**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.**

WRIT PETITION NO.7805/2019

H.D. Enterprises,
a Partnership Firm having it's
office at Ho.No.4261/A/89,
First Floor, Khamla Block 3,
Khamla, Nagpur - 440 025,
By authorized signatory as partner
Harilal Devaji Patel, aged about major. ..Petitioner.

..Vs..

1. The State of Maharashtra,
through Secretary, Department of
Finance, Mantralaya, Mumbai.

2. The Deputy Commissioner of
State Tax, LTU-4, NAG-VAT-E-005,
1st Floor, New Building, Vikrikar
Bhavan, Civil Lines, Opp. High
Court, Nagpur - 440 001.

3. Indian Oil Corporation Ltd.,
through authorized signatory,
a company registered under the
Companies Act, 1956 and having
it's office at Indian Oil Bhavan, G-9,
Ali Yavat Jung Marg, Bandra (E),
Mumbai - 440 051.

4. Reliance Industries Ltd., through
authorised signatory, a company
registered under the Companies Act,
1956 and having it's office at Office
Block No.1, 3rd Floor, DB City Mall,
Arera Hills, MP Nagar, Bhopal,
Madhya Pradesh 462 016. ..Respondents.

Mr. M.G. Bhangde, Senior Advocate with Mr. M. Anilkumar, Advocate for the petitioner.
Ms K.S. Joshi, In-charge Government Pleader for respondent Nos.1 and 2.
Mr. A.V. Khare, Advocate for respondent No.3.
Mr. D.I. Jain, Advocate for respondent No.4.

CORAM :- SUNIL B. SHUKRE AND ANIL L. PANSARE, JJ.
DATED :- 30.11.2021.

ORAL JUDGMENT *(Per Sunil B. Shukre, J.)*

Heard. **Rule**. Rule made returnable forthwith. Heard finally by consent.

2. Learned Senior Advocate has placed heavy reliance upon the view taken by the coordinate Bench of this Court in the case of Mingoa Pvt. Ltd. & Anr. V/s. Union of India & Ors. (1983 SCC Online Bom 22) and also in the case of Commissioner of Income Tax and J.A. Trivedi Bros. (1979 117 ITR 983 [Bom]) to support his argument that the expression “mining activity” or the expression “mining operations”, includes every kind of activity and operation that is required for winning of the mineral and that would mean that such operations would include the activities like removing of upper earth crust, removing of the debris and the overburden, penetrating further into the substrata of different stratas, removing substratum and finally reaching the area where the mineral is actually available for extraction

and exploitation. He further argues that even the dumping of material which has been removed from the upper crust of the earth at the mining site in a different area has been understood to be a part of mining operations by the Apex Court as held in the case of **Samaj Parivartana Samudaya & Ors. V/s. State of Karnataka & Ors**., (2013) 8 SCC 154.

3. Learned Senior Advocate further submits that the law laid down by the Apex Court and the High Court was specifically brought to the notice of respondent No.2 who passed the impugned order but, unfortunately respondent No.2 chose to simply ignore the law and that she even did not make any mention of the same in the impugned order and thus is guilty of the civil contempt of this Court, as held in the case of **Legrand (India) Private Ltd. V/s. Union of India and others.**, 2007 (6) Mh.L.J.146.

4. Learned Government Pleader appearing for respondent Nos.1 and 2 submits that respondent No.2 ought to have not only mentioned the law cited before her by the petitioner but, should also have applied her mind to the law and reached an appropriate conclusion in the matter, which she did not. However, she submits that respondent No.2 is personally present before the Court and respondent No.2

tenders an oral apology for not having mentioned the law cited by the petitioner and also for not having considered the same while passing the impugned order. She also orally assures that in future she would be careful in such matters. The apology so orally and unconditionally tendered by respondent No.2 is accepted and she is advised to be careful in future while dealing with such matters and exercising her quasi judicial powers. We would expect learned Government Pleader to bring these observations to the notice of concerned at the State Sales Tax Office so that all officers exercising quasi judicial powers would be careful in future. We would also request her to bring to the kind notice of these officers the law laid down by the coordinate Bench of this Court in the case of Legrand (India) Private Ltd. (supra) wherein in paragraph 9, the Bench has observed that when such proceedings are initiated and concluded in utter disregard of the position of law enunciated by the High Court, same would amount to civil contempt as defined in Section 2(b) of the Contempt of Courts Act, 1971.

5. As regards the law cited before respondent No.2, we must mention here that the law being very clear, explains the entire position regarding meaning of mining operations and also mining activity and, therefore, this law ought to have been considered by respondent No.2

but, respondent No.2 unfortunately did not do so. Legal position expounded by the Division Bench of this Court can be summed up by stating that the digging of the earth to reach the earth mining belt and removing the overburden dumps before commencing the mining operation is intrinsically connected with and is integral part of the mining operations and these things cannot be separated for carrying out the mining operations. In the case of Samaj Parivartana Samudaya and others (supra) the Supreme Court has even gone a step further when it held in para 48 that dumping of the material removed from the mining site at another place would be an activity which is within the meaning of expression "mining operations". The relevant observations, as they appear in paragraph 48, are reproduced as under:-

> *"48. Before proceeding to the next issue we would like to observe that the contention urged on behalf of some of the lessees that dumping of mining waste (overburden dumps) do not constitute operations under Section 3(d) of the MMDR Act is too naive for acceptance. The wide terms of the definition within the meaning of expression "mining operations". The use of forest land for such activity would require clearance under the FC Act. In case the land used for such purpose is not forest land the mining lease must cover the land used for any such activity."*

6. The impugned order when perused carefully would show that the above referred law has been ignored completely by respondent No.2 and respondent No.2 in order to justify her negative decision

which she appears to have had in her mind before the order was actually passed, invented something which was nowhere in the Central Sales Tax Act, 1956. Respondent No.2 has reasoned that because mining lease is required under Section 4 for mining of the minerals and as the mining lease is not held by the petitioner, the activity of removal of material from the earth crust and surface at the mining site by the petitioner would not amount to activity of mining. The word “mining” has not been defined in the Mines and Minerals (Development and Regulation) Act, 1957 (for short “MMDR Act”) and what is defined therein is the expression “mining operations”. The expression “mining operations” has been defined to be any operations undertaken for the purpose of winning any mineral and what is encompassed in the expression has been well explained in the above case laws of the Apex Court and High Court. But, for the reasons best known to respondent No.2, the law which was made available her was ignored, important factors stated therein were brushed aside by her and some irrelevant factors which were not germane to decide this case were stated while passing the impugned order against the petitioner. Such an order, therefore, cannot stand the scrutiny of law.

(i) The petition is **allowed**.

(ii) The impugned order is hereby quashed and set aside.

(iii) The matter is remanded to respondent No.2 for taking an appropriate decision in the matter which shall be taken by considering the decisions of Apex Court and High Court already cited before us and bearing in mind the observations made hereinabove regarding requirements of law. The decision shall be so rendered at the earliest and in any case, within two weeks from the date of the order.

(iv) Rule is made absolute in the above terms. There shall be no order as to costs.

JUDGE **JUDGE**

Tambaskar.