



JSA Prism Mines and Minerals

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A 9 (nine) judge constitution bench of the Supreme Court of India rules that royalty under the Mines and Minerals (Development and Regulation) Act, 1957 is not 'tax'

On July 25, 2024, a 9 (nine) judge Constitution Bench of the Hon'ble Supreme Court of India ("Supreme Court") in the case of *Mineral Area Development Authority and Anr vs. M/s Steel Authority of India and Anr Etc.*¹, by way of the majority opinion² endorsed the power of States to levy tax and cesses on mining and mineral use activities. In a nutshell, it held that:

1. royalty under the Mines and Minerals (Development and Regulation) Act, 1957 ("MMDR Act") is not in the nature of 'tax'. It is a contractual consideration paid by the mining lessee to the lessor for enjoyment of mineral rights;
2. 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;
3. the legislative power to tax mineral rights lies with the State legislatures. However, this right may be limited by the Parliament; and
4. States can adopt the mineral value of land as basis for levying tax on land and buildings, since this is an independent taxing power of States.

Brief Facts

Several States such as Rajasthan and Uttar Pradesh sought to impose taxes on mineral bearing land in pursuance of Entry 49 of List II of the Constitution of India ("Constitution") by applying mineral value or royalty as the measure of tax. These levies were challenged on the ground that they were beyond legislative competence of State legislatures.

¹ Civil Appeal Nos. 4056-4064 of 1999

² Majority Opinion of Chief Justice Dr Dhananjaya Y Chandrachud, Justices Hrishikesh Roy, Abhay Oka, JB Pardiwala, Manoj Misra, Ujjal Bhuyan, SC Sharma and AG Masih.

Relevant Issues

The questions of law framed by the Supreme Court were:

1. *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?*
2. *What is the scope of Entry 50 of 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 of List I? Does Section 9, or any other provision of the MMDR Act, contain any limitation with respect to the field in Entry 50 of List II?*
3. *Whether the expression "subject to any limitations imposed by Parliament by law relating to mineral development" in Entry 50 of List II pro tanto subjects the entry to Entry 54 of 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 *M P V Sundararamier* (1958 1 SCR 1422)?*
4. *What is the scope of Entry 49 of 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 of List II read with Entry 54 of List I?*
5. *Whether Entry 50 of List II is a specific entry in relation to Entry 49 of List II, and would consequently subtract mining land from the scope of Entry 49 of List II?"*

Findings of Supreme Court

Whether royalty is tax

1. Royalty is a consideration paid by a mining lessee to the lessor for enjoyment of mineral rights and to compensate for the loss of value of minerals suffered by the owner of the minerals. The marginal note to Section 9 of the MMDR Act³ states that royalties are 'in respect of mining leases'. The liability to pay royalty arises out of the contractual conditions of the mining lease. The failure of the lessee to pay royalty is considered to be a breach of the terms of the contract, allowing the lessor to determine the lease and initiate proceedings for recovery against the lessee.
2. Section 9 of the MMDR Act statutorily regulates the right of a lessor to receive consideration in the form of royalty from the lessee for removing or carrying away minerals from the leased area. The object of empowering the Central Government to specify rates of royalty for major minerals was to ensure a certain level of uniformity in mineral prices in view of the domestic and international market.
3. The fact that the rates of royalty are prescribed under Section 9 of the MMDR Act does not make it a 'compulsory exaction by public authority for public purposes' because: (a) the compulsion stems from the contractual conditions of the mining lease agreed between the lessor and lessee; (b) the demand is not made by a public authority, but the lessor (which can either be the State Government or a private party); and (c) the payment is not for public purposes, but a consideration paid to the lessor for parting with their exclusive privileges in the minerals. Moreover, the fact that Section 25 of the MMDR Act allows recovery of royalty due to the Government under the MMDR Act or 'under the terms of the contract' as arrears of land does not make royalty 'an impost enforceable by law'. Section 25 of the MMDR Act is a standard recovery provision allowing the government to recover any dues payable to it, flowing from statute or the terms of a contract. Pertinently, contractual payments due to the government cannot be deemed to be a tax merely because the statute provides for their recovery as arrears.
4. There are major conceptual differences between royalty and a tax: (a) the proprietor charges royalty as a consideration for parting with the right to win minerals, while a tax is an imposition of a sovereign; (b) royalty is paid in consideration of doing a particular action, that is, extracting minerals from the soil, while tax is generally levied with respect to a taxable event determined by law; and (c) royalty generally flows from the lease deed as

³ Section 9 deals with royalties in respect of mining leases, to be paid by the holder of a mining lease.

compared to tax which is imposed by authority of law.

5. Under the MMDR Act, the Central Government fixes the rates of royalty, but it is still paid to the proprietor by virtue of a mining lease. In case the minerals vest in the government, the mining lease is signed between the State Government (as lessor) and the lessee in pursuance of Article 299 of the Constitution. Through the mining lease, the Government parts with its exclusive privilege over mineral rights. A consideration paid under a contract to the State Government for acquiring exclusive privileges cannot be termed as an impost. Since royalty is a consideration paid by the lessee to the lessor under a mining lease, it cannot be termed as an impost. Royalty is not a tax as held several times.
6. The principles applicable to royalty apply to dead rent because: (a) dead rent is imposed in the exercise of the proprietary right (and not a sovereign right) by the lessor to ensure that the lessee works the mine, and does not keep it idle, and in a situation where the lessee keeps the mine idle, it ensures a constant flow of income to the proprietor; (b) the liability to pay dead rent flows from the terms of the mining lease; (c) dead rent is an alternate to royalty; if the rates of royalty are higher than dead rent, the lessee is required to pay the former and not the latter; and (d) the Central Government prescribes the dead rent not in the exercise of its sovereign right, but as a regulatory measure to ensure uniformity of rates.

Relationship between Entry 50 of List II and Entry 54 of List I of the Constitution

1. Royalty is not a tax. Therefore, royalty would not be comprehended within the meaning of the expression 'taxes on mineral rights'. The scope of taxes on mineral rights includes taxes on the right to extract minerals. Taxes on mineral rights also take within their fold other aspects relating to the exercise of mineral rights such as working the mines and dispatching minerals from the leased area. However, the legislature must ensure that the exercise of the taxing powers relatable to the field under Entry 50 of List II of the Constitution does not foray into a duty of excise or a tax on the sale of minerals.
2. Entry 50 of List II of the constitution is unique because though it is a taxing entry, it is made subject to 'any limitations imposed by Parliament by law relating to mineral development'. Thus, the taxing power of the State is capable of being controlled by a non-fiscal enactment by Parliament relating to the development of minerals.
3. Entry 54 of List I of the Constitution is a regulatory entry dealing with the regulation of mines and mineral development. The regulatory entries in Lists I and II of the Seventh Schedule are distinct from taxing entries. Though the power to levy taxes is an incident of sovereignty, it is subject to constitutional limitations. Since Entry 54 of List I of the Constitution is a general entry, it will not include the power of taxation.

Tax under Entry 49 of List II of the Constitution

1. The owner of a land can be divested of sub-soil rights in minerals only through a valid process of law, which has generally taken the shape of land reform legislation enacted by State legislatures. The MMDR Act does not vest the ownership of minerals or mineral rights in the State. It regulates the exercise of rights to minerals which may be owned either by the Government, private persons, or by both the Government and private persons.
2. The legislative declaration under the MMDR Act will only affect the legislative power of the State with respect to Entry 23 of List II of the Constitution to the extent the Parliamentary legislation covers the subject-matter. The legislative powers of the State with respect to other subjects under List II of the Constitution, including taxes on lands and buildings, will not be affected or controlled by the MMDR Act. Therefore, the legislative powers of the States to levy a tax falling under Entry 49 of List II of the Constitution remains unaffected.
3. The specification of rates of royalty with respect to major minerals under the MMDR Act limits the powers of the State Government in terms of Entry 54 of List I read with Entry 23 of List II of the Constitution. However, Entry 49 of List II of the Constitution is not restricted or subjected in its operation by any other entry – the State legislature can tax any lands including mineral bearing lands. Reading any implied limitation or restriction on the legislative

power of the State legislature to tax mineral bearing land under Entry 49 of List II of the Constitution will be against the grain of the Constitution.

4. The fact that mineral value or mineral produced is used as a measure under Entry 50 of List II of the Constitution does not preclude the legislature from using the same measure for taxing mineral bearing land under Entry 49 of List II of the Constitution.

Retrospective applicability of Judgment

After the judgment was pronounced on July 25, 2024, arguments were advanced on whether said Judgment is to apply only prospectively. Accordingly, by way of a separate Judgment on August 14, 2024, it was clarified that:

1. the present Judgment would have retrospective applicability;
2. however, demands of tax will not operate on transactions made prior to April 1, 2005;
3. further, the time for payment of the demand of tax will be staggered in instalments over a period of 12 (twelve) years commencing from April 1, 2026; and
4. the levy of interest and penalty on demands made for the period before July 25, 2024, will stand waived for all the assesses.

Conclusion

Supreme Court's 9 (nine) Judge Constitution Bench Judgment settles many issues of constitutional importance bearing fiscal significance – such as interpretation of taxing entries and regulatory entries under the Seventh Schedule of the Constitution, powers of taxation by the Union and States, as also restrictions thereon on important subjects such as minerals and land generally. It is bound to be read as protecting States' powers of revenue over minerals etc. in context of a tight balancing act between fiscal powers of Centre and States under the Constitution.

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