a **tax on the minerals** actually produced and can be no different in pith and

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[27] Page No. 1323 of the Compilation of Judgements Vol-V
[28] Page No. 1397 of the Compilation of Judgments Vol-V

substance from a tax on goods produced which comes under Item 54 of List I, as a duty for regulation of mines and mineral development. The present levy therefore under the Act of 2008 cannot be justified as a tax on mineral rights.

24. Thus, **Question VII** on the scope of the expression "taxes on mineral rights" in List II Entry 50 of the Seventh Schedule to the Constitution ought to be answered in the aforesaid terms.

C. ENTRY 54 (LIST I) READ WITH ENTRY 50 (LIST II) READ WITH SECTION 2, 9, 13, 15 OF THE MMDR ACT AND 1988 RULES, MAKES IT ABUNDANTLY CLEARLY THAT THE STATE GOVERNMENT IS DENUDED OF ITS POWER TO ENACT LAW OR LEVY TAX WITH RESPECT TO "MAJOR MINERALS".

25. The present sub-head deals with **Question III, VIII, IX, X, XI** of the reference order.

26. In exercise of the powers conferred by Entry 54 of List I of the Seventh Schedule appended to the Constitution of India, the Parliament enacted the **Mines and Minerals (Development and Regulation) Act, 1957 ("MMDR Act")**[29]. Section 2 of the Act of 1957 provides the declaration by the Parliament to the effect that the Union shall take under its control the regulation of mines and development of minerals **to the extent provided in the Act of 1957**. Section 2 of the Act of 1957 reads as follows:–

> *"2. Declaration as to the expediency of the Union control. –*
>
> *It is hereby declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent hereinafter provided."*[30]

27. The MMRD Act provides for levy of Royalty, dead rent, etc. for the exercise of "mineral rights" that vest in the State and are leased to the Lessees, and this

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[29] Page No. 813 of the Compilation of Judgments Vol-V
[30] Page No. 823 of the Compilation of Statutes Vol-IV

is at the rate fixed by Parliament and cannot be increased by the State Legislature.

28. Entry 50 in List II is "*subject to any limitations imposed by Parliament by law relating to mineral development*" and Entry 23 relating to regulation of mines and mineral development is "*subject to the provisions of List I with respect to regulation and development under the control of the Union.*". In view enactment of MMDR Act, 1957 under Entry 54, List I and the declaration made under Section 2 and provisions of Section 9 of the MMDR Act, 1957 the power of State Legislature would be overridden to that extent. It is, therefore, a clear bar on the State legislature taxing royalty so as to, in effect, amend Second Schedule of the MMDR Act. In the premises, any "royalty" charged by State Legislature under the purport of Entry 50 of List II be ultra vires and in teeth of Section 9(3) of the MMDR Act.

29. In exercise of the powers conferred by Section 9 of the MMDR Act, the second schedule appended to the MMDR Act has been amended by the Central Government from time to time providing for the rate to be paid on the major minerals dispatched by the mining lease holder of such mineral.

30. Further it is submitted that Section 13 of the MMDR Act makes it evident that the field with respect to minerals is covered and that only the Central Government can make rules and levy fees/ charges etc.

31. Section 14[31] of the MMDR Act makes it clear that the preceding provisions from Section 5 to 13 are not applicable on minor minerals and it can be concluded that the provisions preceding Section 14 will apply to major minerals, such as wollastonite in the present case, and the Central Government

[31] Page 866 of Compilation of Statutes Vol-IV

is empowered to act with respect to the same. This has been further clarified under Section 15(1) of the MMDR Act.

32. A bare reading of Section 13 and Section 15 and comparison between them would make it abundantly clear and can be well concluded that while in respect of any "Major Minerals" listed in Second Schedule of Act of 1957, the Central Government is only competent to make any Rules or fix any type of levy, fines or other charges, whereas it is only for any "Minor Minerals" that it is the respective State Government(s), which has been given the powers to act at its discretion and fix the royalty, fees, cess, fines or other charges as it deem proper. Thus, before exercise of powers in respect of fixation of any cess, fees or levy the issue of relevance is to look about the classification of a lease of the subject mineral whether it belongs to "Major Mineral" or the "Minor Mineral" category.

33. The power of the State Legislature to impose taxes as per Entry 50 of List II on mineral rights, if it relates to "major minerals" is subject to any limitation by Parliament by law relating to mineral development and as stated above Parliament has already enacted the Act of 1957 which has imposed limitations on the powers of the State to make rules only in respect of minor minerals by virtue of Section 15 of the MMDR Act,1957.

34. Thus, by operation of Entry 54 of List I and Section 15[32], at best the State Government is empowered to make rules in respect of minor minerals only. Thus, the power to levy royalty on major minerals vests in the Central Government.

35. Hence, it is evident that the right to frame laws in respect of major minerals has exclusively been vested in the Parliament as per Entry 54 List I read with

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[32] Page 866-867 of Compilation of Statutes Vol-IV

Entry 23 and 50 of List II read with provisions of the MMDR, Act which is clear from a holistic reading of the declaration and provisions made by the Parliament in Section 2 read with Section 9, 13, 14 and 15 of the MMDR Act.

36. It is also pertinent to note that even Section 16 of the Finance Act, 2008 (Rajasthan)[33] [which imposed the impugned "**environment and health cess**"] itself begins with the expression *"Subject to any limitation imposed by parliament by law relating to mineral development....."*. The Parliament has already enacted the MMDR Act, 1957 and Section 2 of the said Act provides the declaration by the Parliament that the Central Government shall take under its control the regulation of mines and development of minerals to the extent provided in the Act of 1957.

37. Therefore, so far as a major mineral is concerned a declaration having been made by the parliament to regulate the mines and mineral development, the power to impose taxes and fees will also vest in the parliament by virtue of Entry 54 of List I of Schedule VII to the Constitution of India.

38. The field of regulating minerals is thus already occupied by the Parliament by enacting the Act of 1957. Consequently, the State legislatures are **denuded** of any power or competence to enact any laws with respect to regulation of mines and mineral development, except for "minor minerals" as per the four corners of MMDR Act, 1957.

D. TAX ON "MAJOR MINERALS" BY THE STATE GOVERNMENT CANNOT BE JUSTIFIED UNDER ENTRY 49 OF LIST II

39. It is submitted that Entry 49 of List II[34] reads as ***"taxes on lands and building"***. Entry 49 of List II has nothing to do with regulation of mines and mineral development as regulation is covered by Entry 23 of List II and taxes

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[33] Section 16 at Page 8952 of Compilation of Documents Vol-III
[34] Page No. 364 of Compilation of Statutes Vol-IV

on mineral rights is specifically covered by Entry 50 of List II. Thus, mines and minerals or the rights therein being separately covered in respective entries cannot be covered by the expression "Land" appearing in Entry 49 of List II.

40. The judgement in ***Kesoram*** is clearly wrong when it holds that a tax based on the exercise of mineral rights can be justified as a tax under Entry 45 or Entry 49, treating the value of the minerals only as a measure of the tax and for a particular use of land[35]. The said reasoning of Kesoram is *per incuriam* two Constitution Bench decisions in **Sudhir Chandra v. Wealth Tax Officer AIR 1969 SC 59**[36] and **Second Gift Tax Officer Mangalore v. D.H. Nazareth (1970) 1 SCC 749**[37]

41. The Minority in ***Kesoram*** *(Supra)* at paras 505-506[38], relied on **Sudhir Chandra v. Wealth Tax Officer AIR 1969 SC 59** and **Second Gift Tax Officer Mangalore v. D.H. Nazareth (1970) 1 SCC 749** to conclude that minerals extracted would qualify as "*personal property*" and therefore cannot be said to attract a tax on land under Entry 49 of List II.

42. This Hon'ble Court in ***D.H. Nazareth*** *(Supra)* has clarified that unless a tax is levied directly on lands and building *per se*, even if a tax levied on a "*particular use*" of a land and the measure of the tax is based on the value of the land or its produce, it cannot be justified as falling within the scope of Entry 49 of List II.

43. Thus, a levy on mining lessees and mineral extraction, being a tax on a 'particular use' of land, as opposed to a tax based directly on ownership of lands and buildings, cannot be justified as a tax falling within the scope of

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[35] Para 40 and 42 of Kesoram
[36] Page No. 378 of the Compilation of Judgments Vol-V
[37] Page No. 440 of the Compilation of Judgments Vol-V
[38] Page No. 2226 of the Compilation of Judgments Vol-V

Entry 49 of List II. As such, no levy contemplated under Entry 50 of List II, even if the measure thereof is tied to the value of the land, can be said to fall under Entry 49 of List II as well.

44. In any event, royalty is directly relatable only to the minerals extracted and on the principle that the general provision is excluded by the special one, royalty would be relatable to Entries 23 and 50 of List II, and not Entry 49 of List II. But as the fee is covered by the central power under Entry 23 or Entry 50 of List II, the impugned legislation cannot be upheld

45. Further, it has been rightly observed by this Hon'ble Court in the judgment of ***India Cement (Supra)*** that the Royalty is a tax, and as such a cess on royalty being a tax on royalty is beyond the competence of the State Legislature as Section 9 of the MMDR Act, 1957 covers the field and the state legislature is denuded of its competence under Entry 23 of List II. This Hon'ble Court further held that in any event, cess on royalty cannot sustained under Entry 49 of List II as being a tax on land. [Para 34 of India cement]

46. The judgment of ***Kesoram*** failed to observe that royalty on mineral rights is not a tax on land but a payment for the user of land.

47. It is further submitted in the facts of the present Appellant's case, the cess imposed by the Finance Act, 2008 (Rajasthan) cannot be treated to be a tax on land because the tax on land has already been imposed by the State Government by the virtue of Chapter VII of the Act of 2006 and thus it cannot be said to fall within the ambit of Entry 49 of List II.

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