

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on: 10/02/2020****Judgment Delivered on : 14/02/2020****Writ Appeal No. 163 of 2020***{Arising out of Order dated 20.11.2019 passed in Writ Petition (T) No. 127 of 2019 by the learned Single Judge}*

Nuvuco Vistas Corporation Limited (formerly Lafarge India Private Limited) having its Eastern Operations Office at DLF IT Park , 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)

---- Appellant**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 Appellant/Writ Petitioner	: Shri Ashish Shrivastava, Advocate.
For Respondent/State	: Shri Vikram Sharma, Deputy Government Advocate.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

C.A.V. Judgment**Per P.R. Ramachandra Menon, Chief Justice**

1. Revision and enhancement of the rate of 'development cess' and 'environment cess' as per Annexure P/1 Notification dated 04.09.2019 issued by the Respondent/State amending Schedule -1 and Schedule-2 of the Chattisgarh (Adhosanrachna Vikas Evam Paryavaran) Upkar Adhiniyam, 2005, was put to challenge in the writ petition.

2. Referring to the pendency of the challenge in respect of the power and authority of the State to have framed the statute itself as pending consideration before the Apex Court and also placing reliance on the course pursued by a Division Bench of this Court as per Annexure P/3 judgment dated 25.07.2012, interference was declined, observing that the writ petition was also one which would be governed by the order of the Division Bench dated 25.07.2012. This is put to challenge in this appeal.

3. Heard Shri Ashish Shrivastava, the learned counsel for the Appellant and Shri Vikram Sharma, the learned Deputy Government Advocate representing the State/Respondents.

4. The prayers in the writ petition are in the following terms:

"10.1 It is prayed that this Hon'ble Court may kindly be pleased to call for the entire records concerning the case from the possession of the respondents for its kind perusal.

10.2 That, this Hon'ble Court may kindly be pleased to issue appropriate writ quashing and setting aside the Notification No. F4-09/2015/Seven-1, dated 04/09/2019 (Annexure P/1) vide which amendment has been carried out in Chhattisgarh (Adhoshanrachna Vikas Evam Prayavaran) Upkar Adhiniyam, 2005 (Act No. 7 of 2005) in Schedule I and II thereby increasing the rates of Development Cess and Environmental Cess @ 11.25% in so far as levy of Cess on land covered under mining lease is concerned, as illegal, inoperative and void being violative of Article 246, 265 and beyond legislative competence referable to Entry No. 49 and 50 of List-II Schedule VII of the Constitution of India.

10.3 This Hon'ble Court may kindly be pleased to issue appropriate writ in the nature of mandamus restraining official respondents and authorities under the impugned enactment to take any measure or action towards realization and collection of Infrastructure Development Cess and Environment Cess under the impugned Notification dated 04/09/2019 on land covered under the mining lease on the increased rate of Rs. 11.25 and Rs. 11.25%.

10.4 This Hon'ble Court may further be pleased to issue an appropriate writ of mandamus to refund amount of

cess recovered by the respondents, during the pendency of the petition.

10.5 Any other relief/reliefs, which this Hon'ble Court may think fit and proper in the facts and circumstances of the case, with cost of the petition, may also please be granted to the petitioner."

5. The learned counsel for the Appellant submits that the Respondent/State does not have any power or authority to have mulcted the liability by way of development cess/environment cess in view of the law declared by the Supreme Court in ***India Cement Ltd. & Others v. State of Tamil Nadu & Others***; {(1990) 1 SCC 12}. The incompetence of the State stands further asserted in this regard as per ruling rendered by the Apex Court in ***Orissa Cement Ltd. v. State of Orissa & Others***; {(1991) supp (1) SCC 430}. It is also pointed out that the basic challenge raised against the vires of the provision/enactment is pending consideration before the Apex Court. It is without any regard to the said course and events that the State has proceeded with the further amendment, whereby the rate of the development cess/environment cess has been increased substantially from 7.50% to 11.25% which is unconscionable in all respects, and hence the challenge.

6. The learned counsel representing the State/Respondents submits that no interim stay has been granted by the Apex Court and insofar as the provision stands intact as on date, the course pursued by the State Government effecting periodical revision of the rate, depending upon various facts and circumstances, is within the four walls of the law and is not liable to be interdicted. The learned counsel further submits that by virtue of settled position of law, there is a presumption as to the validity of the legislation and until it is declared *ultra vires* for sustainable reasons, the provisions have to be given effect to.

7. There is no dispute with regard to the sequence of events. When the enactment was made, it was subjected to challenge and the issue is now pending consideration before the Apex Court. In the meanwhile, a bunch of writ petitions came to be filed before this Court, and after hearing both the sides, those petitions were disposed of as per the judgment dated 25.07.2012. It was noted by a Co-ordinate Bench of this Court that Civil Appeals pending before the Apex Court have already been referred to a Larger Bench, after framing specific questions of law, to be decided by the Larger Bench. The said questions are in the following terms:

"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?

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 ?

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.”

8. It was in the above context, that the Division Bench of this Court disposed of all the writ petitions as per the common judgment dated 25.07.2012, the operative portion of which as contained in paragraphs 4 to 8 are in the following terms:

"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 others*), 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 Authority 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 other matters arising from the 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 of 1999 (*Mineral Area Development Authority etc. Vs. M/s Steel Authority of India and Others*).

5. While admitting this petition, this Court has directed that recovery and deposit of cess amount made under the impugned Adhiniyam by the writ petitioners 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.

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 Area Development Authority etc. Vs. M/s Steel Authority of India and Others) and in W.P. No. 2067/2006 (Hindalco Industries Ltd. Vs. State of Chhattisgarh and others), 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.

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 observation 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.

8. It is with these observation or/and direction, this petition along with other connected petitions stand finally disposed of."

9. The learned Single Judge, considering the present challenge with reference to the revision of the cess. held that the present petition also would be governed by the order passed by the Division Bench on 25.07.2012. Operative portion of the verdict passed by the learned Single Judge as contained in paragraph 8 is to the following effect:

"8. The Petitioner herein accordingly is directed to continue depositing 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 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."

10. After hearing both the sides, this Court finds that the course pursued by the learned Single Judge, in conformity with the view already taken by a co-ordinate Bench of this Court, with reference to pendency of the matter before the Larger Bench of the Apex Court, cannot be termed as wrong or unsustainable in any respect. It is for the Appellant to continue to deposit the cess amount as per the revised rates under protest, if it be so and this would be subject to the outcome of the Civil Appeals pending before the Apex Court. As made clear by the learned Single Judge, if the issue comes to be answered by the Apex Court in favour of the Appellant, the amount so deposited would stand refunded or adjusted under other heads payable to the State Government or could be dealt with as to be ordered by the Hon'ble Apex Court, while deciding the Civil Appeals. There is no tenable ground to interdict the verdict passed by the learned Single Judge.

11. The appeal fails. It is dismissed accordingly.

Sd/-
(P.R. Ramachandra Menon)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE