

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. 8637/2023

Decided on: 4.11.2024

M/s Lakhwinder Singh Stone Crusher

.....Petitioner

Versus

Union of India & ors.

....Respondents

Coram:

***The Hon'ble Mr. Justice Tarlok Singh Chauhan, Acting Chief Justice.
The Hon'ble Mr. Justice Satyen Vaidya, Judge.***

*Whether approved for reporting?*¹No

For the Petitioner:

Mr. Arvind Sharma, Advocate.

For the Respondents:

Mr. Balram Sharma, Dy.S.G.I. with
Mr. Rajeev Sharma, Advocate, for
respondents No. 1, 3 and 4.

Mr. Anup Rattan, A.G. with Mr. Rakesh
Dhaulta, Mr. Pranay Pratap Singh,
Mr. Sushant Kaprate, Addl. A.Gs., Mr. Arsh
Rattan and Ms. Priyanka Chauhan, Dy.A.Gs.,
for respondent No.2.

Justice Tarlok Singh Chauhan, Acting Chief Justice (oral)

The instant petition has been filed for grant of following substantive reliefs:

- i. Issue a writ in the nature of Certiorari for quashing the Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 (Annexure P-5), Notification No. 1/2017 - Central Tax (Rate) dated 28.06.2017 (Annexure P-6), Himachal Pradesh Govt. Notification No.11/2017 dated 30.06.2017 (Annexure P-7), Himachal Pradesh Govt. Notification No. 1/2017 dated 30.06.2017*

¹ Whether reporters of the local papers may be allowed to see the judgment? Yes.

(Annexure P- 8), Notification No. 27/2018 - Central Tax (Rate) dated 31.12.2018 (Annexure P-10) and Himachal Pradesh Govt. Notification No.27/2018 dated 31.12.2018 (Annexure P-11), to the effect that no GST on can be levied on Royalty paid by a Mineral Concession Holder for any mining concession granted by the State is illegal, unjust, unconstitutional and without authority of law.

ii. Issue a writ in the nature of Certiorari for quashing the Notices dated 15.12.2022 (Annexure P-17), 22.06.2023 (Annexure P-19), 12.10.2023 (Annexure P-20) issued in pursuance to Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 (Annexure P-5), Notification No. 1/2017 Central Tax (Rate) dated 28.06.2017 (Annexure P-6), Himachal Pradesh Govt. Notification No.11/2017, dated 28.06.2017 (Annexure P-7), Himachal Pradesh Govt. Notification No. 1/2017 dated 28.06.2017 (Annexure P-8), Notification No. 27/2018 Central Tax (Rate) dated 31.12.2018 (Annexure P-10) and Himachal Pradesh Govt. Notification No.27/2018 dated 31.12.2018 (Annexure P-11) Summon dated 23.10.2023 (Annexure P-26) under Section 70 of the CGST Act, 2017 being totally illegal erroneous and bad in law.

iii. Stay further proceedings emanating from Notices dated 15.12.2022 (Annexure P-17), 22.06.2023 (Annexure P-19), 12.10.2023 (Annexure P-20) and Summon dated 23.10.2023 (Annexure P-26).

iv. Stay the levy of GST/Service Tax on Mining Royalty payable under mining concession granted by State, during the pendency the present writ petition.

2 The question, which arises for consideration in this petition is whether there can be levy of GST on royalty paid by the mineral concession holder for any mining concession granted by the State.

3 This petition was based upon the judgment rendered by Seven-Judge Bench of the Hon'ble Supreme Court in **India Cement Ltd. and ors. vs. State of Tamil Nadu and ors. (1990) 1 SCC 12**, wherein it was declared that royalty itself is a tax.

4 It was in this background that demand for GST on royalty by the respondents was stayed by the Division Bench of this Court.

5 It is not in dispute that the judgment rendered in **India Cement Ltd.'s** case (supra) has now been overruled by Nine-Judge Bench of the Hon'ble Supreme Court in **Mineral Area Development Authority & anr. vs. M/s Steel Authority of India & anr., 2024 INSC 554**, wherein it has been held that royalty is not a tax. Therefore, the respondents are well within their rights to levy GST on the royalty paid by the mineral concession holder for any mining concession granted by the State.

6 Consequently, the orders impugned herein i.e. notices (Annexure P-17) dated 15.12.2022 17), (Annexure P-19) dated 22.06.2023, (Annexure P-20) dated 12.10.2023, (Annexure P-27) dated 30.10.2023 and summons (Annexure P-26) dated 23.10.2023 are upheld and the instant petition is accordingly dismissed, so also the pending application(s), if any, leaving the parties to bear their own costs.

(Tarlok Singh Chauhan)
Acting Chief Justice

4.11.2024
(pankaj)

(Satyen Vaidya)
Judge