BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **25.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.(MD) Nos.16961 to 16964 of 2024
and
W.M.P.(MD) Nos.14620, 14626, 14621 and 14623 of 2024

Tvl.Sri Mahalakshmi Blue Metal
represented by its Partnership Chellamuthu Selvaraj Pandi

... Petitioner in all W.Ps.,

/vs./

The State Tax Officer -1 (Ins),
Commercial Tax Building,
Virudhunagar.

... Respondent in all W.Ps.,

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records in reference Nos. ZD330224150807J, ZD3303241503021, ZD330324150631U and ZD330324150724N dated 24.02.2024 and 23.03.2024 on the file of the respondent and quash the same as illegal, arbitrary, against the principles of natural justice.

For Petitioner
in all W.Ps., : Mr.S.Karunakar

For Respondent
in all W.Ps., : Mr.J.K.Jayaselan
Government Advocate

COMMON ORDER

By this common order, all the four writ petitions are being disposed of.

2. The case of the petitioner is that on the mining activity, no GST is payable by the petitioner and that the petitioner has been taking consistent stand that the matter was subjudiced before the Hon'ble Supreme Court. It is submitted that despite the same, the respondent has levied tax under reverse charge mechanism on the mining activity carried out by the petitioner.

3. It is submitted that the petitioner is also selling the mines and minerals and therefore, the petitioner had availed input tax credit on various input supplies and there were certain discrepancies, which have been met with. As far as the tax payable on reverse charge basis on the mining activity is concerned, it is submitted that the respondent ought not to have confirmed the demand.

4. It is submitted that the Hon'ble Supreme Court has now stayed the recovery of tax on the mining activity in ***M/s.Lakhwinder Singh Vs. Union of India*** in ***WP (Civil) No.1076 of 2021***.

5. It is noticed that in view of the order of the Hon'ble Supreme Court, the Division Bench of this Court in its recent order dated 08.01.2024 in W.P.(MD) No.30974 of 2022 etc. batch, has laid down certain guidelines. The guidelines issued by the Division Bench have been reproduced in Paragraph 9 of the order dated 08.01.2024 in W.P.(MD)No.30974 of 2022 etc. batch, which reads as under:

> "*9. In these circumstances, we deem it fit and appropriate to issue the following directions:*
>
> *(i) In the cases, where the challenge is made to the show cause notices, the writ petitioners shall submit their objections / representations within a period of four weeks from the date of receipt of a copy of this order.*
>
> *(ii) Upon receipt of the objections / representations from the writ petitioners, the authority concerned shall proceed with the adjudication, on merits and in accordance with law, after affording reasonable opportunity of being heard to the petitioners. However, the orders of adjudication shall be kept in abeyance until the Nine Judge Constitution Bench decides the issue as to the nature of royalty.*
>
> *(iii) It is made clear that there shall be no recovery of GST on royalty until the Nine Judge Constitution Bench takes a decision.*

(iv) Needless to state that on the matters being decided, the writ petitioners if still aggrieved, shall redress their grievance(s), if any, before the appropriate forum, including by filing appeal(s).

(v) Insofar as the challenge to the notification as well as the circular, it is open to the writ petitioners to act upon, after the outcome of the case pending before the Nine Judge Constitution Bench.

(vi) It is also made clear that all the contentions are left open for the writ petitioners to raise in appropriate proceedings, after the outcome of the decision of the Nine Judge Constitution Bench.

10. Accordingly, this batch of writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed."

6. It is noticed that the Hon'ble Supreme Court has passed a detailed order on **25.07.2024** [today] on the issue relating to rights of the State Government to levy royalty on the mining activity under the provisions of the Mines and Minerals [Development and Regulation] Act, 1957 in **Civil Appeal Nos. 4056-4064 of 1999**, 2024 INSC 554 [**Mineral Area Development Authority and another** vs. **M/s.Steel Authority of India and another etc.**]. The Hon'ble Supreme Court has passed a detailed order consisting of majority view running to 200 pages and minority view running to 193 pages. The majority view has concluded as follows:-

"342. In view of the above discussion, we answer the questions formulated in the reference in terms of the following conclusions:

a. Royalty is not a tax. Royalty is a contractual consideration paid by the mining lessee to the lessor for enjoyment of mineral rights. The liability to pay royalty arises out of the contractual conditions of the mining lease. The payments made to the Government cannot be deemed to be a tax merely because the statute provides for their recovery as arrears;

b. Entry 50 of List II does not constitute an exception to the position of law laid down in M P V Sundararamier (supra). The legislative power to tax mineral rights vests with the State legislatures. Parliament does not have legislative competence to tax mineral rights under Entry 54 of List I, it being a general entry. Since the power to tax mineral rights is enumerated in Entry 50 of List II, Parliament cannot use its residuary powers with respect to that subject-matter;

c. Entry 50 of List II envisages that Parliament can impose "any limitations" on the legislative field created by that entry under a law relating to mineral development. The MMDR Act as it stands has not imposed any limitations as envisaged in Entry 50 of List II;

d. The scope of the expression "any limitations" under Entry 50 of List II is wide enough to include the imposition of restrictions, conditions, principles, as well as a prohibition;

e. The State legislatures have legislative competence under Article 246 read with Entry 49 of List II to tax lands which comprise of mines and quarries. Mineralbearing land falls within the description of "lands" under Entry 49 of List II;

f. The yield of mineral bearing land, in terms of the quantity of mineral produced or the royalty, can be used as a measure to tax the land under Entry 49 of List II. The *decision in Goodricke (supra) is clarified to this extent;*

g. Entries 49 and 50 of List II deal with distinct subject matters and operate in different fields. Mineral value or mineral produce can be used as a measure to impose a tax on lands under Entry 49 of List II;

h. The "limitations" imposed by Parliament in a law relating to mineral development with respect to Entry 50 of List II do not operate on Entry 49 of List II because there is no specific stipulation under the Constitution to that effect; and

i. The decisions in India Cement (supra), Orissa Cement (supra), Federation of Mining Associations of Rajasthan (supra), Mahalaxmi Fabric Mills (supra), Saurashtra Cement (supra), Mahanadi Coalfields (supra), and P Kannadasan (supra) are overruled to the extent of the observations made in the present case.

343. The Registry is directed to take administrative directions from Hon'ble Chief Justice of India for placing the matters before an appropriate Bench."

7. The minority view has concluded as follows:-

"40.What follows are my answers to the conclusions reached on the issues raised in the judgment of Hon'ble the Chief Justice of India, which read as under:

Question	Issues	My conclusions
a.	What is the true nature of royalty determined under Section 9 read with Section 15(1) of the MMDR Act? Whether royalty is in the nature of tax?	The true nature of royalty determined under Section 9 read with Section 15(1) of the MMDR Act, 1957 is that it is in the nature of a tax coming within the scope and ambit of Article 366(28) of the Constitution which defines taxation to include the imposition of any tax or impost, whether general or local or special and the word "tax" is to be construed accordingly.

b.	What is the scope of Entry 50 - List II of the Seventh Schedule? What is the ambit of the limitations imposable by Parliament in exercise of its legislative powers under Entry 54 - List I? Does Section 9, or any other provision of the MMDR Act, contain any limitation with respect to the field in Entry 50 - List II?	Entry 50 - List II of the Seventh Schedule is, no doubt, a taxation Entry which deals with taxes on mineral rights. But this Entry is subject to any limitations imposed by Parliament by law relating to mineral development. The use of the word "any" means the limitation could be in any form which can be imposed only by the Parliament by law relating to mineral development. In view of the use of the expression "any limitations", it must be given the widest possible meaning to include a limitation in the form of Sections 9 and 9A, 25 or any other provision of the MMDR Act, 1957 and Rules made thereunder which act as a limitation to Entry 50 - List II.
c.	Whether the expression "subject to any limitations imposed by Parliament by law relating to mineral development" in Entry 50 - List II pro tanto subjects the Entry to Entry 54 - List I, which is a non-taxing general Entry? Consequently, is there any departure from the general scheme of distribution of legislative powers as enunciated in MPV Sundararamier (supra)?	The expression "subject to any limitations imposed by Parliament by law relating to mineral development" in Entry 50 - List II pro tanto subjects the Entry to Entry 54 - List I. The use of the expression "any limitations" would mean that the taxing Entry would be subject to a nontaxing or general Entry such as in Entry 54 – List I which could also be termed as a regulatory Entry. Consequently, there is a departure from the general scheme of distribution of legislative powers as enumerated in **MPV Sundararamier** insofar as Entry 50 – List II read with Entry 54 - List I is concerned which is unique to Entry 50 – List II. This is having regard to the significance of Entry 54 – List I which also overrides Entry 23 – List II.

d.	What is the scope of Entry 49 - List II and whether it covers a tax which involves a measure based on the value of the produce of land? Would the constitutional position be any different qua mining land on account of Entry 50 - List II read with Entry 54 - List I?	Entry 49 - List II deals with taxation of lands and buildings. It does not cover taxes on mineral bearing lands. The constitutional position is different qua mineral bearing lands on account of Entry 50 - List II read with Entry 54 - List I and Section 2 of the MMDR Act, 1957. Consequently, any imposition on the basis of royalty by a State Legislature or involving royalty as a measure of the value of the minerals extracted from the land is impermissible.
e.	Whether Entry 50 – List II is a specific Entry in relation to Entry 49 - List II, and would consequently subtract mining land from the scope of Entry 49 – List II?”	Yes, Entry 50 - List II is a specific Entry in relation to Entry 49 - List II and would consequently subtract mining lands from the scope of Entry 49 - List II. This is particularly so having regard to Entry 50 - List II to be read with Entry 54 - List I and Section 2 of the MMDR Act, 1957.

41. Consequently, the following conclusions are arrived at by me:

a. I hold that royalty is in the nature of a tax or an exaction. It is not merely a contractual payment but a statutory levy under Section 9 of the Act (Section 9A relating to dead rent). The liability to pay royalty does not arise purely out of the contractual conditions of a binding lease. The payment of royalty to the Government is a tax in view of Entry 50 - List II being subject to any limitations imposed by Parliament by law in the context of Entry 54 - List I read with Section 2 of the MMDR Act, 1957.

b. Entry 50 - List II is an exception to the position of law laid down in ***MPV Sundararamier vs. State of Andhra Pradesh, AIR 1958 SC 468 ("MPV Sundararamier")****. Moreover, in the said case, the scope and ambit as well the implication of Entry 54 – List I on Entry 50 - List II was not considered at all. Therefore, the principle stated in* ***MPV Sundararamier*** *is foreign to the instant case and the ratio of the said decision does not apply to the present case. No* *doubt, the legislative power to tax mineral rights vests with the State legislature but Parliament, though may not have an express power to tax mineral rights under Entry 54 - List I, it being a general Entry, Parliament can, nevertheless on the strength of Entry 54 - List I read with Section 2 of the MMDR Act, 1957, impose any limitation on the power of the States to tax mineral rights under Entry 50 - List II. Sections 9 and 9A of the MMDR Act, 1957 are two such instances of limitations imposed by the Parliament on the taxing power of the State under Entry 50 - List II. This is a unique Entry and must be given its true and complete meaning and while interpreting the same one cannot be swayed by the principles laid down in* ***MPV Sundararamier*** *as the same do not apply in the instant case. At the cost of repetition, it is stated that Entry 50 - List II never came for consideration in the aforesaid case.*

c. Parliament is not using its residuary power with respect to imposing any limitation on the taxing power of the State under Entry 50 – List II. In fact, even the Validation Act, 1992 enacted by Parliament was upheld having regard to Entry 54 - List I read with Section 2 of the MMDR Act, 1957 and not Entry 97 - List I.

d. Entry 50 - List II envisages that Parliament can impose "any limitations" on the legislative field created by that Entry under a law relating to mineral development. The MMDR Act, 1957 has imposed the limitations as envisaged in Entry 50 - List II in Sections 9, 9A and 25, etc. on the strength of Entry 54 – List I.

e. I, however, concur with the learned Chief Justice that the scope of the expression "any limitations" under Entry 50 - List II is wide enough to include the imposition of restriction, conditions, principles as well as a prohibition by Parliament by law.

f. The State legislatures have legislative competence under Article 246 read with Entry 49 - List II to tax lands and buildings but not lands which comprise of mines and *quarries or have mineral deposits as mineral bearing lands do not fall within the description of lands (under Entry 49 - List II). Similarly, States can tax such mineral bearing lands which are not covered within the scope of MMDR Act, 1957 i.e., minor minerals, under Entry 50 – List II and not under Entry 49 – List II as tax on exercise of mineral rights. Thus, mineral bearing lands cannot be taxed under Entry 49 – List II.*

g. Further, the yield of mineral bearing lands, in terms of quantity of mineral produced or royalty paid cannot also be used as a measure to tax such lands under Entry 49 - List II. In my view, the decision in ***Goodricke*** *does not apply to the present case and hence does not require any clarification.*

h. Entries 49 and 50 - List II, no doubt, operate in different fields. Entry 49 - List II deals with taxes on lands and buildings but Entry 50 - List II deals with taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development. There is no constitutional limitation on the competence of the State legislature to tax lands and buildings. However, the State's competence to tax mineral rights is subject to any limitations imposed by the Parliament by law relating to mineral development. Entry 49 – List II and Entry 50 - List II are distinct and operate in distinct ways. Entry 49 - List II does not apply to mineral bearing lands as such lands are taxed in the form of royalty or dead rent in the context of exercise of mineral rights. Exercise of mineral rights is the basis for payment of royalty or dead rent. Consequently, value of mineral produced cannot be used as a measure to once again impose a tax on mineral bearing land under Entry 49 – List II. If so, Entry 50 – List II would be rendered redundant.

i. As Entry 49 - List II does not apply to mineral bearing land, the limitations imposed by Parliament by law relating to mineral development with respect to Entry 50 - List II would restrict the power of the State legislature to *impose tax on mineral rights under the latter Entry. Thus, the power of the State legislature to impose tax under Entry 50 - List II is subject to the Parliament imposing any limitation by law relating to mineral development.*

42. In view of the above discussion, the eleven questions referred to this Bench are accordingly answered. In particular, I hold that:

(i) Sections 9, 9A and 25 of the MMDR Act, 1957 denude or limit the scope of Entry 50 - List II;

(ii) the majority decision in ***Kesoram*** *is a serious departure from the law laid down by the seven-judge Bench in* ***India Cement*** *which was wholly unwarranted and therefore, in my view, the said majority judgment is liable to be overruled and is overruled to the extent of holding that royalty is not a tax;*

(iii) taxes on lands and buildings under Entry 49 – List II contemplates a tax levied directly on the land as a unit having a defined relationship with the land and does not include mineral bearing lands within its scope;

(iv) in view of the declaration under Section 2 of the MMDR Act, 1957 made in terms of Entry 54 - List I and to the extent of the provisions of the said Act, the State legislature is denuded of its powers under Entry 50 - List II; and

(v) Entry 50 - List II is a unique Entry because it is the only taxation Entry in Lists I and II where the taxing power of a State legislature has been subjected to "any limitations imposed by Parliament by law relating to mineral development". The dictum in ***MPV Sundararamier*** *has not discussed on Entry 50 – List II and hence the said decision has no bearing as such on the present controversy. The conclusion that 'royalty' is a 'tax' is the only exception to the position of law laid down in* ***MPV Sundararamier****. Of course, the scope of expression "any limitations" in Entry 50 - List II is wide enough to include the imposition of*

restrictions, conditions, principles as well as a prohibition.

*43. In the result, in my view, the judgments in **India Cement, Orissa Cement, Mahalaxmi Fabric Mills, Saurasthra Cement, Mahanadi Coalfields, Kannadasan** excluding to the extent overruled in **Tata Iron and Steel**, and **Tata Iron and Steel** are correct and therefore are binding precedent and cannot be overruled. On the other hand, the majority judgment in **Kesoram**, is overruled to the extent it holds that royalty is not a tax.*

44. The Registry is directed to place these matters before Hon'ble the Chief Justice of India for directions on listing the matters before the appropriate Bench. I must place on record my sincere appreciation to the learned Attorney General, learned Solicitor General and their teams, learned senior counsel appearing for the respective parties, learned instructing counsel and learned counsel for the respective parties for their valuable assistance to this Bench."

8. However, the main issue insofar as levy of GST on the mining activities is concerned, the final decision of the Hon'ble Supreme Court is awaited as per the recent order of the Hon'ble Supreme Court dated 24.07.2024 in the batch of cases in **Udaipur Chambers of Commerce and Industry and others** vs. **Union of India and others** [Special Leave to Appeal (C)No.37326 of 2017]. The cases are likely to be listed for hearing during the third week of August, 2024.

9. In view of the above, the recovery proceedings pursuant to the impugned orders shall be kept in abeyance pending disposal of the appeal by the Hon'ble Supreme Court. The petitioner is given liberty to file a statutory appeal to keep the issue alive. However, there shall be no pre-deposit, in view of the decision of the Hon'ble Supreme Court.

10. These Writ Petitions stand disposed of accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No
Internet : Yes / No
mm/smn2

25.07.2024

To

The State Tax Officer -1 (Ins),
Commercial Tax Building,
Virudhunagar.

C.SARAVANAN, J.

mm/smn2

W.P.(MD) Nos.16961 to 16964 of 2024

25.07.2024