NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPT No. 127 of 2019

Nuvoco Vistas Corporation Limited (Formerly Lafarge India Private Limited) Having Its Eastern Operations Office At DLF IT Park 1, Block A1, 8th Floor, 8, Major Arterial Road, Kolkata 700156 And Its Corporate And Registered Office At Equinox Business Park, Tower 3, East Wing, 4th Floor, Off Bandra Kurla Complex, LBS Road, Kurla (West) Mumbai - 400070 (Ms), District : Mumbai, Maharashtra **---- Petitioner**

Versus

1. State Of Chhattisgarh Through Its Secretary, Department Of Revenue And Disaster Manager, Mahanadi Bhawan, Mantralaya, Nava Raipur, Atal Nagar, District Raipur Chhattisgarh
2. Collector (Mining) District Raipur (Chhattisgarh)
3. Collector (Mining) District Janjgir-Champa Chhattisgarh

---- Respondents

For Petitioner	:	Shri Ashish Shrivastava, Advocate
For State	:	Shri Chandresh Shrivastava, Dy. A. G.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

20.11.2019

1. The challenge in the present writ petition is to the notification dated 04.09.2019 passed by the Respondent-State Government amending the Schedule I & II of the Chhattisgarh (Adhosamrachana, Vikas Avam Paryavaran) Upkar Adhiniyam, 2005 and thereby revising the rate of Development Cess and Environment Cess.

2. The challenge primarily made to the notification or amendment brought in is that the State Government is denuded of its power to enact any such provision firstly and secondly, once when the matter has already subjudiced before the Hon'ble Supreme Court so far as the validity of the act itself, the Respondent-State Government

should have refrained from revising the Development Cess and Environment Cess which were already enforced.

3. A bunch of writ petitions, leading of which being W.P. 2445/2006 and other analogous writ petitions challenging the validity of the original Act itself i.e. the Principle Act, 2005 referred to in the preceding paragraph.

4. The Division Bench of this Court took all these matters for hearing on 25.07.2012 and taking into consideration the matters which had been seized by the Hon'ble Supreme Court in writ petition No. 2067/2006 before this Court (Hindalco Industries Ltd. Vs. State of Chhattisgarh and others) which was subsequently transferred to the Supreme Court, as Transfer Petition (Civil) No. 481/2007. Later on, Hon'ble Supreme Court directed all pending writ petitions of similar nature from different States of India to be transferred to the Hon'ble Supreme Court and tagged all these matters with Civil Appeals No. 4056-4064 of 1999 (Mineral Area Development Authority v. Steel Authority of India Ltd. & Ors.)

5. The said Civil Appeals have since been referred to a larger Bench with following questions of law to be decided by the Larger Bench which are as follows:-

> 1. Whether 'royalty' determined under Section 9/15(3) of the Mines and Minerals (Regulation & Development Act, 1957 (Act 67 of 1957, as amended) is in the nature of tax?
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> 2. Can the State Legislature while levying a tax on land under Entry 49 List II 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 Entry 50 List II and its interrelation with Entry 54 List I?
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> 3. 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 Entry 50 of List II of the Seventh Schedule of the Constitution of India? Does the Mines and Minerals (Regulation & Development) Act, 1957 contain any provision which operates as a limitation on the field of legislation prescribed in Entry 50 of List II of the Seventh Schedule of the Constitution of India? In particular, whether Section 9 of the aforementioned Act denudes or limits the scope of Entry 50 of List II?

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

5. Whether the majority decision in the **State of West Bengal v. Kesoram Industries Ltd. & Ors**. (2004) 10 SCC 201, could be read as departing from the law laid down in the seven Judge Bench decision in **India Cement Ltd. and Ors. v. State of Tamil Nadu and Ors.** (1990) 1 SCC 12?

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

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

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

9. Whether Entry 50, List II read with Entry 54, List I of the Seventh Schedule of 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 Andhra Pradesh & Anr.**, (1958) 1 SCR 1422 at 1481 (bottom)?

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

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

6. In the light of the aforesaid matters pending before the larger Bench of the Hon'ble Supreme Court, the Division bench of this Court had disposed of all the writ petitions by making these following observations on 25.07.2012 in Paragraph 4 to 8 :-

> 4. It is not in dispute that the constitutional validity of this very Adhiniyam is also under challenge in one W.P. No. 2067/2006 (Hindalco Industries Ltd. Vs. State of Chhattisgarh and Ors.), which was filed initially before this Court but later by order of the Supreme Court passed in Transfer Petition (Civil) No. 481/2007, the said writ petition was transferred to Supreme Court for its hearing on merits and hence was directed to be tagged with pending Civil Appeal No, 4056-4064 of 1999 (Mineral Area Development Authoruty etc. Vs. M/s. Steel Authority of India and others) involving the same issue which is involved in the writ petition. It is also not in dispute that various others mattes arising from different States are also pending in the Supreme Court involving identical challenges namely constitutional validity of Acts enacted by the respective States alike the impugned Adhiniyam. One such pending case in Supreme Court as stated above is Civil Appeal No. 4056-4064/1997(Mineral Areas Development Authority etc. Vs. M/s Steel Authority of India and Ors.
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> 5. While admitting this petition, this Court has directed that recovery and deposit of cess amount made under the impugned Adhiniyam by the writ petitions would be subject to the final order of the writ petition. In other words, the petitioner by this impugned order is directed to go on paying/depositing the Cess under protest to the State, but such payment/deposit made during the pendency of this petition or till the constitutional validity of the impugned Adhiniyam is decided, is made subject to the result of the writ petition.
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> 6. In our view, since the Supreme Court of India is seized of the issue and examining its constitutional validity along with similar Acts made by different States, we are inclined to dispose of this petition finally with an observation that any decision that may be rendered by the Supreme Court in Civil Appeal No. 4056-4064 of 1999 (Mineral Areas Development Authority etc. Vs. M/s Steel Authority of India and Ors) and in W.P. 2064/2006 (Hindalco Industries Ltd. Vs. State of Chhattisgarh and Ors.), the same shall be binding upon the parties to the writ petitions herein by virtue of provision of Article 141 of Constitution and depending upon the final directions given by the Supreme Court in the aforementioned appeals, the parties will ensure its compliance in terms of the directions given therein including obviously the directions relating to payment of refund of cess, if occasion so arises.
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> 7. In our view, there is no need to keep these matters pending and the same can therefore be disposed of in the light of aforesaid observations which, in our opinion, are in the interest of both the parties. Indeed no serious attempt was made by either the parties to object to the order passed by this Court. Even otherwise and as mentioned above, once the controversy is settled by the Supreme Court, then there remains nothing left for any Court in the country to decide any issue arising out of such controversy except to follow and implement the directions contained in the orders of Supreme Court in letter and spirit.
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> 8. It is with these observation or/and direction, this petition along with other connected petition stand finally disposed of.

7. Given the fact that the Division Bench of this Court in somewhat similar set of facts where the Principle Act itself was under challenge had taken a decision by disposing of the writ petitions directing the petitioner therein to deposit the cess amount under protest to the State Govt. Subject to the final outcome of the Civil Appeals/ Writ Petitions pending before the Hon'ble Supreme Court. The present writ petition is also one which would be governed by the order of the Division Bench dated 25.07.2012. Accordingly, the present writ petition also stands disposed of in terms of the order passed by the Division Bench in its order dated 25.07.2012.

8. The Petitioner herein accordingly is directed to continue depositing of the Cess amount as per revised rate under protest as they have been doing in the past. The said deposit would be subject to the outcome of the Civil Appeals by the Hon'ble Supreme Court. In the event, if the Writ Petitions/ Civil Appeals are decided in favour of the Petitioner/Company, the said amount shall be refunded or adjusted with the other heads payable to the State Government or as may be directed by the Hon'ble Supreme Court while deciding the Civil Appeal.

9. Accordingly, the present writ petition stands disposed of.

Sd/-

(P. Sam Koshy)
Judge

Jyotijha