



2024:CGHC:28945

NAFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**WPT No. 151 of 2024**

1. M/s Mahesh Sharma A Proprietorship Concern, Proprietor, Mahesh Sharma, S/o. Late Shri Kishori Lal Sharma, Aged 46 Years, Addressed At Main Road Keshala, Bilha, Dist. - Bilaspur (C.G.)

**... Petitioners**

**versus**

1. The Union Of India Through Secretary, Ministry Of Finance, Department Of Revenue, North Block, New Delhi

2. The Commissioner Of Central Tax, Goods And Service Tax, GST Commissionerate, Raipur (C.G.)

3. The Superintendent Central Gst Range-Iv, Bilaspur, Office Of The Superintendent Cgst, Range-IV Central Excise, Central Excise Building, Near Aykar Bhawan, Vyaparvihar, Bilaspur (C.G.)

**... Respondents**

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For Petitioners : Mr. Devershi Thakur along with Mr. Ashutosh Biswas, Advocate

For Respondent No.-1 : Mr. Ramakant Mishra, Dy. S.G.

For Respondent No. 2 and 3 : Mr. Maneesh Sharma, Advocate

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**Hon'ble Shri Justice Ravindra Kumar Agrawal, J.**  
**Order on board**

**02.08.2024.**

1. The petitioner has filed the present petition seeking the following reliefs:-

“10.1 May kindly be pleased to issue appropriate writ (s)/order/direction declaring the impugned proceeding initiated by the respondent no.-3 vide F.no. IV(16)30-48/Royalty/SCN/Bil/2021-22/872, dated 23.02.2024,

(filed as ANNEXURE P-1), along with show cause letter was issued on 20.10.2021 (filed as ANNEXURE P-3) as illegal, arbitrary, without jurisdiction and violative of Finance Act 1994 and consequently set aside the same;

10.2 That, the petitioner further prayed for the entire records of the petitioner's case to be called for.

10.3 Any other relief or reliefs that may be deemed fit and proper in the facts and circumstances of the case may kindly be granted also.

10.4 Cost of the case may also be granted.”

2. The petitioner has challenged the show cause notice dated 20.10.2021 (Annexure-P/3) issued by the respondent No. 2 and 3 whereby the demand was made from the petitioner to deposit the service tax of Rs. 36,000/- including (Swachchha Bharat Cess and Krishi Kalyan Cess) which was recoverable under Section 73 (1) of the Finance Act, 1994 read with Section 174 of Central Goods and Service Tax Act, 2017. The said notice dated 20/10/2021 was followed by another notice dated 23.02.2024 (Annexure-P/1) by which the petitioner was called upon for personal hearing before the authorities, in pursuance of the said show cause notice dated 20.10.2021. The challenge of the petitioner is that the petitioner is not liable to pay Service Tax on royalty as the royalty is the tax and therefore, there cannot be tax upon the tax which is in violation of the Finance Act, 1994.
3. Learned counsel for the respondents have submitted that recently, the Hon'ble Supreme Court in the matter of **Mineral Area Development Authority and Anr. v. Steel Authority of India and Anr.** reported in **2024 SCC online SC 1796**, has held that the “The royalty is not a tax” and in view of the recent decision of Hon'ble Supreme Court, the present petition may be disposed of
4. In Para 123 to 130, the Hon'ble Supreme Court deals with the issue as to whether the royalty is tax or not and while giving its conclusion in Para 342, the Hon'ble Supreme Court has held as below:-

“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 **MPV 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. Mineral bearing 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.

5. Thus, in view of the judgment passed by Hon'ble Supreme Court, that the royalty is not a tax, the contention of the learned counsel for the petitioner that royalty is a tax cannot be appreciated.
6. The learned counsel for the petitioner proposition have not disputed the aforesaid proposition of law.
7. The show cause notice has already been issued on 20.10.2021 and the petitioner was called upon for personal hearing in pursuance of the said show cause notice, the remedy lies on the petitioner to pursue his case before the authorities in the show cause notice issued on 20.10.2021 and to raise all his grievances there.
8. In view of the submissions made by learned counsel for the parties and also in view of the judgment of Hon'ble Supreme Court passed in **Mineral Area Development Authority Case (Supra)** the present petition is disposed of, however, since the notice dated 23.02.2024 has already lost its efficacy as the date mentioned in the notice is already expired, therefore, it would be appropriate to direct the petitioner to appear before the authority concerned on 28/08/2024 and then the authority concerned after giving the proper opportunity of hearing to the petitioner, decide the case in accordance with law.

Sd/-  
(Ravindra Kumar Agrawal)  
**Judge**