



महेन्द्र रंगा
MAHENDRA RANGA
मुख्य आयुक्त
CHIEF COMMISSIONER



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भारत सरकार
वित्त मंत्रालय
मुख्य आयुक्त कार्यालय
सीजीएसटी एवं केन्द्रीय उत्पाद शुल्क
जयपुर
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
OFFICE OF THE CHIEF COMMISSIONER
CGST & CENTRAL EXCISE
Jaipur

10th September, 2024
D.O. No. GCCO/TECH/MISC/440/2023

Dear *Colleagues,*

'SAMVAAD' : September, 2024

Inauguration of the 'GST Bhawan' in Udaipur by Smt. Nirmala Sitharaman, Union Minister of Finance & Corporate Affairs on 23.08.2024 was a landmark event in the history of the Zone. This modern and energy-efficient building stands as a testament to the country's commitment to sustainable development and the 'New India' vision. Presence of our senior officials, including Shri Sanjay Kumar Agarwal, Chairman CBIC; Shri Shashank Priya, Member CBIC; Shri Rajiv Talwar, Member CBIC; Shri Surjit Bhujabal, Member CBIC; DG HRD & DG Systems added to the luster. The Finance Minister's emphasis on quality, budget adherence, and timely completion, despite the pandemic's challenges, sets a commendable standard for future projects. Her call for a fairer implementation of GST laws, balanced with necessary stringent measures, reflects a visionary approach to regulatory enforcement. The Guard of Honor, led by CGST Inspector Ms. Kalpana, with equal representation of male and female officers, was a powerful statement of CBIC's commitment to women's empowerment and an inclusive work environment. About one hundred officers jointly contributed to efficient and successful conclusion of the programme. As such, the inaugural function was a shining example of team work. Kudos to all officers whose contributions made the event a tremendous success!

2. The Hon'ble Finance Minister also launched revamped ICETAB 2.0. It marks a significant step forward in streamlining customs operations in India. With features designed to expedite cargo clearances and manage documentation efficiently, this handheld device is set to enhance transparency and reduce logistics costs and enhance our rankings in the Ease of Doing Business Index.

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3. We have proudly observed India's 78th Independence Day. I also had the honor to hoist the National Flag in the program organized at Zonal level. Independence Day function is an occasion to honor the sacrifices of our freedom fighters and move towards their vision of a modern India. It is heartening to see CGST Alwar celebrating Independence Day by inviting and honoring eminent artists like 'Padma Shri' Tilak Gitai, renowned painter & 'Shilp Guru' and 'Mahakavi' Shri Balbir Singh 'Karun', who garnered numerous honors and awards including the Sahitya Akademi Award. These personalities, known for their artistic and literary contributions, evoke national pride and unity. Recognizing such contributions highlights the importance of patriotism and progress.

4. Shri Sanjay Sharma, Hon'ble Minister of Forest, Environment and Climate Change, Government of Rajasthan visited CGST Alwar on 30.08.2024 and planted trees in the campus along with CGST officers. The Minister's assurance of support from the Forest Department and the call to involve taxpayers in the tree plantation campaign reflects a community-driven approach to enhance green cover and address climate change.

5. The GST revenue collection in August 2024 reached Rs.1777 Crores, marking a 4% increase compared to August 2023. Trends suggest that August has seen the lowest revenue contributions; however the collections are below par. Notably, the growth rate up to August 2024 stands at 14%, surpassing both the national average and the growth rate observed during the same period in the previous year.

6. The Central Intelligence Unit (CIU) has demonstrated its effectiveness in combating tax fraud and evasion. Acting upon the intelligence provided by CIU, various cases booked by the Commissionerates have led to significant detections and recoveries. In Udaipur, a substantial case of short payment of GST amounting to Rs.1.80 Crore by M/s Mahatma Gandhi Shramik Theka Sehkari Samiti Ltd. was identified, resulting in a recovery of Rs.0.53 Crore. CGST Jaipur uncovered a registrant operating under forged credentials. The firm M/s Kawat Traders has availed ITC of Rs.9.47 Crores and passed on fake ITC of Rs.6.04 Crores. In another case, CGST Jodhpur has detected evasion of GST by M/s O. S. Automobiles Pvt. Ltd. on commission and other miscellaneous receipts. The taxpayer has voluntarily deposited Rs.1.08 Crore for tax, interest and penalty. Similarly, CGST Alwar also detected a non-existent firm in the name of M/s P. K. K. Enterprise, involved in the wrongful availment and distribution of fake ITC amounting to Rs.12.76 Crores. Additionally, a misclassification of services as exempted by M/s Shri Pandor Mata Carrier was detected by CGST Alwar. In this case, whole short paid tax of Rs.0.79 Crore has been recovered. These actions underscore the efficacy of data analytics and intelligence.

7. Last month, some typical cases of incorrect ITC availment and misclassification have been booked by CGST Udaipur. In the case of M/s Hindustan Zinc Ltd., availment of ineligible ITC of IGST amounting to Rs.43.69 Crores on Brand License and Strategic Services has been detected. In a separate case, a substantial tax evasion of Rs.266.41 Crores was uncovered due to the misclassification of chewing tobacco. M/s Gyankeer Tobacco Products Pvt. Ltd. were incorrectly classifying the products under wrong tariff heading 24012090, instead of 24039910.

8. The establishment of Data Analytics Cells (DACs) across Commissionerates represents a significant advancement in use of technology to enhance tax compliance and enforcement. CGST Jodhpur has detected a case of wrong availment and passing on of fake ITC of Rs.5.36 Crores through goods less invoices by M/s Tyagi Enterprises. It showcases the precision with which the tools like ADVAIT and BIFA can pinpoint discrepancies. CGST Jaipur succeeded in locating 59 non-existent registrants. These non-existent registrants have passed on fake ITC of Rs.10.96 Crores.

9. The Board has set forth a comprehensive plan for a second special All-India drive through Instruction No. 02/2024-GST dated 12.08.2024, spanning from 16.08.2024 to 15.10.2024. This drive aims to detect fake registrations, thereby safeguarding government revenue. We have received a list of over one thousand taxpayers for verification. It is now imperative for us to undertake the necessary verification.

10. It is a historic moment for India! The Indian Paralympic contingent has made the nation proud by winning a record number of medals at the Paralympics, surpassing all previous records. With an impressive display of skill, determination, and grit, Indian athletes have excelled in various events. This remarkable achievement is a lesson for all of us that by strong will, we can surmount all barriers. Congratulations to the entire team.

11. The Special Campaign 4.0 for institutionalizing Swachhta in Government offices from 2nd October to 31st October is an initiative that reflects a commitment to cleanliness and efficiency in government. It is essential that all Commissioners take proactive steps to ensure the campaign's directives are implemented effectively. By fostering a clutter-free environment and efficient waste management, we can significantly enhance our productivity.

12. The September edition of 'Gyan Sangrah' contains following two articles:-

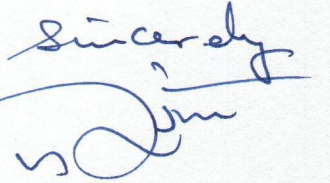
(a) *Understanding the judgment dated 25.07.2024 of Hon'ble Supreme Court in the case of Mineral Area Development Authority holding that "Royalty is not a Tax"*- by Shri Devi Dutt Sharma, Superintendent, CGST Division-E, Behror

(b) जब मौत बहुत करीब से गुजरी : Pages from my DRI Diary – By Shri Mukesh Bihari Pathak, Superintendent, CGST & CX, Jaipur

These articles reflect the competence and dedication to duty of our officers.

13. Superannuation marks a significant milestone in one's career. For many, it is a time to reflect on past achievements and to look forward to new beginning. In August, we bid adieu to our colleagues Shri Ajay Kumar, Commissioner, Shri Shakti Singh, Superintendent, Shri Chaina Ram & Shri Khiv Singh Sodha, both ASI (Weapons) and Shri Hardan Ram & Shri Heera Lal, both LDC on their superannuation. Shri Rajeev Arya, Superintendent has also taken voluntary retirement from service in August. I compliment their contributions and wish them well on behalf of the Zone.

Till next month,

Yours 

(Mahendra Ranga)
Chief Commissioner

To:- Team Jaipur Zone.

Copy for information to:-

- (i) OSD to the Chairman, CBIC, New Delhi.
- (ii) PS to the Member (GST & Zonal Incharge), CBIC, New Delhi.
- (iii) Chief Commissioner, State Tax, Rajasthan, Jaipur
- (iv) Pr. ADG/ ADG, NACIN/ DGGI, Jaipur.

ज्ञान संग्रह

सितम्बर, 2024

GYAN SANGRAH

SEPTEMBER, 2024

Understanding the Judgment dated 25.07.2024 of Hon'ble Supreme Court in the case of Mineral Area Development Authority holding that "Royalty is not a Tax"

*By – Devi Dutt Sharma, Superintendent,
CGST Division-E, Behror*

A Nine-Judge Bench of Hon'ble Supreme Court of India, by its majority (8:1) judgment dated 25.07.2024 in the case of Civil Appeal No. 4056-4064 of 1999 titled **Mineral Area Development Authority and Anr. vs Steel Authority of India & Anr. Etc. (MADA Case)** has held that royalty is not a tax. The said judgment is with reference to the taxing powers of the Union and the States but the judgment is also relevant for the matter of levy of Service Tax on the activity of assignment of right to use natural resources and levy of GST on licensing services for the right to use minerals which is still pending before Hon'ble Supreme Court.

A. Negative List of Services

2. With the introduction of negative list of services regime of taxing all service except those covered by the negative list became taxable with effect from 01.07.2012. Any activity carried out by a person for another for consideration unless covered by the negative list of services was taxed under the said regime. A question arose as to whether royalty collected by the State Government for allotment of mining lease was a consideration against provision of any service not covered by the negative list of services.

B. Assignment of right to use natural resources

3.1. The statutory provisions in Chapter- V of the Finance Act, 1994 came to be amended with effect from 01.04.2016 for taxing all services provided by Government to business entities and the activity of leasing of land for mining purposes on payment of royalty came to be named as "assignment of right to use natural resources" for the purpose of charging service tax. The activity was carried out by the Government for the persons whom the rights were assigned and royalty is what was charged from them as consideration against the activity involving such assignment.

3.2. The said activity had always been a service since 01.07.2012 but the same was not taxable until 01.04.2016 because the negative list of services included, in section 66D(a) of the Finance Act, 1994, an entry titled "services provided by Government" with an exception carved out as "support services provided to business entities". Thus, except "support services provided to business entities" all other services provided by Government to business entities were out of the purview of taxation because of their coverage by negative list of services and assignment of right to use natural resources was one such service.

3.3. The situation changed with effect from 01.04.2016 with substitution of the words "any service" for the words "support services" in the exception carved out in the negative last entry in clause (a) of section 66D. Thus, all services provided by Government to business entities became taxable by virtue of their exclusion from the negative list of services.

3.4. However, since the exception was redrafted with effect from 01.04.2016 tax could not have been logically imposed upon the services provided before that date. Thus, there was an apparent conflict between the earlier show cause notices which termed the activity as renting of immovable property service and the category now termed as "assignment of right to use natural resources".

C. Judgment of Hon'ble High Court upholding levy of service tax on royalty

4. Levy of service tax on the activity of assignment of right to use natural resources was challenged before Hon'ble Rajasthan High Court, Principal Seat, Jodhpur by way of a writ petition (DBCWP) No. 14578 of 2016 which was dismissed vide judgment dated 24.10.2017 with the observation that:-

“Taking into consideration all these principles relating to “consideration”, we are of considered opinion that the royalty is nothing but a “consideration” to have mining operations in the leased area on execution of a mining lease. It is a part of agreement arrived between the parties to have lease of a mining area to undertaking mining operations. The royalty being “consideration” certainly places assignment of right to use natural resources deposited in the leased area as a “service” as defined under Section 65B(44) of the Act of 1994, according to which, any activity carried out by a person for another for consideration is a service. The finding arrived by us as above is sufficient to say that the notification dated 13.04.2016 is not at all in conflict with its enabling Act i.e. the Finance Act, 1994 and the same does not suffer from any illegality.”

D. Stay of recovery of service tax on royalty by Hon'ble Supreme Court

5.1. However, the said judgment of Hon'ble High Court has been stayed by Hon'ble Supreme Court vide order dated 11.01.2018 in SLP (C) No. 37326 of 2017 filed by Udaipur Chambers of Commerce and Industry in the following terms:-

“Until further orders payment of service tax for grant of mining lease/royalty by the petitioners shall remain stayed.”

5.2. The matter was recently listed for final disposal at admission stage before a Three-Judge Bench of Hon'ble Supreme Court on 22.08.2024. However, the matter could not be heard in view of the following directions given vide order dated 22.08.2024:-

“The Registrar (Judicial-I) shall take suitable instructions on the administrative side for the constitution of an appropriate Bench for hearing the present batch of matters bearing in mind the disposal of the main proceedings by the Nine Judge Bench.”

5.3. The said direction of Hon'ble Supreme Court comes after the **judgment dated 25.07.2024** of Hon'ble Supreme Court in the case of Civil Appeal No. 4056-4064 of 1999 titled **Mineral Area Development Authority and Anr. vs Steel Authority of India & Anr. Etc.** whereby it has been held that royalty is not a tax.

E. Levy of GST on royalty

6. Litigation of similar nature in the matter of levy of GST on royalty has also reached Hon'ble Supreme Court and the matters have been tagged with SLP (Civil) No. 37326 of 2017 which means that the issues of levy of GST on royalty and levy of Service Tax on royalty will be heard together.

F. Reference to Hon'ble Supreme Court- Whether Royalty is a tax- MADA Case

7. The question as to whether “royalty is a tax” has been decided by Hon'ble Supreme Court vide judgment dated 25.07.2024 in a reference made to a Nine-Judge Bench in the case of **Mineral Area Development Authority [(2011) 4 SCC 450]** vide decision dated

30.03.2011 wherein it was observed that a Five- Judge Bench by its judgment dated **15.01.2004** in the case of **State of West Bengal vs. Kesoram Industries Limited and Others [AIR 2005 SC 1646]** held that royalty is not a tax but the said judgment dated **15.01.2004** was in conflict with the judgment dated **25.10.1989** of a Seven-Judge Bench in the case of **India Cement Limited vs. State of Tamil Nadu [1990 AIR 85]** wherein it was held that royalty is a tax. The five-judge Bench of Hon'ble Supreme Court in **Kesoram Industries** attributed the finding of Hon'ble Supreme Court in **India Cements Limited** qua royalty being in the nature of tax to a "typographical error" and "stenographer's devil" and accordingly proceeded to depart from the law laid down by the Seven-Judge Bench in **India Cement Limited**.

G. Royalty is not a tax- Judgment dated 25.07.2024 of Hon'ble Supreme Court

8. Conclusions arrived at by Hon'ble Supreme Court in the majority judgment dated 25.07.2024 in Part- J, Paragraph- 342, are 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. **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.”

H. Understanding the nature of royalty- Whether a tax or otherwise

9. The findings arrived at by Hon’ble Supreme Court holding that “Royalty is Not a Tax” are based on analysis of the legal position from various sources and the historical context including the drafting of Indian Constitution and the law prevailing in the British era and the origin of royalty from the British Law.

I. How the issue emerged

10. The main reasons why royalty came to be understood as a tax are as follows:-

- (A) Royalty was levied under the powers conferred by the MMDR Act of the Parliament;
- (B) Royalty was levied by the Government; and
- (C) The MMDR Act provided that in case of failure to pay royalty the same can be recovered by the Government as arrears of land revenue.

11. The core issue involved in the batch of appeals before Hon’ble Supreme Court was the distribution of legislative powers between the Union and the States on the taxation of mineral rights especially with reference to Entry 50 of List II of the Seventh Schedule to the Constitution which deals with taxes on mineral rights subject to “any limitations imposed by Parliament by law relating to mineral development.” Regulation of mines and mineral development is enumerated under both the Union List (Entry 54 of List I) and the State List (Entry 23 of List II) of the Seventh Schedule. The entrustment of the subject to the State legislatures under Entry 23 of List II is made subject to the provisions of Entry 54 of List I.

12. As outlined in the judgment, Parliament enacted the **Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act)** in exercise of its legislative powers under Article 246 of the Constitution. The subject which the legislation predominantly covers is **relatable to Entry 54 of List I**. The MMDR Act is a comprehensive code for the regulation of mines and development of minerals. Section 9 provides that the holder of a mining lease shall **pay royalty in respect of any mineral removed or consumed from the leased area at the specified rates**. The question of dispute was as to whether royalty is tax and whether the state legislatures lack competence to levy **taxes on mineral rights in terms of Entry 50 of List- II** of the Seventh Schedule because the subject-matter is covered by **the MMDR Act in terms of Entry 54 of List- I of the Seventh Schedule**. Another issue was as to whether royalty can be used by the State legislature as a measure of tax on mineral-bearing lands under Entry 49 of List II.

J. Brief of observations of Hon’ble Supreme Court as regards (a) “Taxing Entries” in the Seventh Schedule and (b) the Mining Lessor being a private person as well

13. Important observations of Hon'ble Supreme Court in the said judgment dated 25.07.2024 as regards the taxing and general entries in the lists of Seventh Schedule to the Constitution of India with reference to royalty are as follows:-

(i) The structure of the legislative entries in the three Lists of the Seventh Schedule follows an express and deliberate pattern. The entries are classified into general and taxing entries. In the Union List, entries 1 to 81 enumerate general subject matters, while entries 82 to 92-C pertain to the powers of taxation. Similarly, entries 1 to 45 in the State List enumerate the general entries and entries 46 to 63 provide for taxing entries. The legislature does not derive the power to tax from the general entries- taxation is considered to be a distinct matter for purposes of legislative competence.

(ii) **While Entry 50 of List-II is a taxing entry, Entry-54 of List-I is a general entry.** It is an accepted principle that the subject matter of taxation is dealt with under distinct entries and, therefore, cannot be traced to a non-taxing entry. The taxing powers of Parliament and the State legislatures are mutually exclusive and clearly demarcated. There can be no overlap between the taxing powers of the Union and the States.

(iii) The Central Government or the State Government may not always be the "owner" of the underlying minerals. But the Constitution empowers both Parliament (**under Entry 54 of List I**) and the State legislatures (**under Entry 23 of List II**) to regulate mines and mineral development, the entrustment to the State being subject to the power of Parliament to regulate the domain.

(iv) The MMDR Act was enacted by Parliament in exercise of its legislative power derived from Article 246 read with Entry 54 of List I. The Act seeks to provide for the regulation of mines and development of minerals under the control of the Union. Section 9(2) of the MMDR Act provides that the holder of a mining lease granted after the commencement of the MMDR Act is also liable to pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area at the rate specified in the Second Schedule. The rates of royalty payable in respect of minerals in the Second Schedule of the MMDR Act are computed either on an ad valorem basis at a specified percentage of the average sale price or at specific rates on per tonnage basis. While Section 9 authorizes the charging of royalty, the Second Schedule provides the method of computation. The rate of royalty and method of computation differ from mineral to mineral.

14. As regards the MMDR Act and the relevant rules, the judgment carries the following observations:-

(i) The MMDR Act and the Mineral Concession Rules 1960 detail the procedure for the grant of mining leases in three situations:- (a) first, where the **minerals vest in the government**; (b) second, where the **minerals vest in a person other than the government**; and (c) third, where the **minerals vest partly in the government and partly in a private person**.

(ii) Chapter IV of the Mineral Concession Rules 1960 (containing Rules 22 to 40) deals with the grant of mining leases in respect of **land in which the minerals vest in the government**. Chapter V (containing Rules 41 to 52) deals with the procedure for obtaining prospecting licences or mineral lease in respect of **land in which the minerals vest in a person other than the Government**. Rule 45(i) provides that certain specific conditions which apply under Rule 27 to mining leases in respect of minerals which vest in the Government are **also applicable to leases of minerals vesting in private persons**.

15. In view of the above observations, Hon'ble Supreme Court has held that **royalty is**

received by mining lessor which can be the State Government or a private Person. Para- 93 of the judgment reads thus:-

“The right of proprietors to grant leases and receive royalty stems from the proprietary interest in the immovable property including the minerals. The MMDR Act regulates the exercise of the proprietary rights in the minerals in the larger public interest. The statute specifies the terms of the lease, but the lease deed is ultimately entered between the State Government (or the private person, as the case may be) and the lessee. Similarly, the rates of royalty are fixed by the Central Government under Section 9, **but royalty is received by the mining lessor, that is the State Government or a private person.**”

K. Brief of observations- (a) “Meaning of Royalty” & (b) “Characteristics of Tax”

16. The meaning of royalty has been explained in the judgment in Para- 98 and 99 which read thus:-

“98. The essential characteristics of royalty are that (i) **it is a consideration or payment made to the proprietor of minerals, either the government or a private person**; (ii) it flows from a statutory agreement (a mining lease) between the lessor and the lessee; (iii) it represents a return for the grant of a privilege (to the lessee) of removing or consuming the minerals; and (iv) it is generally determined on the basis of the quantity of the minerals removed.

99. In comparison, dead rent acts as a deterrent against a leaseholder cornering a mining lease and keeping the mineral resources idle. Similar to royalty, dead rent is also a statutory imposition and an integral part of the mining lease, but it generally does not serve as a consideration for the removal or consumption of minerals. The dead rent is determined on the basis of the area of land covered by the lease. Imposition of dead rent ensures that the proprietor obtains a fixed rent from the lessee even if the mine remains unworked. Therefore, dead rent is not in addition to royalty but an alternative.”

17. The essential characteristics of tax and its distinction with a consideration under a contract have been explained in the judgment thus:-

“104. A tax has the following essential characteristics: (i) it is a compulsory exaction of money by a public authority; **(ii) it is imposed under statutory power without the consent of the tax payer**; (iii) the demand is enforceable by law; (iv) it is an imposition made for public purposes to meet the general expenses of the state without reference to any special benefit to be conferred on the payer of the tax; and (v) it is part of the common burden.”

“108. The expression “tax” under Article 265 includes every kind of impost in the form of a compulsory exaction. An impost is a compulsory exaction. The power to levy an impost is an incident of sovereignty. A liability arising out of contract cannot be termed as an impost or tax. **A consideration paid under a contract to the State Government for acquiring exclusive privileges and rights with respect to a particular activity cannot be termed as an “impost” or “tax” under Article 366(28).**”

“109. The government may demand payments in the nature of a price or consideration for parting with its exclusive privilege to carry on activities of a

particular description. **Well-known examples involving the parting of the exclusive privilege by the government include telecommunication activities and the manufacture and sale of intoxicants. The price paid for parting with an exclusive privilege vesting in government is neither a tax nor a fee.**”

L. Royalty is not in the nature of tax

18.1. Finally, Hon’ble Supreme Court has concluded that royalty is not a tax. The conclusion as to how royalty is not a tax and the conceptual differences between royalty and tax have been explained in the judgment, in paragraph 125 and 126 as follows:-

“125. 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: (i) the compulsion stems from the contractual conditions of the mining lease agreed between the lessor and lessee; (ii) **the demand is not made by a public authority, but the lessor (which can either be the State Government or a private party);** and (iii) 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 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 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.”

“126. There are major conceptual differences between royalty and a tax: (i) the proprietor charges royalty as a consideration for parting with the right to win minerals, while a tax is an imposition of a sovereign; (ii) **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 (iii) royalty generally flows from the lease deed as compared to tax which is imposed by authority of law.”

18.2. After observing that the principles applicable to royalty apply to dead rent as well mainly because dead rent is also imposed in exercise of proprietary right and not a sovereign right, Hon’ble Supreme Court has held that both royalty and dead rent do not fulfill the characteristics of tax or impost.

M. Inter-relation of Entry-50 (List-II), Entry- 54 (List-I) and Entry- 23 (List-II)

19. The difference between a taxing entry and general entry in the Lists of the Seventh Schedule and the States’ power to tax mineral rights despite payment of royalty under the MMDR Act enacted under Entry 54 of List-I have been explained in the judgment thus:-

“197. The subject of Entry 54 of List I is “regulation of mines and mineral development”. In contrast, the subject of Entry 50 of List II is “taxes on mineral rights”. Each of these terms has a specific connotation. Whereas Entry 54 of List I encompass a broad subject matter covering the regulation of mines and mineral development, the taxing entry in Entry 50 of List II is confined to mineral rights. Entry 23 of List II also encompasses the “regulation of mines and mineral development” as a legislative field for the states. Since Entry 54 of List I also deals

with the “regulation of mines and mineral development”, the states’ domain under Entry 23 of List II is subject to the limitations created by Entry 54 of List I. Despite the positioning of Entry 23 in List II, the Constitution has specifically enumerated the taxing field with respect to mineral rights in Entry 50 of List II. Taxation of mineral rights is hence, traceable to Entry 50 of List II. If the framers had intended that the field of taxing mineral rights would be subsumed in the general entry covering the regulation of mines and mineral development, namely, Entry 23 of List II, there would have been no reason to provide for a specific taxing entry on mineral rights in Entry 50 of List II. **Therefore, just as the field of taxing mineral rights does not fall under Entry 23 of List II, it does not fall under Entry 54 of List I which uses similar language and is not a taxing entry.** While the imposition of taxes on mineral rights is a field entrusted to the State legislatures in List II, it is subject to a law enacted by Parliament on mineral development. **While the imposition of taxes on mineral rights is a field exclusively entrusted to the State legislatures (and not to Parliament) in the State List, Parliament can while making provisions in a law relating to mineral development make provisions which ensure that the exercise of the taxing power by the states does not adversely affect the development of minerals.** This power of Parliament to impose limitations or conditions which ensure that the exercise of the taxing power of the states does not impede mineral development (is) distinct from the power to tax mineral rights which is entrusted to the state legislatures.

N. Royalty as a measure of tax used for both Tax on Land [Entry-49] and Tax on Mineral Rights [Entry- 50] of List-II

20. State Legislature is empowered to enact laws to levy tax on land in terms of Entry-49 of List-II and tax on mineral rights in terms of Entry-50 of List-II. The judgment explains in paragraph 341 as to how use of royalty as a common measure of tax under both the entries does not overlap, in the following manner:-

“341. In view of the above discussion, we conclude that mineral value or mineral produce could be used as a measure of the tax on land under Entry 49 of List II. **The fact that Entry 50 of List II pertains to taxes on mineral rights would not preclude the State legislature to use the measure of mineral value or mineral produce under Entry 49 of List II.** The State legislature has legislative discretion to determine the appropriate measure for the purposes of quantifying taxes, **so long as there is a reasonable nexus between the measure and the nature of the tax. The measure does not determine the nature of the tax.** The words “lands” under Entry 49 of List II includes mineral bearing land. The mineral produce is the yield from a mineral bearing land. **Since royalty is determined on the basis of the mineral produce, royalty can also be used as a measure to determine the tax on royalty (land).** The fact that the State legislature uses mineral produce or royalty as a measure does not overlap with Entry 50 of List II.

O. Service Tax on the assignment of right to use natural resources or GST on Licensing Services for the right to use minerals

21.1. For the purpose of charging service tax on any activity, there has to be a consideration for an activity carried out by a person for another. So far as levy of GST is concerned there has to be a consideration for a supply of service to be taxable. Both these levies use the amount of royalty as a measure of tax.

21.2. The matter of levy of service tax on the activity of 'assignment of right to use natural resources' and the matter of levy of GST on 'supply of licensing services for the right to use minerals' are pending before Hon'ble Supreme Court in SLP (C) No. 37326 of 2017 and connected matters. However, the observations in the Hon'ble Supreme Court's judgment dated 25.07.2024 in **Mineral Area Development Authority** case are relevant for both Service Tax and GST in the following manner:-

- (i) Royalty is not a tax but a consideration which is paid to the proprietor for the extraction and removal of mineral under the terms of the mining lease meaning thereby that royalty can be regarded as a consideration against supply of services.
- (ii) An activity involving provision of service or supply of service, being the matter of nature of tax, is distinct from royalty which is only a measure of tax.
- (iii) If the same amount of royalty can be used separately as a measure of tax for charging tax on land [Entry- 49: List- II] and tax on mineral rights [Entry- 50: List- II], the same can also become a measure of tax for charging service tax or GST on specified services taxable under the law.
- (iv) Royalty is paid to the mining lessor who can also be a private person meaning thereby that royalty is relatable to services or business and it is not relatable to sovereign functions of the State.

(The write-up is simply intended to share the personal experience of the writer with the colleagues and the views expressed therein may not necessarily represent the stand taken by him on the provisions of law in his official capacity.)

जब मौत बहुत करीब से गुजरी : Pages from my DRI Diary

लेखक – मुकेश बिहारी पाठक, अधीक्षक
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DRI में एक drugs की intelligence पर काम चल रहा था। डीआरआई की एक टीम एक सप्ताह से अमृतसर से drug smuggler की shadow surveillance करते हुए पीछा कर रही थी और हमारे टारगेट की उस रात या अगले दिन दिल्ली पहुँचने की पूरी संभावना थी और हमारी टीम किसी भी समय drugs का एक अच्छा केस दर्ज करने के लिए प्रयासरत थी।

इसी दौरान एक दिन सुबह सुबह मोबाईल बजा। माताजी का फोन था। हालचाल पूछने के बाद माताजी ने बोला की कल करवा चौथ हैं और उद्घाटन करने का विचार हैं। ऐसा करना कि बच्चों को आज भेज देना और तुम कल सुबह जल्दी आ जाना। मैंने भी बोल दिया कि हाँ माँ आ जाएंगे। जबकि पता था कि मैं नहीं जा पाऊँगा। श्रीमती जी खाना बना रही थी। मैंने माताजी का आदेश उनको बताया तो उन्होंने बताया की दोनों बच्चों के कल पेपर हैं और वो तो नहीं जा पाएंगे। मैंने भी मेरी मजबूरी बयां की और यह तय हुआ की दोपहर बाद वो ही जाएंगी। मैंने श्रीमती जी को शुक्रिया बोला और ऑफिस जाने की तयारी शुरू कर दी।

ऑफिस में शाम तक काम करने के बाद निकलते समय सर्विलांस टीम से अपडेट लिया उन्होंने बताया की टारगेट होटल मे रुका हुआ हैं अब पता नहीं डिनर करने के बाद यही रुकेगा या निकलेगा। जैसा भी movement होगा मैं आपको update कर दूंगा। रात करीब नौ बजे मैं घर पहुँचा तब मेरे ससुर जी बच्चों को खाना खिला रहे थे। वो बोले आज तो करवा चौथ का त्योहार हैं घर पर ही चल लेते हैं वहीं पर गर्म गर्म खाना खायेंगे और सुबह बच्चों को वहीं से स्कूल छोड़ देंगे। मैंने उनको संडे को आने का कहा। मेरे डिनर करने के बाद वो निकल गए। मेरे घर से उनका घर लगभग दो किलोमीटर की दूरी पर था। उनके जाने के बाद थोड़ी देर बच्चों से बात की आने वाले कल के पेपर के बारे में पूछा और उनको सोने के लिए बोला। मैंने श्रीमती जी को फोन लगाया और करवाचौथ की बधाई दी। उन्होंने बताया की सभी औरतों को खाना खिलाकर अभी अभी फ्री हुए हैं। अब हमारा भी खाना लग रहा हैं और खाना खाने के बाद फोन करती हूँ।

रात करीब 10:30 बजे मोबाईल बजा, Deputy Director Sir का फोन था। उन्होंने बताया की टारगेट खाना हो गया हैं और सुबह करीब चार बजे के आस पास दिल्ली पहुँचेंगे। तुम इन इन लोगों को फोन करो और बोलो की एक बजे तक ऑफिस पहुँचें और हाँ दो drivers को भी पहुँचने के लिए कहो। एक ड्राइवर तुमको लेकर आएगा और सभी से coordinate करते रहना कोई दिक्कत आए तो call कर लेना। सभी लोगों को लेकर दो बजे तक उत्तम नगर मेट्रो स्टेशन पहुँचना है। फोन रखने के बाद सोचने लगा की बच्चों की क्या व्यवस्था करूँ। उन्हें पड़ोसी के यहाँ या उनके ननिहाल छोड़े। पड़ोसी के बच्चे भी इनके हम उम्र थे और उनसे इनकी अच्छी बनती थी। मैंने सोचा की बच्चों से ही पूछना सही रहेगा और उनको जगाया तो बच्चे बोले की बगल वाली आंटी के ही रुकेंगे क्योंकि सुबह स्कूल जाने में भी आसानी रहेगी। मेरे पड़ोसी CRPF में आसाम मे posted थे और उनकी पत्नी और बच्चे दिल्ली रहते थे। मैंने बच्चों को उनके यहाँ छोड़ा।

हम ऑफिस समय पर पहुँच गए, अन्य ऑफिसर भी वहाँ पहुँचने वाले थे। कुछ ऑफिसर ने सीधे ही उत्तम नगर मिलने के लिए कहा। हम सभी ऑफिसर दो vehicles में उत्तम नगर पहुँचें और DD Sir को बताया की हम उत्तम नगर मेट्रो स्टेशन पहुँच गए हैं। उन्होंने कहा बात हुई है, टारगेट कहीं नहीं रुका तो चार बजे तक उत्तम नगर पहुँच जाएगा और वो दिल्ली में enter करते ही वो आपको call कर देंगे। आप उस टीम से touch में रहना और आप सर्विस प्रोवाइडर से टारगेट की updated लोकेशन लेते रहना। हम सभी भी थोड़ा रीलैक्स हो गए की अभी कम से कम एक घंटा इंतजार करना है। हम सभी वही एक ठेले पर चाय पीने और गपसप करने लगे। काफी देर बाद सर्विलांस टीम से call आया उन्होंने बताया की दिल्ली में enter हो गए और लगभग बीस पच्चीस मिनट में पहुँच जाएंगे। उन्होंने बताया की टारगेट अकेला हैं और खुद ही ड्राइव कर रहा हैं तथा वाहन की details बताई। हमने दो teams बनाई और दोनों teams से vehicle की details और टारगेट की उपलब्ध जानकारी सांझा की। हमारी टीम रोड के एक तरफ और दूसरी टीम को रोड के दूसरी तरफ मोर्चा संभालने की जिम्मेदारी के साथ सभी लोग अलर्ट हो गए। टारगेट को follow कर रही टीम ने call करके बताया की तिलक नगर मेट्रो स्टेशन निकल गया है। टारगेट और उसके पीछे पीछे उनकी गाड़ी पाँच मिनट में तिलक नगर पहुँच जाएंगे, हमने बताया की हमारी टीम रोड के इस तरफ ही है और गाड़ी स्टार्ट की हुई है। फोन रखते ही दूसरी टीम को भी तदनुसार सूचित किया और हमने ड्राइवर को गाड़ी धीरे धीरे चलाने के लिए बोला।

कुछ ही पल में टारगेट के vehicle ने हमारी गाड़ी को क्रॉस किया हमारे ड्राइवर ने भी गाड़ी की स्पीड बढ़ा दी। लगभग 500-700 मीटर के बाद टारगेट की गाड़ी ने यू टर्न लिया, हमारी गाड़ी ने भी पीछे पीछे यू टर्न लिया। टारगेट ने किसी को मोबाइल पर कान्टैक्ट करने के लिए गाड़ी की स्पीड कम की और रोड के लेफ्ट साइड गाड़ी चलाने लगा। हमारे ड्राइवर ने बोला हमारी गाड़ी आगे करके इसको फूटपाथ की तरफ दबा देता हूँ। दूसरी टीम रोड के इसी तरफ थोड़ा आगे थी, हमने बोला इसको थोड़ा चले और दूसरी टीम को इसके आगे कर देंगे व हम इसके पीछे रहेंगे। टारगेट बीच में रहेगा तो कही जा नहीं पायेगा। ड्राइवर ने कहा की यदि टारगेट किसी गली में गाड़ी घुमा देगा तो दिक्कत हो जाएगी और enthusiums में उन्होंने टारगेट की गाड़ी को पास से overtake करके फूटपाथ की तरफ दबा दिया। हमारी टीम के दो आसूचना अधिकारी फूटपाथ की तरफ बैठे थे वो जल्दी से उतरे और दूसरी तरफ से मैं निकला। वो दोनों टारगेट के vehicle के दोनों तरफ पहुंचकर जैसे ही हैंडल पकड़ने लगे टारगेट ने उसकी गाड़ी को बैक लिया, वो दोनों IOs गिरते गिरते बचे और टारगेट की गाड़ी का सबसे आगे का हिस्सा मेरे से टच होता हुआ निकला। देखते ही देखते टारगेट गाड़ी बैक gear में बहुत तेजी से चलाने लगा। बिना कुछ सोचे समझे, हम तीनों भी उसके पीछे दौड़ने लगे। टारगेट की गाड़ी कभी फूट पाथ से और कभी डिवाइडर से टकराने लगी और जैसे ही गाड़ी पत्थर से टकराती बहुत सी चिंगारिया निकलती नजर आ रही थी। आगे कुछ दूरी पर Delhi Transport Corporation की बस night halt के लिए खड़ी थी। टारगेट की गाड़ी उससे टकरा कर रुकती हुई नजर आई और टारगेट निकल कर बस के पीछे जाता हुआ दिखा हम लोग भी दौड़ते हुए वहाँ पहुँच गए। हमारे पीछे ही surveillance टीम भी मौके पर पहुँच गई। सभी की साँसे फूल रही थी। गाड़ी का दरवाजा खुला था हमने देखा एक बैग ड्राइवर की साइड सीट पर रखा था और उसमें powder के packets थे। कुछ अधिकारियों को टारगेट के vehicle के पास छोड़ कर हम सभी ने DTC की बस के पीछे वाली गलियों में रात के अंधेरे में और स्ट्रीट लाइट के उजाले में करीब आधे घंटे तक बहुत ढूँढा लेकिन टारगेट को नहीं

पकड़ पाए। सभी मायूस से वापिस intercepted vehicle के पास पहुंचे तो दूसरी टीम भी वहीं मिली उन्होंने बताया की पाँच किलो Heroin हैं और एक pistol भी dashboard में पड़ी है। उस गाड़ी के चारों टायर ब्रूस्ट हो चुके थे Rims भी खराब हो गई थी। गाड़ी का पिछला हिस्सा बस से टकरा कर बुरी तरह damage हो गया था | सुबह का उजाला होने लगा था। DD Sir को फोन मिलाया और फिल्मी style के interception में पाँच किलो हेरोइन की रिकवरी, टारगेट के abscond होने के बारे मे बताया। उन्होंने सबकी कुशलक्षेम पूछी और सबको बधाई दी।

इस केस के investigation में पता चला की हमारा टारगेट NDPS case में सजा याफ़ता कैदी था और पैरोल पर कुछ दिन के लिए बाहर आया था। DRI की इन्वेस्टीगेशन टीम ने जेल में जाकर उसके बयान लिए थे और उसने इन्वेस्टीगेशन टीम को बताया था की यदि उसे पकड़ लिया जाता तो उसकी पिस्टल loaded थी और वो फ़ाइरिंग कर देता लेकिन पकड़ में नहीं आता।

अब भी जब कभी उस case की बात चलती हैं और वो करवाचोथ की रात याद आती हैं तो रूह कांप जाती हैं और लगता हैं की उस दिन मौत बहुत ही करीब से गुजर गई। पूरी टीम के सकुशल एक ड्रग केस बुक करवाने और हमारी जान बचाने के लिए भगवान और सभी की धर्म पत्त्रियों का हमारी लंबी उम्र के लिए रखे गए उपवास के लिए बहुत बहुत धन्यवाद।
