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IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION

**J.B. PARDIWALA; J., K.V. VISWANATHAN; J.**

WRIT PETITION (C) NO. 733 OF 2025; July 13, 2026

**Kirloskar Ferrous Industries Ltd. and Anr. *versus* Union of India & Anr.**

**Mines and Minerals (Development and Regulation) Act, 1957 – Section 9, Second Schedule (Entry 24) – Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016 – Rule 38, Rule 42 – Mineral Conservation and Development Rules, 2017 – Rule 45(8)(a) – Constitutional Validity of Explanations to Rule 38 (2016 Rules) and Rule 45(8)(a) (2017 Rules) – Inclusion of Royalty, DMF, and NMET in Sale Value for ASP Calculation – Held - The Explanations appended to Rule 38 of the 2016 Rules and Rule 45(8)(a) of the 2017 Rules which bar the deduction of royalty, District Mineral Foundation (DMF) payments, and National Mineral Exploration Trust (NMET) payments from the "gross amount" when computing the "sale value" for the determination of Average Sale Price (ASP) are constitutionally valid - They do not violate Articles 14 and 19(1)(g) of the Constitution, nor are they *ultra vires* Section 9 of the MMDR Act.**

**Key Legal Principles & Findings – i. Presumption of Constitutionality of Subordinate Legislation - There is a strong presumption in favor of the constitutionality and validity of subordinate legislation - The burden lies heavily on the challenger to displace this presumption by showing a lack of legislative competence, violation of fundamental or constitutional rights, or manifest arbitrariness; ii. Regulation of Mines and Mineral Development - The scope of "regulation of mines and mineral development" under List I Entry 54 of the Seventh Schedule, and implemented through the MMDR Act, is wide. The fixation of rates of royalty under Section 9 read with the Second Schedule falls squarely within this regulatory domain – iii. Distinction Between Measure of Levy and Nature of Levy - The standard or measure adopted to quantify a levy is a matter of legislative policy and convenience - The standard does not need to be contoured along the lines that define the character of the levy itself - The inclusion of royalty, DMF, and NMET in the "sale value" (as a measure to compute ASP) does not alter the *ad valorem* nature of the royalty levy under Section 9; iv. Regulatory Measures to Prevent Tax/Revenue Evasion - Legislative and subordinate rule-making bodies possess the competence to design and enact measures/fictions specifically aimed at suppressing price manipulation, under-invoicing, and revenue evasion - Regulatory data showed that some miners deployed clever stratagems (such as showing nil or very low despatches when ex-mine prices were high, and vice versa) to artificially depress the ASP and keep their premium and royalty payouts down. Hence, loading royalty, DMF, and NMET onto the sale value is a valid regulatory antidote to check evasion and arrive at a fair mineral value; v. No Article 14 Violation (Comparison with Coal Disallowed) - Miners of iron ore cannot claim discrimination by comparing themselves to coal miners (where statutory dues are excluded from actual price calculations) - Coal has a distinct price mechanism (the National Coal Index based on notified PSU prices and imports) and has historically been subject to a public sector monopoly, whereas iron ore prices are determined by highly competitive, private-sector market forces prone to under-invoicing - Comparing coal with iron ore is akin to comparing apples and oranges; v. No Violation of Article 19(1)(g) / Public Interest Over Individual Hardship - The restriction imposed is reasonable and proportional - Individual**

hardship cannot override a regulatory measure designed in the larger public interest to prevent substantial losses to the state exchequer - The *grundnorm* is "*Salus populi suprema lex*" (regard for the public welfare is the highest law), and private rights must cede to public interest. [Relied On State of Tamil Nadu and Another v. P. Krishnamurthy and Others, (2006) 4 SCC 517; Sardar Baldev Singh v. CIT, Delhi & Ajmer, [1961] 1 SCR 482; Mineral Area Development Authority & Anr. v. M/s Steel Authority of India and Another, (2024) 10 SCC 1; Ralla Ram v. Province of East Punjab, 1948 SCC Online FC 9; Union of India & Ors. v. Bombay Tyre International Ltd. and Others, (1984) 1 SCC 467; Hingir-Rampur Coal Co., Ltd. and Others v. State of Orissa and Others, [1961] 2 SCR 537; Navnit Lal C. Javeri v. K.K. Sen, [1965] 1 SCR 909; Union of India and Another v. A. Sanyasi Rao and Others, (1996) 3 SCC 465; State of Madras v. V.G. Row, [1952] SCR 597; Paras 61-64, 72-78, 87-102].

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## **J U D G M E N T**

**K. V. Viswanathan, J.**

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1. The petitioners in the present writ petition are challenging the constitutional validity of the Explanation appended to Rule 38 of the Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016 (hereinafter “the 2016 Rules”) as being *ultra vires* Articles 14, 19(1)(g) of the Constitution of India and Section 9 of the Mines and Minerals (Development and Regulation) Act, 1957 (for short “the MMDR Act”) to the extent that the rule provides for inclusion of payments made towards Royalty, District Mineral Foundation (“DMF”) and National Mineral Exploration Trust (NMET”) in the sale value. Equally, the Explanation to Rule 45(8)(a) of the Mineral Conservation and Development Rules, 2017 (hereinafter “the 2017 Rules”), which is in identical terms, is also challenged on the same ground.

**SUMMARY OF FACTS: AN EARLIER ROUND IN THIS COURT : -**

2. The petitioners earlier filed a Writ Petition (C) No. 715 of 2024 calling in question the validity of the impugned rules. A detailed judgment was passed on 07.11.2024, and the writ petition was disposed of on 19.05.2025. During the course of hearing of the said writ petition, it was noticed that when a situation with regard to non-deduction of payments made towards Royalty, DMF and NMET from the value of coal was provided for, the Central Government remedied the situation. During the course of hearing, it was brought to the notice of the Court that, on 06.04.2021, Ministry of Mines had constituted a Committee for examining the issue and on 25.05.2021, a notice was issued by the Committee inviting comments and suggestions on this issue and pursuant thereto, a Report dated 31.01.2022 was submitted by the Committee to the Ministry of Mines.

3. It was recorded in the said judgment dated 07.11.2024 that pursuant to the aforesaid Report, a notice dated 25.05.2022 initiating public consultation on amending the MMDR Act had also been issued. The relevant portion of the notice reads as under: -

**"1. Calculation of ASP: Removing the cascading impact of royalty on royalty**

(ii) A committee was constituted by the Ministry of Mines under chairmanship by Shri Praveen Kumar, IAS (Retd.) with members from Ministry of Mines, NITI Aayog, Ministry of Steel, Indian Bureau of Mines (IBM) and Indian Statistical Institute to examine the incidence of double calculation of royalty. The committee concluded that since the sale value already includes royalty, DMF and NMET, the lessee pays royalty on royalty, DMF and NMET. Due to this, there is an additional charge on the miners under the current methodology.

(vi) Accordingly, it is proposed to (i) introduce new section in the MMDR Act regarding ASP; (ii) the provision shall specifically provide that ex-mine price for determination of ASP shall exclude GST, export duty, royalty, DMF & NMET & such other levies as may be prescribed; (iii) the change will be applicable for all the MLs, whether auctioned/ granted before or after the commencement of the proposed MMDR Amendment Act, for the minerals removed or consumed from the leased area after the commencement of the said Act; and (iv) adoption of new formula only for the future dues for existing MLs arising after the amendment"

Since no action was thereafter taken, the matter was argued on merits.

4. This Court further observed that exclusion of payments made towards royalty and contribution towards DMF and NMET for coal but not for other minerals cannot be termed as arbitrary and unreasonable, merely because the computation for one differs from the other in certain aspects. This Court also observed that deference needs to be shown to the law-making authorities in deciding how royalty must be computed in respect of different mineral grades/concentrates.

5. Thereafter, what this Court observed is very crucial. This Court observed that while different treatment of the two minerals may not be in excess of the powers or domain of

the respondents or the differential treatment may not be in breach of any statutory provision, the court cannot ignore or overlook the fact that the legislature itself has acknowledged the anomaly in compounding of royalty for the purpose of computation of Average Sale Price (hereinafter 'ASP'). This Court further observed that even the respondent-Union of India had acknowledged that the differing mechanism for coal and other minerals is not based on any fine distinction between the two, but rather an anomaly in the 2016 Rules and 2017 Rules, and it is for that reason that a Committee had been constituted to look into the same and that the Committee had proposed amendments for rectifying the same.

**6.** In view of this position, this Court pronounced its judgment in the Writ Petition (C) No. 715 of 2024 with the following operative directions: -

"83. In view of the decisions referred to above, we may only say that since the respondents herein are already in *seisin* of the anomaly in computation of royalty and the policy is being reconsidered on the grounds raised by the petitioners herein, we do not say anything further as regards the provisions in question other than what we have observed. We clarify that this decision shall not preclude the petitioners from challenging the final policy decision that the respondents may take on completion of the ongoing consultation process.

84. In view of the aforesaid, we grant the respondents a period of 2-months from the date of pronouncement of this judgment to conclude the public consultation process undertaken for amending the MMDR Act initiated pursuant to the Notice dated 25.05.2022 and take a final decisive call in regard to the cascading impact of royalty on royalty in the calculation of the 'average sale price' by virtue of the Explanation(s) to Rule 38 of the MCR, 2016 and Rule 45 of the MCDR, 2017.

85. The challenge to the validity of Explanation(s) appended to Rule 38 of the MCR, 2016 and Rule 45 of the MCDR, 2017 is answered accordingly.

86. The Registry shall notify this matter before an appropriate Bench after a period of two months from the date of pronouncement of this judgment to report compliance of our directions."

**7.** According to the petitioners, pursuant to the judgment dated 07.11.2024 in Writ Petition (C) No. 715 of 2024, a representation was filed by them on 12.11.2024. This was followed up by filing I.A. No. 22190 of 2025 before this Court on 24.01.2025. By an order of 03.02.2025, this Court directed the respondents to file a report or an appropriate affidavit within two weeks pointing out the progress in the matter subsequent to the pronouncement of the judgment.

**8.** According to the petitioners, an affidavit was filed on 21.02.2025 stating that the Department of Legal Affairs had concurred with the proposal and the file was pending consideration before the Cabinet Secretariat. A further order was made by this Court on 28.02.2025 granting one month's time to the respondents to file an appropriate report or decision taken on this aspect. Since no decision was taken, on 05.04.2025, the petitioners filed an affidavit highlighting the state of affairs. Pursuant thereto, a last opportunity was given to the respondents by an order of 08.04.2025.

**9.** The Union of India filed an application seeking modification of order dated 08.04.2025 stating that the Cabinet Secretariat would no longer be preparing any proposal since it would be the concerned Ministry itself which would be taking a decision and ultimately, on 17.05.2025, the Union of India filed an affidavit intimating its final decision of not amending the rules as it would seriously impact the revenue of the States.

**10.** By an order of 19.05.2025, this Court made an order expressly granting liberty to the petitioners to raise a fresh challenge to the decision not to amend, on all grounds

available to them in law. Paras 8 to 11 of the order dated 19.05.2025 are extracted hereinbelow.

“8. Since, the Central Government has taken a policy decision not to reconsider the Rule 38 of the MCR, 2016 and Rule 45 of the MCDR, 2017 respectively in consonance with what fell from this Court in the impugned judgment, there is no other option left for the petitioners but to question the legality and validity of such decision by filing a fresh petition before this Court.

9. We grant liberty to the petitioners to question the decision taken by the Central Government on all grounds available to them in law.

10. If according to the petitioners the decision which the Central Government has taken and placed on record is not in the spirit of the original judgment of this Court dated 07-11-2024 they may raise such ground in their fresh petition.

11. With the aforesaid liberty we close this matter.”

**11.** It must also be recalled that earlier in the main judgment of 07.11.2024, this Court had observed that since the respondents are already in *seisin* of the anomaly in computation of royalty and the policy is being reconsidered on the grounds raised by the petitioners herein, this Court was not saying anything further as regards the provisions in question other than what has been observed. This Court also observed that the judgment of 07.11.2024 will not preclude the petitioners from challenging the final policy decision that the respondents may take. It is pursuant to the liberty granted that the present petition has been filed.

#### **BRIEF OVERVIEW OF THE FACTS: -**

**12.** The principal contention raised is that the Explanation appended to Rule 38 of the 2016 Rules and the Explanation appended to Rule 45(8)(a) of the 2017 Rules, both of which include the payments made towards royalty, District Mineral Foundation (DMF) and National Mineral Exploration Trust (NMET) as a component of the sale value, is *ultra vires* Section 9 of the MMDR Act. The impugned Rules are set out hereinunder:-

#### **"38. Sale Value.- (2016 Rules)**

Sale value is the gross amount payable by the purchaser as indicated in the sale invoice where the sale transaction is on an arms' length basis and the price is the sole consideration for the sale, excluding taxes, if any.

**Explanation - For the purpose of computing sale value no deduction from the gross amount will be made in respect of royalty, payments to the District Mineral Foundation and payments to the National Mineral Exploration Trust.**

#### **45. Monthly and annual returns- (2017 Rules)**

(8) In case of mining of minerals by the holder of a mining lease, the –

(a) sale value is the gross amount payable by the purchaser as indicated in the sale invoice, where the sale transaction is on an arms' length basis and the price is the sole consideration for the sale, excluding taxes, if any.

**Explanation.- For the purpose of computing sale value, no deduction from the gross amount shall be made in respect of royalty, payments to the District Mineral Foundation and payments to the National Mineral Exploration Trust.”**

**13.** The relevant sections and the Rules, which have a bearing in deciding the controversy, are extracted hereunder:-

#### **Section 9 of the MMDR Act**

**“9. Royalties in respect of mining leases.—**



(1) The holder of a mining lease granted before the commencement of this Act shall, notwithstanding anything contained in the instrument of lease or in any law in force at such commencement, 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 after such commencement, at the rate for the time being specified in the Second Schedule in respect of that mineral.

(2) **The holder of a mining lease granted on or after the commencement of this Act shall 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 for the time being specified in the Second Schedule in respect of that mineral.**

(2A) The holder of a mining lease, whether granted before or after the commencement of the Mines and Minerals (Regulation and Development) Amendment Act, 1972 shall not be liable to pay any royalty in respect of any coal consumed by a workman engaged in a colliery provided that such consumption by the workman does not exceed one-third of a tonne per month.

(3) **The Central Government may, by notification in the Official Gazette, amend the Second Schedule so as to enhance or reduce the rate at which royalty shall be payable in respect of any mineral with effect from such date as may be specified in the notification:**

**Provided that the Central Government shall not enhance the rate of royalty in respect of any mineral more than once during any period of three years."**

#### **14. Entry 24 of the Second Schedule**

"Second Schedule

24. Iron Ore: (CLO, Lumps, fines and concentrates all grades)" **Fifteen per cent. of average sale price on *ad valorem* basis.**

The main argument is that as per Section 9(2) read with Entry 24 of the Second Schedule, what is prescribed is that the rate of royalty will be 15% of average sale price on *ad valorem* basis. *Ad valorem*, the petitioners contend, means according to value.

**15. Rule 42 of the 2016 Rules reads as under:**

#### **"42. Computation of average sale price.**

(1) The ex-mine price shall be used to compute average sale price of mineral grade/concentrate.

(2) The ex-mine price of mineral grade or concentrate shall be:

(a) where export has occurred, the free-on-board (F.O.B) price of the mineral less the actual expenditure incurred beyond the mining lease area towards transportation charges by road, loading and unloading charges, railway freight (if applicable), port handling charges/export duty, charges for sampling and analysis, rent for the plot at the Stocking yard, handling charges in port, charges for stevedoring and trimming, any other incidental charges incurred outside the mining lease area as notified by the Indian Bureau of Mines from time-to-time, divided by the total quantity exported.

(b) **where domestic sale has occurred, sale value of the mineral less the actual expenditure incurred towards transportation, loading, unloading, rent for the plot at the stocking yard, charges for sampling and analysis and any other charges beyond mining lease area as notified by the Indian Bureau of Mines from time-to-time, divided by the total quantity sold.**

(c) where sale has occurred, between related parties and/or where the sale is not on arms' length basis, then such sale shall not be recognized as a sale for the purpose of this rule and in such case, sub-clause (d) shall be applicable.

(d) where sale has not occurred, the average sale price published monthly by the Indian Bureau of Mines for that mineral grade/concentrate for a particular State:

Provided that if for a particular mineral grade/concentrate, the information for a State for a particular month is not published by the Indian Bureau of Mines, the last available information published for that mineral grade/concentrate for that particular State by the Indian Bureau of Mines in the last six months previous to the reporting month shall be used, failing which the latest information for All India for the mineral grade/concentrate, shall be used.

**(3) The average sale price of any mineral grade/concentrate in respect of a month shall be the weighted average of the ex-mine prices of the noncaptive mines, and any merchant sale done by the captive mines, computed in accordance with the above provisions, the weight being the quantity despatched from the mining lease area of mineral grade/concentrate relevant to each ex-mine price."**

**16.** What is contended is that, by virtue of a subordinate legislation, an explanation is appended in a manner as to deviate from the concept of *ad valorem* by loading to the *ad valorem*, payments made towards the royalty, DMF and NMET already paid. This, the petitioners contend, is *ultra vires* Section 9 of the MMDR Act. The further argument is that revision can only be once every three years.

**17.** The stand of the Union of India is that this is a measure adopted since there was price manipulation in iron ore. Hence, to save revenue, this method was adopted. They also articulated the reason why coal stands on a different footing by highlighting the difference in the price fixation mechanism.

### **PLEADINGS AND CONTENTIONS: -**

**18.** We have heard Dr. Abhishek Manu Singhvi, Mr. Balbir Singh, learned Senior Counsels and Mr. Ninad Laud, learned Counsel for the petitioners and Mr. R. Venkataramani, learned Attorney General for India on behalf of the respondents.

### **PETITIONERS' CASE**

**19.** To understand the controversy, a brief enumeration of the averments in the pleadings filed by the parties as well as the contentions made by them are adverted to. Petitioner No. 1 is a Company holding a mining lease in the State of Karnataka for the purpose of captive production of pig iron at its manufacturing facilities in Koppal and Hiriyur in Karnataka. Petitioner No. 2 is a shareholder of Petitioner No. 1.

**20.** Pursuant to the amendment notified on 27.03.2015 to the Mines and Minerals (Development and Regulation) Act, 2015, auction was made the basis of allotment of mines. The Mineral (Auction) Rules, 2015 (hereinafter "the Auction Rules 2015") were also notified. Petitioner No. 1 secured a mining lease after successfully participating in the auction.

**21.** Rules 8, 9 and 13 of the Auction Rules 2015, read as under:-

**"8. Bidding parameters: - (1) The State Government shall specify in the tender document the minimum percentage of the value of mineral despatched, which shall be known as the "reserve price."**

**(2) The value of mineral despatched shall be an amount equal to the product of,-**

**(i) Mineral despatched in a month; and**

**(ii) Sale price of the mineral (grade-wise and State-wise) as published by Indian Bureau of Mines for such month of despatch.**

**(3) The bidders shall quote, as per the bidding parameter, for the purpose of payment to the State Government, a percentage of value of mineral despatched equal to or above the reserve price and the successful bidder shall pay to the State Government, an amount equal to the product of,-**

**(i) percentage so quoted; and**

**(ii) value of mineral despatched.**

**(4) Where an area is being auctioned for more than one mineral, the percentage of value of mineral despatched as quoted by the successful bidder under sub-rule (3) shall be applicable for the purpose of payment to the State Government in respect of each such mineral.**

**(5) If subsequent to grant of a mining lease, one or more new minerals are discovered, the percentage of value of mineral despatched as quoted by the successful bidder under sub-rule (3) shall be applicable for the purpose of payment to the State Government in respect of each such mineral.**

### **9. Bidding Process.-**

(1).....

(2).....

(3).....

(4) The auction shall be an ascending forward online electronic auction and shall comprise of the following rounds, namely:-

(a) First Round of Auction to be held in the following manner, namely:-

(i) the bidders shall submit-

(A). a technical bid comprising amongst others, documentary evidence to confirm eligibility as per the provisions of the Act and the rules made thereunder to participate in the auction, bid security and such other documents and payments as may be specified in the tender document; and

(B) An initial price offer which shall be a percentage of value of mineral despatched;

**(ii) only those bidders who are found to be eligible in accordance with the terms and conditions of eligibility specified in rule 6 and whose initial price offer is equal to or greater than the reserve price, referred to as "technically qualified bidders", shall be considered for the second round of auction;**

**(iii) the highest initial price offer amongst the technically qualified bidders shall be the floor price for the second round of online electronic auction; (iv).....**

(b) Second Round of Auction to be held in the following manner, namely:-

(i) the qualified bidders may submit their final price offer which shall be a percentage of value of mineral despatched and greater than the floor price:

Provided that the final price offer may be revised till the conclusion of the auction as per the technical specifications of the auction platform;

**(ii) The auction process shall be annulled if none of the qualified bidders submits a final price offer on the online electronic auction platform;**

**(iii) the qualified bidder who submits the highest final price offer shall be declared as the "preferred bidder" immediately on conclusion of the auction.**

**13. Payments under mining lease.—(1) The lessee shall pay royalties and dead rent to the State Government as specified in the Act and the rules made thereunder.**



**(2) The lessee shall pay the applicable amount quoted under rule 8 to the State Government on a monthly basis.**

**(3) The lessee shall contribute such amounts as may be required under the Act to-**

**(a) the designated account of the National Mineral Exploration Trust; and**

**(b) the designated account of the District Mineral Foundation.**

**(4) The lessee shall also pay such other amounts as may be required under any law for the time being in force to the concerned authorities.”**

**22.** In exercise of powers under Sections 9C(2), (3), (4) and Section 13 of the MMDR Act, the Union of India notified the National Mineral Exploration Trust Rules, 2015 (“the NMET Rules”) which dealt with the manner of deposit and disbursal of the funds collected under the NMET. Under Rule 7 of the NMET Rules, the holder of mining lease or prospecting license-cum-mining lease shall pay to the Trust a sum equivalent to two per cent of the Royalty under sub-section (4) of Section 9C of the MMDR Act by depositing the same in the Public Account of the State under the Head booked for the said purpose.

**23.** On 17.09.2015, in exercise of powers under Section 9B (5) and (6) of the MMDR Act, Respondent No. 1-Union of India notified the Mines and Minerals (Contribution to District Mineral Foundation) Rules, 2015 (“the DMF Rules”). Rule 2(a) of the DMF Rules states that every holder of a mining lease or a prospecting license-cum-mining lease shall, in addition to the royalty, pay to the District Mineral Foundation of the District in which the mining operations are carried on, an amount at the rate of ten percent of the royalty paid in terms of the Second Schedule.

**24.** As set out hereinabove, royalty under the Second Schedule for iron ore was 15% of the Average Sale Price (ASP) on *ad valorem* basis and that was payable under Section 9 of the MMDR Act. The net result was, while there was a levy of 15% of ASP on *ad valorem* basis towards royalty, there was a levy of 2% of the royalty towards NMET, and there was a levy of 10% of the royalty towards DMF.

**25.** Sale value in the manner provided under Rule 42(2) of the 2016 Rules and Rule 45(8) of the 2017 Rules was to be the basis for the ex-mine price. Based on the ex-mine price, average sale price is arrived at in the manner provided under Rule 42(3) of the 2016 Rules. The petitioners are aggrieved by the fact that the explanation appended to both Rule 38 and Rule 45(8)(a), expressly prescribed that no deduction from the gross amount shall be made in respect of payments made towards royalty, payments to the DMF and payments to the NMET.

**26.** As pointed out earlier, under Entry 24 of the Second Schedule, the royalty was 15% of the average sale price on *ad valorem* basis. Rule 42 of the 2016 Rules deals with the method of computation of average sale price. Rule 42 of the 2016 Rules has already been set out.

**27.** It will be noticed that under Rule 42(3) of the 2016 Rules, the average sale price of any mineral grade/concentrate in respect of a month was the weighted average of the ex-mine prices of the non-captive mines, computed in accordance with Rule 42(2), the weight being the quantity despatched from the mining lease area of mineral grade/concentrate relevant to each ex-mine price.

**28.** Rule 43 of the 2016 Rules reads as under:-

**“43. Publication of average sale price.-** The Indian Bureau of Mines shall publish the average sale price of each mineral grade/concentrate removed from the mining leases in a month in a

State within 45 days from the due date for filing the monthly returns as required under the Mineral Concession Development Rules, 1988.”

Under Rule 43 of the 2016 Rules, the Indian Bureau of Mines was to publish the ASP of each mineral grade/concentrate removed from the mining leases in a month in a State within 45 days from the due date for filing the monthly returns as required under the Mineral Concession Development Rules, 1988. Hence, post the filing of the return and within 45 days, the Indian Bureau of Mines notifies the ASP. It is while computing the ASP that the sale value factor comes in and as a component of the sale value, payments made towards royalty, DMF and NMET are not deducted which has resulted in the petitioners being aggrieved.

**29.** Under Rule 45 of the 2017 Rules, monthly and annual returns are obliged to be filed by the lessee. The monthly return was to be filed online before the 10<sup>th</sup> of every month. The return was to be in the prescribed Form. Amongst the other things required in the Form is the extent of iron ore despatched during the month.

**30.** According to the petitioners, the impugned provisions result in the payment of royalty on royalty and further it results in payment of royalty, DMF and NMET twice in case of auctioned mines, that is, once as part of auction premium and a second time upon removal of the minerals. According to the petitioners, under Rule 8 of the Auction Rules, 2015, a reserve price is to be fixed. Under Rule 8(2), the value of mineral despatched was to be an amount equal to the product of the mineral despatched in a month and sale price of the mineral (grade-wise and State-wise) as published by the Indian Bureau of Mines for such month of despatch and under Rule 8(3), the bidder was to quote, as per the bidding parameter, for the purpose of payment to the State Government, a percentage of value of mineral despatched equal to or above the reserve price. They contend that as part of the auction premium also, the ASP notified by Indian Bureau of Mines, comes into operation. According to them, if the ASP is to be loaded with the amount paid towards royalty, DMF and NMET, it tantamounts to double payment at the stage of computation of premium. Further, at the time of removal of mineral also they are obliged to pay royalty, DMF and NMET, which in turn, is based on the average sale price. Here again, they contend that the failure to deduct royalty, DMF and NMET constitutes payment of royalty on royalty with a cascading effect. Petitioners contend that it amounts to increasing the rate of royalty as it leads to a compounding effect on payment of royalty.

**31.** According to the petitioners, Rule 38 of the 2016 Rules and Rule 45 of the 2017 Rules, more particularly, the explanations thereof, which permit this cascading effect, are *ultra vires* Section 9 of the MMDR Act, since Section 9 read with the Schedule is based on the concept of *ad valorem*. According to them, the plain meaning of *ad valorem* is according to value and there cannot be any artificial addition to the value.

**32.** Pointing to Entry 10 of the Second Schedule dealing with Coal, they contend that for Coal under the Notes appended to the Second Schedule with effect from 14<sup>th</sup> July, 2020, the cascading effect which was prevailing for the said product was rectified by introducing the following clause.

**“Notes:**

Explanation:- For the purposes of this sub-entry.- (i).....

(ii) Actual price means the sale invoice value of coal, net of statutory dues including taxes, levies, royalty, contribution to National Mineral Exploration Trust and District Mineral Foundation.”

**33.** According to the petitioners, the anomaly was rectified, vis-à-vis Coal with effect from 14.07.2020. The petitioners refer to the notice for public consultation issued on

25.05.2022 where the anomaly of cascading effect was highlighted and how a proposed clause excluding the components was suggested. Thereafter, the petitioners point to the writ petition filed being Writ Petition No. 715 of 2024 which has already been discussed hereinabove. The petitioners also adverted to the judgment of this Court dated 07.11.2024. The petitioners contend that based on the judgment of 07.11.2024, they filed a representation on 12.11.2024 and consequential proceedings in this Court.

**34.** The petitioners contend that the explanations appended to Rule 38 of the 2016 Rules and Rule 45(8)(a) of the 2017 Rules are *ultra vires* the MMDR Act, violative of Articles 14 & 19(1)(g) of the Constitution of India as being manifestly arbitrary. The petitioners contend that while all conceivable expenditure is excluded yet the impugned explanations add payments made towards royalty, DMF and NMET contributions. They contend that, being expenses, it ought not to be part of the average sale price. The petitioners seek to demonstrate by the following chart appended to the writ petition about the purported cascading effect in the levy:-

| Description                                                                                                      | Existing (with anomaly) | If anomaly is removed | Difference (Excess payment) |
|------------------------------------------------------------------------------------------------------------------|-------------------------|-----------------------|-----------------------------|
| Average sale price = Ex-mine (100)+<br>Royalty (15)+ DMF (4.5)+<br>NMET (0.3)                                    | 119.80                  | 100                   | 19.8                        |
| Applicable Amount/Premium (assuming 100%)                                                                        | 119.80                  | 100                   | 19.8                        |
| Royalty, DMF, NMET to be paid by lease holders on Average sale price including Ex-mine +<br>Royalty + DMF + NMET | 20.13                   | 16.8                  | 3.33                        |
| <b>Premium +<br/>Royalty + DMF<br/>+ NMET</b>                                                                    | <b>139.93</b>           | <b>116.8</b>          | <b>23.13</b>                |

**35.** The petitioners further contend that under the proviso to Section 9(3) of the MMDR Act, a fixed royalty is contemplated for three years whereas by this process there is change every month.

**36.** Petitioners also referred to the recommendations of Shri Praveen Kumar and Dr. Aruna Sharma Committees which, according to them, recommended the amendment to remove the purported cascading effect. Aggrieved with the inaction of the Union and by virtue of the liberty granted by this Court, the present writ petition has been filed.

#### **RESPONSE OF THE UNION OF INDIA: -**

**37.** The writ petition was vehemently opposed by the Union of India represented by the learned Attorney General. The principal argument on maintainability is that there is no violation of fundamental right either under Article 14 or Article 19(1)(g). It is also contended that the provisions were not *ultra vires* the provisions of the MMDR Act. It was submitted that Section 9 of the MMDR Act read with the Second Schedule authorised the fixation of the rates of royalty as well as the method of computation of royalty and manner of payment of royalty.

**38.** Elaborating further, it is contended that under the Second Schedule, the royalty on minerals is levied either on *ad valorem* basis or on tonnage basis. The Union of India contends that the rate of royalty and the method of computation is different from mineral to mineral. It is contended that fixation of rates of royalty is covered within the scope of “regulation of mines and mineral development”. It is submitted that 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.

**39.** The judgment in Writ Petition (C) No. 715 of 2024 was cited by the Union of India in their support. It is contended that pursuant to the judgment of this Court dated 07.11.2024 in Writ Petition (C) No. 715 of 2024, extensive consultation process was undertaken and for good and valid grounds, it was decided not to amend the Act and the Rules as they now stand. It is submitted that there is nothing capricious or irrational about the impugned rules warranting judicial review under the doctrine of manifest arbitrariness.

**40.** According to the Union of India, the impugned rules simply explain the mechanism under which the sale value is to be calculated by taking into account all the payments that a leaseholder has to make to the government. It is submitted that comparison of methodologies of calculation of royalty for different minerals and to make a point of discrimination is completely untenable as for some minerals, the levy is on tonnage basis; some are based on international prices and some are on ASP arrived on the basis of returns. Even for the same mineral, there are different methodologies.

**41.** The Union submitted that comparison with coal was completely unjustified. It was submitted that there was monopoly in coal production by Coal India Limited and Singareni Collieries Company Limited. Unlike coal, in iron ore, various small and large private sector miners operate in the market. This necessitated the evolution of a mechanism like ASP for calculation of royalty to deal with the menace of under-invoicing.

**42.** The Union of India contended that for auction of coal blocks for commercial mining, from 2020, royalty was to be calculated on notional price or the actual price of coal whichever is higher. The Union of India contends that notional price is arrived from the National Coal Index [NCI]. Elaborating further, it was contended that the NCI is a price index combining the prices of coal from three sales channels:

- i) notified prices of Coal India Limited and Singareni Collieries Company Limited (both Public Sector Undertakings);
- ii) auction prices of Coal India Limited and Singareni Collieries Company Limited; and
- iii) import prices.

It was contended that the NCI price was adopted to check the issue of under-invoicing when coal production started from commercial mines. The Union of India contended that under Article 14, only equals ought to be treated equally and not unequals equally and that there is no violation of Article 14 by treating coal and iron ore differently, in the manner of levy.

**43.** It is further contended that laws relating to economic activity should be viewed with greater latitude and crudities and inequities in complicated experimental economic legislation are bound to exist and that cannot be a ground to strike it down. It is contended that there must be free play in the joints to experiment in the economic policy.

**44.** The Union of India contends that ASP is dependent upon market forces and is not decided by the government. In fact, it is contended that ASP is calculated based on the data given by the miners. It is denied that there is continuous increase in royalty on a month-to-month basis, as according to the Union, the ASP of each month is separately compiled and there is no impact of ASP of previous month in the ASP of the following month.

**45.** Disputing the chart handed over by the petitioners, the learned Attorney General, in turn, relied on the following chart:

“1.....

The correct representation of computation of ASP will be as follows:

| Scenario/<br>Month | Basis for<br>calculating<br>royalty (ASP) | Total levies payable [16.95%<br>of the ASP, i.e., royalty 15%<br>of ASP + DMF (10% of 15%)<br>= 1.5% +<br>NMET (3% of 15%) = 0.45%] | Effective rate of<br>royalty, DMF and<br>NMET payment on<br>the Mineral<br>Value | Excess<br>Payment |
|--------------------|-------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------|-------------------|
| Jan. 2026          | Rs.100.00<br>(Actual/ex mine<br>price)    | Rs.16.95                                                                                                                            | 16.95%                                                                           | No                |
| Feb. 2026          | Rs.105.00<br>(Actual ex mine<br>price)    | Rs.17.80                                                                                                                            | 16.95%                                                                           | No                |
| Mar. 2026          | Rs.98.00 (Actual<br>ex mine price)        | Rs.16.61                                                                                                                            | 16.95%                                                                           | No                |
| Mar. 2027          | Rs.110.00<br>(Actual ex mine<br>price)    | Rs.18.65                                                                                                                            | 16.95%                                                                           | No                |

2. ASP for each month is determined based on returns for the said month. Previous month ASP is not carried forward. Thus, in the above scenarios, ASP of Month of Feb., 2026 is different from ASP for month of Jan., 2026 and depends on market price on which the mineral is sold.

- Each month's ASP is derived from a fresh, independently declared ex-mine price.
- The effective statutory rate remains constant.
- There is no mathematical mechanism by which levies paid in one month influence the base of the next month. Hence, compounding or cascading is impossible.”

**46.** It is submitted that policy decisions ought not to be lightly interfered with. Dealing with the Committees headed by Shri Praveen Kumar and Dr. Aruna Sharma, it was contended that they are recommendatory in nature and cannot have any binding force.

**47.** Contending that there is price manipulation and that lessees are keen to revise the calculation of ASP to reduce the burden of premium which they had quoted in the auction voluntarily, it is submitted that since the lease premium is a percentage of ASP and the premium amounts are significant, there have been instances of deliberate manipulation.

**48.** An additional affidavit dated 02.02.2026 has been filed explaining the evolution of the royalty regime since inception. In the said affidavit, elaborating on the concept of ASP, it is submitted that it was a mechanism introduced to address the mischief/issue of under-invoicing of mineral sales by lessees and to arrive at true sale value of the mineral.



**49.** It is submitted that instances have emerged where even under the regime of the 2016 Rules, miners were trying to reduce the sale value in an attempt to lower the ASP. According to the Union, this undermined the statutory scheme of royalty and was causing substantial loss to the exchequer.

**50.** Dealing with the cases of States of Orissa and Karnataka and the manipulation of ASP of iron ore by the lessees during the period between August, 2022-January, 2023, a note was appended to the affidavit. The following extract from the note is significant: -

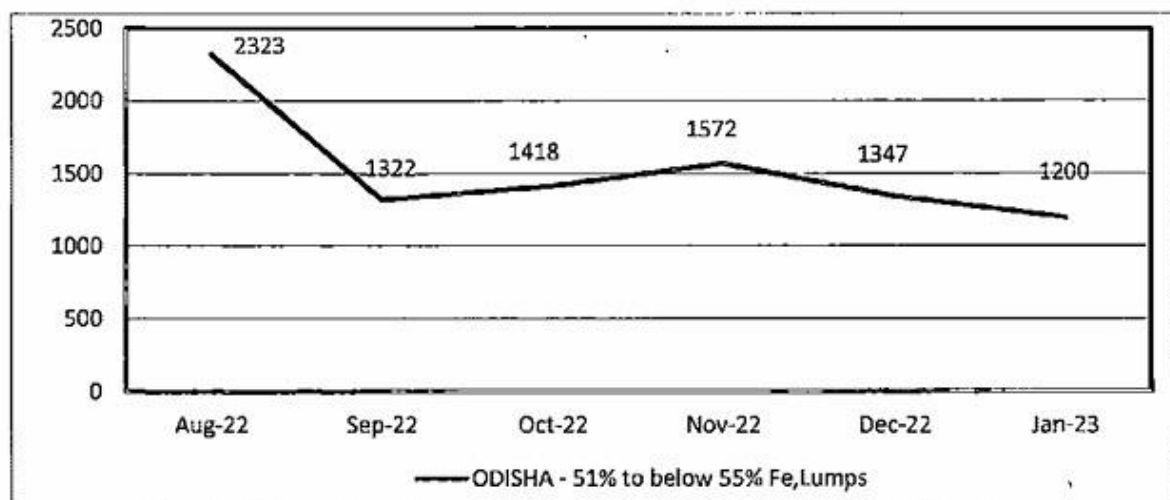
**“While calculating the ASP of Iron ore in certain grades for the Month of August-22 to January-23, it was observed that ASP was considerably lower compared to the previous month during few consecutive months, despite of the fact that ex-mine price reported by the individual mine was almost at the same level that of previous month. An analysis of despatches was made by the IBM based on the last 6 months data from August-22 to January-23 and revealed that there is a drastic change in pattern of the production and despatches by some of the lease holders during last 6 months. This may be probably due to some malpractices adopted by some unscrupulous miners. Miners who have reported higher ex-mine price in the previous month has made no despatches in the subsequent months that distorted/lowered the monthly ASP as published by IBM. Based on the analysis following has been observed:**

A. Odisha

**1. ASP for Grade 51% to 55% Fe lumps**

The ASP of grade 51% to 55% Fe lumps was lowered by 43% in the month of September-22 against August-22; ASP was again slightly increased in the month of October-22 and November-22 and again falls down in the month of December-22 resulting about 50% fall in ASP from August 22. **On analysing the despatches and EMP data, it was observed that the two mines those have reported the highest ex-mine price in the month of August-22 with about 25% of despatch (each mine) are not despatching or despatching very less quantity in the subsequent months; at the same time the mine which have reported lowest EMP in the month of August-22 increased its despatches from less than 50% in August-22 to almost 100% in December-22, which distorted and decreased the ASP from August 22 to January 23 by approximately 50%. The graph and**

**Table depicting the changes in, EMP, Despatch Quantity and ASP is given as below:**



**Grade wise despatch and ex-mine price from August 22 to January 23**

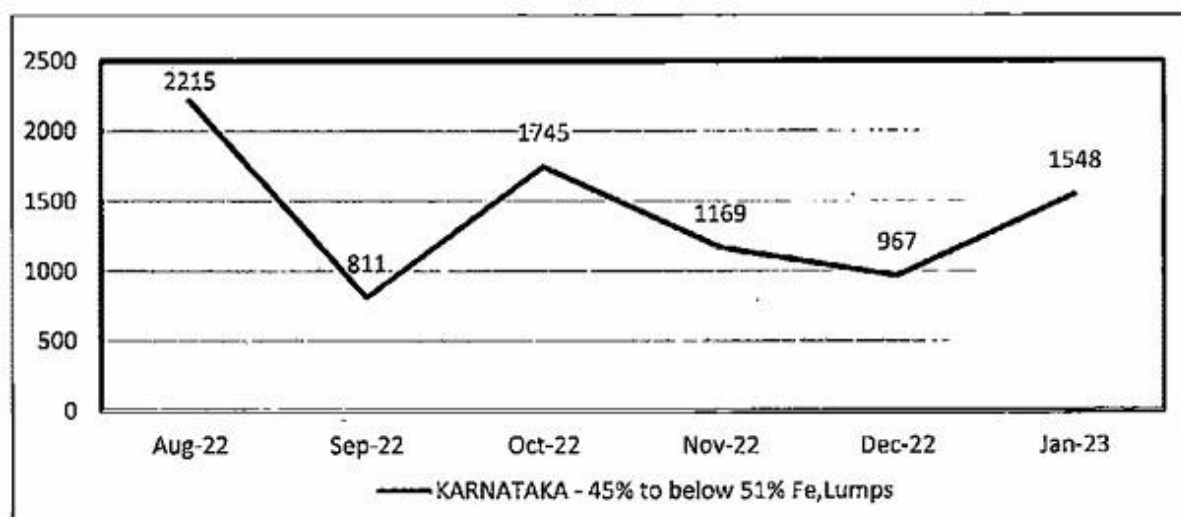
|  | Aug-22 | Sep-22 | Oct-22 | Nov-22 | Dec-22 | Jan-23 |
|--|--------|--------|--------|--------|--------|--------|
|--|--------|--------|--------|--------|--------|--------|

| Name of Mine (Mine Code)      | ExMin e Price | Des patc h | ExMin e Price | Des patc h | ExMin e Price | Desp a tch | ExMin e Price | Desp a tch | ExMin e Price | Desp a tch | ExMin e Price | Desp a tch |
|-------------------------------|---------------|------------|---------------|------------|---------------|------------|---------------|------------|---------------|------------|---------------|------------|
| BHANJI PALI (30ORI13043)      | 3043          | 738        | 3400          | 403        | 3372          | 829        |               |            |               |            |               |            |
| NUAGAON1 (40ORI13050)         | 3100          | 700        |               |            |               |            | 2600          | 1974       | 2600          | 24         |               |            |
| RAIKELA & TANTRA (30ORI13035) | 1459          | 1246       | 1232          | 9357       | 1287          | 12396      | 1233          | 5998       | 1346          | 17865      | 1200          | 4081       |

## B. Karnataka

### 1. Grade 45% Fe to 51% Fe Lumps

The ASP of grade 45% to 51% Fe lumps was down by 63% in the month of September 22 as compared to the August 22 and 33% in the month of November-22 as compared to October-22. On analysis, it was observed that in the month of September-22 four mines have reported despatches and the main reasons for lowering of ASP was changes in reporting pattern of Narayana Iron Ore Mine (30KAR03188) mines of JSW. Being a NonCaptive Mine and as nature of use is Captive Consumption, Narayana Iron Ore Mine (30KAR03188) mines of JSW have reported about 80% (42237t) of total despatches in this grade with applicable IBM published price as per rule 43 of MCR 2016 i.e. ASP of July 2022 during the month. i.e. Rs 771/t, whereas, in the month of August when applicable ASP was Rs. 1831/t the same mine had reported only 226 tons of despatches. Secondly, the Haddinapade Mines reported an EMP of 2243 with 93% despatches reported nil despatches in the month of September-22. Further, Narayana Iron Ore Mine (30KAR03188) mines of JSW reported an EMP of Rs. 2215/t with a despatch of 55% in the month of October-22, however, reported nil despatches in the month of November-22. The graph and Table depicting the changes in ASP and despatches is given as below:



### Grade wise despatch and ex-mine price from August 22 to January 23

| Name of Mine (Mine Code) | Aug-22 | Sep-22 | Oct-22 | Nov-22 | Dec-22 | Jan-23 |
|--------------------------|--------|--------|--------|--------|--------|--------|
|                          |        |        |        |        |        |        |

|                                                        | ExMin<br>e Price | Des<br>patc<br>h | ExMin<br>e Price | Des<br>patc<br>h | ExMin<br>e Price | Des<br>patc<br>h | ExMin<br>e Price | Des<br>patc<br>h | ExMin<br>e Price | Des<br>patc<br>h | ExMin<br>e Price | Des<br>patc<br>h |
|--------------------------------------------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| DINDADAHALLI FE ML<br>2658 26.35<br>ACRES (30KAR07034) |                  |                  |                  |                  | 1198             | 1860             | 1568             | 8070             | 1314             | 5434             | 1745             | 2636             |
| DONIMALAI5320H<br>30KAR03113<br>(30KAR03113)           |                  |                  | 690              | 4000             |                  |                  |                  |                  | 741              | 32000            |                  |                  |
| HADDINAPADE<br>(30KAR03156)                            | 2243             | 3000             | 1179             | 5914             | 1179             | 6086             | 1121             | 12000            | 1078             | 16392            | 1078             | 3176             |
| HARGINADONA<br>(30KAR03133)                            |                  |                  | 846              | 419              | 894              | 171              | 894              | 420              | 890              | 9097             | 890              | 49               |
| KAREKURCHI (ML 2028)<br>(40KAR19021)                   |                  |                  |                  |                  |                  |                  | 890              |                  | 890              | 14973            |                  |                  |
| NARAYANA IRON ORE<br>MINE<br>(30KAR03188)              | 1837             | 226              | 771              | 42237            | 2215             | 9799             |                  |                  |                  |                  |                  |                  |
| Sankalapuram 188<br>AC(30KAR03065)                     |                  |                  |                  |                  |                  |                  |                  |                  | 1745             | 6000             |                  |                  |
| Smt. Susheelamma<br>mine(40KAR07023)                   |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  | 1800             | 4000             |

### **Conclusion**

**Based on the above it is concluded that in most of the cases the ASP's as calculated based on weighted average of EMP's, where despatched quantity is taken as the weight. However, at some instances the change in calculated ASP's is significant and reason for the same is a drastic change in the despatched pattern by the individual mines, where few of the mines have quoted the lowest EMP's in one month and had suddenly increased its despatches in another month. Secondly, at some instances few of the mines have quote the higher ex-mine price in one month but have either reduced the despatched quantity or made no despatches in subsequent months. In both the cases it lowers the ASPs of that month or subsequent months in different grades and for different States."**

Similar trend has been demonstrated for other grades of iron ore in the State of Orissa and similar trend has been noticed in other grades of iron ore in the State of Karnataka also.

**51.** It is contended by taking the example of the two States that where the average of the ex-mine price [EMP] was low, higher despatches were shown and where higher EMP

was shown, reduced despatch quantity was shown. The idea, according to the Union of India, was to reduce the ASP on both counts in different grades of iron for different sets.

**52.** It is vehemently contended that regulatory interventions squarely attracted the provisions to suppress the mischief and advance the remedy and to arrive at the fair value of the mineral. The Union of India further contended that the petitioners are estopped from challenging since they have participated in the auction with full notice. It is also submitted that the rule is very clear and for any future auction also the parties are put on notice.

**53.** Dealing with the estimated loss for the State Governments in case the explanations are struck down, the Union of India, in its counter affidavit, dated 25.11.2025 avers as follows: -

**“65. That it is submitted that challenge to the Rule that defines sale value has a larger implication in the auction regime as currently more than 585 mineral blocks have been successfully auctioned in the Country after introduction of auction for mineral blocks in 2015 and the basis for calculation of reserve price is the ASP. It is further submitted that the Rules sought to be impugned, is considered, the same shall have wide ramifications on the mineral blocks already auctioned and would tantamount to change in the conditions of the tender(s) pursuant to which the successful miners have got the mines. Such change in measure of royalty and auction premium are as essential components of auction. Those who participated in auction and decided to quote low auction premium considering the explanation to Rule 38 of MCR 2016 would claim that auction parameters have been changed post-auction and would allege undue enrichment and unfair benefit to the preferred/successful bidder. Successful bidders for all the blocks auctioned are selected based on the existing definition of sale value.**

**66. Applying changes on existing non-auctioned and auctioned mining lease would result in lower royalty and auction premium payable to States. The committee that suggested changes regarding royalty on royalty calculated that for an ad valorem royalty rate of 15%, there would be reduction of State revenue to an extent of 15 to 17%. Since, 2015, more than 585 mineral blocks have been auctioned. The estimated loss to the State Government due to revenue reduction would run into lakhs of crore rupees and there would be commensurate benefit to the existing lease holders.**

**67. It is stated that the Answering Respondent had calculated a loss of around Rs.1.94 to 2.20 lakh crore over the next 50 years, i.e., around Rs. 4000 crore per year for just 149 auctioned MLs (auctioned till April, 2022).**

**68. It is submitted that during FY 2023-24, the iron ore production in the country was 277 million tonnes out of which the share of auctioned mines was 66 million tonnes (39 working mines) and 211 million tonnes was produced from non-auctioned mines (140 working mines). The total value of 277 million tonnes of iron ore produced in the country was approximately Rs. 1 lakh crore.**

**72. It is submitted that the total loss of revenue to the State Governments based on FY 2023-24 production data would be approximately Rs. 6,200 crore per year. This loss would accrue each year for the entire lease period of 50 years. Thus, the total loss to the State Governments if both the production and prices remain at FY 2023-24 level, would be more than Rs. 3 lakh crore. Further, this loss is only for mineral iron ore. If other minerals are also taken into consideration then the loss would increase further.**

**73. It is submitted that with passage of time, more number of auctioned mines will come into production and nonauctioned mines would keep expiring. Therefore, the share of production of iron ore from auctioned mines would increase substantially in the coming years. The Central Government has envisaged a production target of 450 million tonnes of iron ore in FY 2029-30 in line with the requirement of the Steel industry as per the National Steel Policy, 2017.**

**74. Even if it is assumed that the prices of iron ore remain constant at 2023-24 levels, the value of 450 million tonnes of iron ore produced in FY 2029-30 would be around 1.6 lakh crores. It may**

be assumed that the share of production of iron ore from non-auctioned mines would be 250 million tonnes in 2029-30 and remaining 200 million tonnes would be produced from auctioned mines.

**76. Therefore, the total loss of revenue based on estimated production in FY 2029-30 based on 2023-24 prices would be approximately Rs. 14,000 per year just for iron ore alone. This loss when extrapolated over the lease period of 50 years would be approximately Rs. 7 lakh crore. This amount would obviously increase with increase in operationalization of auctioned mines and increase in value of minerals and their production. Further, even other minerals are also taken into consideration, as the rules applies to all minerals, the loss would be in lakhs of crores over the lease period.”**

**54.** The petitioners, in their rejoinder affidavit dated 06.12.2025, while disputing the contentions of the Union, advert to the following chart to demonstrate how the existing method of computation of ASP under the impugned rules is resulting in a cascading impact on the payments of royalty by enhancing the rate of royalty every month: -

| Scenario                       | Basis for Calculating Royalty (ASP)   | Total levies Payable (16.95% of the ASP) | Effective Rate of royalty, DMF and NMET payment on the Mineral Value | Excess Payment (occasioned due to the anomaly) |
|--------------------------------|---------------------------------------|------------------------------------------|----------------------------------------------------------------------|------------------------------------------------|
| Ideal Scenario (If no anomaly) | Rs. 100/- (Actual ex-mine price)      | Rs. 16.95                                | 16.95%                                                               | Rs. 0.00                                       |
| Scenario with anomaly          | Rs. 116.95 / (ex-mine price + levies) | Rs. 19.82                                | 19.82 %                                                              | + 2.87 (Immediate Inflation)                   |
| Cascading Impact (Month 2)     | Rs. 119.82 (Value + Month 1 levies)   | Rs. 20.30                                | 20.30%                                                               | + 3.35 (Compounding starts)                    |
| Cascading Impact (Month 3)     | Rs. 120.30 (Value + Month 2 levies)   | Rs. 20.39                                | 20.39%                                                               | + 3.44 (Further Inflation)                     |

True Value of Mineral (Ex-Mine Price): Rs.100.00

Total Statutory Levies: 16.95% (Royalty 15% + DMF 1.5% + NMET 0.45%)

#### **QUESTION FOR CONSIDERATION: -**

**55.** In the above background, the question that arises for consideration is whether the explanations appended to Rule 38 of the 2016 Rules and Rule 45(8)(a) of the 2017 Rules are *ultra vires* Article 14 and Article 19(1)(g) of the Constitution as well as Section 9 of the MMDR Act to the extent that the levy provides for inclusion of royalty and payments made towards DMF and NMET in the sale value?

#### **ANALYSIS AND DISCUSSION: -**

**56.** Before addressing the core issue, we need to clear the deck by dealing with certain preliminary aspects which were argued before us.



## **MAINTAINABILITY AND ESTOPPEL :-**

57. On behalf of the Union, it was feebly contended that the writ petition is not maintainable since there was no violation of fundamental rights under Articles 14 and 19(1)(g) of the Constitution of India. It was argued that there was also no case made out about the impugned provisions being *ultra vires* the MMDR Act. These are not arguments on maintainability but are aspects dealing with the merits of the matter.

58. In any event, the aspect of maintainability need not detain us any further as this Court, in its order of 19.05.2025, set out hereinabove, expressly reserved liberty for the petitioners to challenge the decision of the government. This order of 19.05.2025 was made pursuant to the judgment of 07.11.2024.

59. Equally, the argument that the petitioners are estopped from challenging since they participated in the auction, does not appeal to us. The petitioners are challenging the validity of certain Rules. Irrespective of the fact that the Rule was on the Statute Book when they participated in the auction, this Rule will operate for future purposes also.

## **CERTAIN FUNDAMENTAL PRINCIPLES :-**

60. While navigating the aspect of constitutional validity of explanation to Rule 38 of the 2016 Rules and the explanation to Rule 45(8)(a) of the 2017 Rules, we need to bear in mind certain basic legal principles which will help us to resolve this conundrum.

## **PRESUMPTION OF CONSTITUTIONALITY :-**

61. At the very outset is the fundamental principle - the presumption of constitutionality. Today, it is beyond cavil that the presumption of constitutionality not just applies to plenary legislation but also to subordinate legislation. Of course, it is a rebuttable presumption and the burden will be on the petitioners to displace the presumption.

62. In ***State of Tamil Nadu and Another vs. P. Krishnamurthy and Others***,<sup>1</sup> R.V. Raveendran J., speaking for this Court, felicitously set out the aspect of presumption of constitutionality in the context of subordinate legislation thus: -

**“15. There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid.** It is also well recognised that a subordinate legislation can be challenged under any of the following grounds:

- (a) Lack of legislative competence to make the subordinate legislation.
- (b) Violation of fundamental rights guaranteed under the Constitution of India.
- (c) Violation of any provision of the Constitution of India.
- (d) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.
- (e) Repugnancy to the laws of the land, that is, any enactment.
- (f) Manifest arbitrariness/unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules).

16. The court considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent statute. Where a rule is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the court is simple and easy. But where the contention is that the inconsistency or non-conformity of the rule is not with reference to any specific provision of the enabling Act, but with

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<sup>1</sup> (2006) 4 SCC 517

the object and scheme of the parent Act, the court should proceed with caution before declaring invalidity.”

### **LIBERAL CONSTRUCTION OF LEGISLATIVE ENTRIES :-**

**63.** The second principle to be borne in mind is that legislative entries which are fields demarcated under the Seventh Schedule are to be liberally construed and would take in subsidiary and ancillary matters. The MMDR Act, which is the enabling Statute under which the Rules are enacted, is legislated pursuant to the field demarcated under Entry 54 of List I. In **Sardar Baldev Singh vs. CIT, Delhi & Ajmer**<sup>2</sup>, this Court held that legislative entries have to be read in a very wide manner so as to include all subsidiary and ancillary matters.

**64.** In **Mineral Area Development Authority & Anr. vs. M/s Steel Authority of India and Another**,<sup>3</sup> this Court, while explaining how the fixation of rates of royalty under Section 9 read with the Second Schedule is covered within the scope of “Regulation of Mines and Mineral Development” held as under: -

“**144.** The expression “regulation of mines” can be understood in the backdrop of above discussion to mean the management of both the process of extracting minerals as well as the place where such minerals will be extracted from sub-surface levels. The MMDR Act gives shape and meaning to the expression “regulation of mines and mineral development” through its provisions and the subordinate rules. To that effect, we find provisions under the MMDR Act pertaining to prospecting or mining operations under lease or licence, [MMDR Act, Section 4] restrictions on the grant of mineral concessions, [MMDR Act, Section 5] periods for which prospecting licences [MMDR Act, Section 7] or mining leases [MMDR Act, Section 8] may be granted or renewed, and royalties in respect of mining leases. [MMDR Act, Section 9] Chapter III deals with the procedure for obtaining mineral concessions in respect of land in which the minerals vest in the Government. Chapter IV empowers the Government to frame rules for regulating the grant of mineral concessions. Chapter V deals with the special powers of Central Government to undertake prospecting or mining operations in respect of lands in which the minerals vest in the Government of a State or any other person. [MMDR Act, Section 17] Thus, Chapters II to V of the MMDR Act invariably deal with aspects regulating the place of extraction of minerals and the process by which mines are worked. These provisions govern aspects such as conceding land to a person for carrying out mining operations (mining concession) or granting licences for working mines and winning minerals, which are integral to the concept of “regulation of mines”. **The fixation of rates of royalty under Section 9 read with the Second Schedule is also covered within the scope of “regulation of mines and mineral development”.**

**65.** Similarly in **Union of India vs. A. Sanyasi Rao**,<sup>4</sup> this Court held that the legislature has got a wide discretion to pick and choose persons and objects for legislating and even the rates for taxation.

### **NATURE OF ROYALTY: -**

**66.** In **Mineral Area Development Authority (supra)**, dealing with the nature of Royalty, this Court held as under: -

“**133.** 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;

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<sup>2</sup> 1960 SCC OnLine SC 147/[1961] 1 SCR 482

<sup>3</sup> (2024) 10 SCC 1

<sup>4</sup> (1996) 3 SCC 465

(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; [*Goodyear (India) Ltd. v. State of Haryana*, (1990) 2 SCC 71, para 27] and

(iii) royalty generally flows from the lease deed as compared to tax which is imposed by authority of law.

**134.** 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.

**365.1** 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.”

### **CONSIDERATION OF THE LEGAL PROVISIONS IN ISSUE HEREIN: -**

**67.** In the present matter, the real controversy is as to what would be the base figure on which the percentage of Royalty would be calculated. Payments made towards DMF, NMET are only a percentage of Royalty. Under Section 9(3) read with Entry 24 of the Second Schedule, Royalty on iron ore is levied at 15 per cent of the average sale price on *ad valorem* basis. Rule 42, which deals with average sale price, speaks of sale value. Rule 38 and Rule 45 of the 2016 Rules and the 2017 Rules respectively, deal with the components that would go to constitute sale value. Explanations have been appended to Rule 38 and 45(8)(a) respectively, stating that the amounts paid towards Royalty, DMF and NMET would not be excluded from the sale value.

**68.** Rules 8, 9 and 13 of the Auction Rules, 2015, which have been discussed hereinabove, explained how the bidder bids the auction premium as percentage of the average sale price.

**69.** As per Rules 8 & 9, the bidders submit a bid which is the percentage of the value of the minerals despatched or also known as reserve price. Definition of value of mineral despatched in Rule 8(2) says, value of mineral despatched = mineral despatched x sale value.

**70.** So, both for payment of premium and for computation of Royalty, DMF and NMET, average sale price is the base figure and in average sale price, the “sale value” is an important component. The real question is whether providing that amounts paid towards Royalty, DMF and NMET will not be excluded from the sale value makes the provision *ultra vires* the Constitution or the Statute.

**71.** Being a levy, *albeit* contractual, backed by statutory provisions, the Rules of interpretation applicable to fiscal Statutes and the principles set out thereon will definitely come into play. Granted legislative competence, the legislature and the subordinate Rule making authority will have full liberty to prescribe the manner of levy, the determination of the rates and the method of computation of the levy. The only requirement is that it should comport with the constitutional provisions and the parent Statute and that the nexus between the measure of levy and the levy ought to be reasonable and the measure must have some relationship with the nature of the levy.

## **MEASURE OF LEVY AND NATURE OF LEVY : -**

**72.** In *Mineral Area Development Authority (supra)* this Court clearly reiterated the well-settled distinction between the subject matter of a levy and the standard by which the amount of levy is measured. This Court explained that the measure of the levy is not the true test of the nature of the levy. The following paragraphs in the said judgment make for useful reading: -

“302. It now a well-settled principle that the determination of the principles for assessing the amount of tax is within the legislative domain [*S. Kodar v. State of Kerala*, (1974) 4 SCC 422, para 10]. The quantification or measurement of liability is done on the basis of the procedures laid down by the competent legislature [*Shaktikumar M. Sancheti v. State of Maharashtra*, (1995) 1 SCC 351, para 3]. In situations where the legislature selects one method out of the many available for assessing tax, the courts should not strike down the levy on the ground that the legislature should have adopted another method unless the method is capricious, fanciful, arbitrary or clearly unjust [*Khandige Sham Bhat v. CIT (Ag)*, 1962 SCC OnLine SC 15, para 10]. Although the liability may be quantified or measured in many ways, there is a clear distinction between the subject matter of a tax and the standard by which the amount of tax is measured.

303. The pith and substance or true nature and character of the legislation must be determined with reference to the legislative subject matter and the charging section [*Federation of Hotel & Restaurant Assn. of India v. Union of India*, (1989) 3 SCC 634, para 37] The charging section levying a tax and defining the persons who are liable to pay the tax constitute the core of a taxing statute *B. Shama Rao v. State (UT of Pondicherry)*, 1967 SCC OnLine SC 29]. The distinction between the nature of tax and measure of tax can be gathered from the decision of this Court in *Sainik Motors, Jodhpur v. State of Rajasthan*, [1961 SCC OnLine SC 15]. In that case, the petitioners challenged the levy of taxes on passengers and goods by the State legislature. The charging section provided that the tax was “in respect of all passengers carried and goods transported by motor vehicles at such rate not exceeding one-eighth of the value of the fare or freight.” This Court held that the tax was on passengers and goods which could be traced to Entry 56 of List II of the Seventh Schedule. As regards the measure of the levy, it was held that the measure was furnished by the amount of the fare and freight charged.

304. It is a settled position that the measure of tax is not a true test of the nature of tax [*R.R. Engg. Co. v. Zila Parishad, Bareilly*, (1980) 3 SCC 330, para 16] The standard adopted as a measure of tax may be a relevant consideration in determining the nature of tax, but is not conclusive....

308. The discussion above indicates that the nexus between the measure and levy of tax need not be “direct and immediate”. The nexus has to be “reasonable” and must have some relationship with the nature of levy. The reasonability of the nexus will largely depend upon the nature of the tax and the means available with the legislature to design the measure of the tax. Since the measure of the levy is a matter of legislative policy and convenience, [*Express Hotels (P) Ltd. v. State of Gujarat*, (1989) 3 SCC 677, para 25 the reasonability of the nexus between the measure and tax has to be determined by the courts on a case-to-case basis. While doing so, the Court will bear in mind the fundamental principle that the legislature possesses a broad discretion in matters of fiscal levies.”

**73.** In the leading judgment of the Federal Court in *Ralla Ram vs. Province of East Punjab*,<sup>5</sup> the Federal Court had to grapple with the issue whether the prescription of annual value of the property as the basis for the levy of property tax would make the levy, a tax on income. Explaining how such a prescription though used in the Income Tax Act

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<sup>5</sup> 1948 SCC Online FC 9



for getting at the income, that alone was not enough to bar the use of the same for assessing provincial tax, this Court held as under: -

“Our own conclusion may be summed up very briefly. In the first place, we have to look into the charging section of the statute, because as was pointed out in *Provincial Treasurer of Alberta v. G.E. Kerr* [[1933] A.C. 710.] , “the identification of the subject-matter of the tax is only to be found in that section”. The charging section in the present case is s. 3, which in clear terms levies not a tax on income but a tax on buildings and lands. It is true that we must look not to the mere form but to the substance of the levy, and the tax must be held to be invalid, if in the guise of a property tax it is really a tax on income. There is however nothing in the impugned Act to show that there was any intention on the part of the Legislature to get at or tax the income of the owner from the building. It is true that the annual value was used as the basis, but it was very different from the annual value which may be used for getting at the true profits or income. The annual value, as has been pointed out, is at best only notional or hypothetical income and not the actual income. It is only a standard used in the Income-tax Act for getting at income, but that is not enough to bar the use of the same standard for assessing a Provincial tax. If a tax is to be levied on property, it will not be irrational to correlate it to the value of the property and to make some kind of annual value the basis of the tax without intending to tax income.”

This Paragraph clearly highlights the nature and measure of the tax and how the two should not be mixed up.

**74.** In *Union of India & Ors. vs. Bombay Tyre International Ltd. and Others*,<sup>6</sup> explaining how Section 3 of the then prevailing Central Excise and Salt Act provided for the levy of duty of excise on goods produced or manufactured in India and how Section 4 prescribed the measure by which the charge is to be levied, this Court followed *Ralla Rama (supra)* and explained how while the measure of levy may indicate the nature of tax but it does not necessarily determine it. This Court further referred to the Constitution Bench judgment in *M/s R.R. Engineering Co. vs. Zila Parishad, Bareilly and Another*,<sup>7</sup> which explained the relationship between the measure of levy and the nature of levy. This Court referred to the following paragraph from *R.R. Engineering Co. (supra)*.

“It may be, and is often so, that the tax on circumstances and property is levied on the basis of income which the assessee receives from his profession, trade, calling or property. **That is, however, not conclusive on the nature of the tax. It is only as a matter of convenience that income is adopted as a yardstick or measure for assessing the tax.** As pointed out in *Re a Reference under Government of Ireland Act [1936 AC 352]* , the measure of the tax is not a true test of the nature of the tax. Therefore, while determining the nature of a tax, though the standard on which the tax is levied may be a relevant consideration, it is not a conclusive consideration....”

**75.** Further, in para 14 of *Bombay Tyre International Ltd. (supra)*, this Court held : -

“14. ....It is apparent, therefore, that when enacting a measure to serve as a standard for assessing the levy the Legislature need not contour it along lines which spell out the character of the levy itself. Viewed from this standpoint, it is not possible to accept the contention that because the levy of excise is a levy on goods manufactured or produced the value of an excisable article must be limited to the manufacturing cost plus the manufacturing profit. **We are of opinion that a broader based standard of reference may be adopted for the purpose of determining the measure of the levy. Any standard which maintains a nexus with the essential character of the levy can be regarded as a valid basis for assessing the measure of the levy.** In our opinion, the original Section 4 and the new Section 4 of the Central Excises and Salt Act satisfy this test.”

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<sup>6</sup> (1984) 1 SCC 467

<sup>7</sup> (1980) 3 SCC 330



It will be clear from the above paragraph that for determining the measure of levy, sometimes a broad-based standard can be adopted.

76. Further, in ***Bombay Tyre International Ltd. (supra)***, this Court followed the earlier judgment in ***Hingir-Rampur Coal Co., Ltd. and Others vs. State of Orissa and Others***,<sup>8</sup>. ***Hingir-Rampur (supra)*** held that the mere fact that the levy imposed by the impugned Act therein has adopted the method of determining the rate of levy by reference to minerals produced by the mines would not by itself make the levy a duty of excise.

77. The above precedents have been set out only to explain the distinction between the measure of levy and the nature of levy. Though there is no dispute with regard to the legislative competence and the entire argument has only been on the provisions being violative of Articles 14 and 19(1)(g), this conceptual distinction is essential while considering the argument that the sale value could not have been so defined as to encompass within it the payments made towards Royalty, DMF and NMET. The argument on Articles 14 and 19(1)(g) and the aspect of manifest arbitrariness have been independently considered hereinbelow.

78. It must be remembered that as held in ***Mineral Area Development Authority (supra)***, the measure of any levy is a matter of legislative policy. Convenience and the reasonability of the nexus between the measure and tax, no doubt, has to be determined on a case-to-case basis. ***Mineral Area Development Authority (supra)*** also reiterated that it was a fundamental principle that legislature possessed a broad discretion in matters of fiscal levy.

#### **MEASURE OF LEVY – AS AN ANTIDOTE TO CHECK EVASION: -**

79. Yet another principle that will have a bearing is that granted legislative competence, the legislature and the subordinate Rule making authority is also authorized to enact measures to prevent evasion of tax. In ***Sardar Baldev Singh (supra)***, Section 23A of the Income Tax Act, 1923, came up for consideration. The said Section required that on an order being made under it, the undistributed portion of the assessable income of the company after deductions provided in the Section was to be deemed to have been distributed as dividend among the shareholders as at the date of the General Meeting. Considering the constitutionality of the said Section, this Court held that under Entry 54 of List I of the Seventh Schedule to the Government of India Act, 1935, a law could be passed to prevent a person from evading tax payable on his own income. The following paragraphs of the said judgment repays study: -

“20. In spite of all this it seems to us that the legislation was not incompetent. Under Entry 54 a law could of course be passed imposing a tax on a person on his own income. It is not disputed that under that entry a law could also be passed to prevent a person from evading the tax payable on his own income. As is well-known the legislative entries have to be read in a very wide manner and so as to include all subsidiary and ancillary matters. So Entry 54 should be read not only as authorizing the imposition of a tax but also as authorizing an enactment which prevents the tax imposed being evaded. If it were not to be so read, then the admitted power to tax a person on his own income might often be made infructuous by ingenious contrivances. Experience has shown that attempts to evade the tax are often made.

21. Now it seems to us that Section 23-A was enacted for preventing such evasion of tax. The conditions of its applicability clearly lead to that conclusion. The first condition is that the company must have distributed as dividend less than sixty per cent of its

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<sup>8</sup> [1961] 2 SCR 537

assessable income after deduction of income tax and super tax payable by it. The taxing authority must then be satisfied that the payment of a dividend or of a larger dividend than that declared, would, in view of losses incurred in earlier years or the smallness of the profit made, be unreasonable. Lastly, the section does not apply to a company in which the public are substantially interested or a subsidiary company of a public company whose shares are held by the parent company or by the nominees thereof.....

... ..

When therefore in spite of there being money reasonably available for the purpose, it decides not to declare a dividend it is clear that it does so because it does not want to take the dividend. Now it may not want to take the dividend if it wants to evade payment of tax thereon. Thus by not declaring the dividend the persons constituting the group in control, could evade payment of super tax, which, of course, is a form of income Tax. They would be able to evade the super tax because super tax is payable on the dividend in the hands of the shareholders even though it may have been paid by the company on the profits out of which the dividend is paid, and because the rate at which super tax is payable by a company may be lower than the rate at which that tax is payable by other assesseees. By providing that in the circumstances mentioned in it, the available assessable income of a company would be deemed to have been distributed as dividend and be taxable in the hands of the shareholders as income received by them, the section would prevent the members of such a group from evading by the exercise of their controlling power over the company, payment of tax on income that would have come to them. That being so, the section would be within Entry 54.

In conceivable circumstances the section may work hardship on members of the public who hold shares in such a company but that would not take the section outside the competence of the legislature. It would still be an enactment preventing evasion of tax. Considerations of hardship are irrelevant for deciding questions of legislative competence.

**22.** It is further quite clear that in the absence of a provision like Section 23-A it is possible so to manipulate the affairs of a company of this kind as to prevent the undistributed profits from ever being taxed and experience seems to have shown that this has often happened. The following passage from Simon's Income Tax, 2nd Edn., Vol. 3, p. 341, fully illustrates the situation:

“Generally speaking, surtax is charged only on individuals, not on companies or other bodies corporate. Various devices have been adopted from time to time to enable the individual to avoid surtax on his real total income or on a portion of it, and one method involved the formation of what is popularly called a ‘one-man company’. **The individual transferred his assets, in exchange for shares, to a limited company, specially registered for the purpose, which thereafter received the income from the assets concerned. The individual's total income for tax purposes was then limited to the amount of the dividends distributed to him as practically the only shareholder, which distribution was in his own control. The balance of the income, which was not so distributed, remained with the company to form, in effect, a fund of savings accumulated from income which had not immediately attracted surtax. Should the individual wish to avail himself of the use of any part of these savings he could effect this by borrowing from the company, any interest payable by him going to swell the savings fund; and at any time the individual could acquire the whole balance of the fund in the character of capital by putting the company into liquidation.**”

The section prevents the evasion of tax by, among others, the means mentioned by Simon.

**80.** What is significant to note is that undistributed dividend was deemed to be income proportionate in the hands of the shareholders. This was to prevent devices being employed by companies to not distribute dividends and thereby prevent income accruing in the hands of shareholders. A measure in the nature of a legal fiction passed muster

under the Constitution. This Court also noticed that in **Sardar Baldev Singh (supra)**, the Section may work hardship on members who hold shares but that would not make the levy unconstitutional.

81. Similarly, in **Balaji vs. ITO**,<sup>9</sup> this Court upheld the provision which provided that, in computing the total income of any individual there shall be included so much of the income of a minor child of such individual and as arises directly or indirectly from the membership of the wife in a firm of which her husband is a partner and further, from the admission of the minor to the benefits of the partnership in a firm of which individual is a partner.

82. This implied that the individual who was the husband or the father was taxed for the income of the wife or of the minor child respectively in the partnership. Upholding the provision, this Court held that this was a measure to prevent evasion of tax and even though it may be little hard on a husband or a father in the case of genuine partnership, it was intended in larger interest to prevent evasion of income tax :-

“5. It is well settled that the entries in the Lists are not powers but are only fields of legislation, and that widest import and significance must be given to the language used by Parliament in the various entries. Sarkar, J., speaking for this Court, observed in Sardar Baldev Singh case [(1960) 40 ITR 605] thus at p. 615:

“So Entry 54 should be read not only as authorising the imposition of a tax but also as authorising an enactment which prevents the tax imposed being evaded. If it were not to be so read, then the admitted power to tax a person on his own income might often be made infructuous by ingenious contrivances.”

This decision holds that the said entry can sustain a law made to prevent the evasion of tax.

So judged, can it be said that the restrictions imposed, under the impugned provisions are not reasonable? The object sought to be achieved was to prevent the prevalent abuse, namely, evasion of tax by an individual doing business under a partnership nominally entered with his wife or minor children. The scope of the provisions is limited only to a few of the intimate members of a family who ordinarily are under the protection of the assessee and are dependants of him. The persons selected by the provisions, namely, wife and minor children, cannot also be ordinarily expected to carry on their business independently with their own funds, when the husband or the father is alive and when they are under his protection. ***Doubtless some of the said partnerships may be genuine and the wife or minor children may have contributed capital to the business; but the provisions do not in any way affect their rights and even the liability inter se between the husband and the wife or the minor children, as the case may be, in respect of the tax paid.*** It is true that in computing the total income of an individual for the purpose of assessment, their income in their capacity as partners shall be included in the income of the individual; but the section does not prevent the husband or the father, as the case may be, from debiting against them in the partnership accounts that part of the tax referable to the share or shares of their income. It may be that a father or a husband may have to pay tax at a higher rate than ordinarily he would have to pay if the addition of the wife's or children's income to his own brings his total income to a higher slab. But it may not necessarily be so in a case where the income of the former is not appreciable; even if it is appreciable, he can debit a part of the excess payment to his wife and children. In short, the firm, though registered, would be treated as a distinct unit of assessment, with the difference that, unlike in the case of a registered firm, the entire income of the unit is added to the personal income of the father or the husband, as the case may be. ***This mode of taxation may be a little hard on a husband or a father in the case of genuine partnership with wife or minor children, but that is offset, to a large extent, by the beneficial results that flow therefrom to the public, namely, the prevention of evasion of income tax, and also by the fact that, by and large, the additional payment of tax made on the income of the wife or the minor children will ultimately be borne by them in the final accounting between***

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<sup>9</sup> 1961 (43) ITR 393

them. In these circumstances, we cannot say that the provisions of Section 16(3) of the Act impose an unreasonable restriction on the fundamental rights of the petitioner under Article 19(1)(f) and (g) of the Constitution.”

**83.** It is apt to recall that in *Navnit Lal C. Javeri vs. K.K. Sen, Appellate Assistant Commissioner of Income Tax, Bombay*,<sup>10</sup> while considering the validity of a provision of the Income Tax Act deeming the loan received by a shareholder as a dividend, this Court upheld the validity of the provision to set at naught any subterfuge that companies may adopt by dressing up dividends as loans to circumvent tax in the hands of the recipient. All that this Court expected was some rational connection between the items taxed and the concept of income construed liberally. The following passage from *Navnit Lal C. Javeri (supra)* is very relevant: -

**“16. The question which now arises is, if the impugned section treats the loan received by a shareholder as a dividend paid to him by the company, has the legislature in enacting the section exceeded the limits of the legislative field prescribed by the present Entry 82 in List I? As we have already noticed, the word “income” in the context must receive a wide interpretation; how wide it should be it is unnecessary to consider, because such an enquiry would be hypothetical. The question must be decided on the facts of each case. There must no doubt be some rational connection between the item taxed and the concept of income liberally construed. If the legislature realises that the private controlled companies generally adopt the device of making advances or giving loans to their shareholders with the object of evading the payment of tax, it can step in to meet this mischief, and in that connection, it has created a fiction by which the amount ostensibly and nominally advanced to a shareholder as a loan is treated in reality for tax purposes as the payment of dividend to him. We have already explained how a small number of shareholders controlling a private company adopt this device. Having regard to the fact that the legislature was aware of such devices, would it not be competent to the legislature to devise a fiction for treating the ostensible loan as the receipt of dividend? In our opinion, it would be difficult to hold that in making the fiction, the legislature has travelled beyond the legislative field assigned to it by Entry 82 in List I.**

17. It is, however, urged by Mr. Pathak that while providing for such a fiction, the legislature should have required the Income Tax Officer to consider in each case whether the loan was genuine, or was the result of a device; and he argues that since no such provision has been made and a uniform presumption by fiction is sought to be raised, the legislature has gone beyond its legislative competence. In support of this argument, Mr. Pathak has referred to the fact that under Section 108(1) of the Commonwealth Income Tax Act it is provided that the amount paid to the shareholder by way of advance or loan can be taxed if in the opinion of the Commissioner it represents distributions of income. Such a provision would have made the impugned section valid. Mr. Pathak argues that omission of Parliament to exclude from the operation of Section 12(1-B) genuine loans or advances, and its failure to distinguish between such loans and advances and loans and advances made as device shows, that it has acted blindly and must, therefore, be held to have exceeded its legislative power. **We are not inclined to accept this argument. If the legislature thinks that the advances or loans are in almost every case the result of a device, it would be competent to it to prescribe a fiction and hold that in cases of such advances or loans, tax should be recovered, from the shareholder on the basis that he has received the dividend. Therefore, we are satisfied that the High Court was right in coming to the conclusion that the impugned section is not beyond the legislative competence of the legislature.”**

**84.** In *Union of India and Another vs. A. Sanyasi Rao and Others*,<sup>11</sup> this Court upheld Section 44-AC read with Section 206-C of the Income Tax Act, 1961. The said Section

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<sup>10</sup> [1965] 1 SCR 909

<sup>11</sup> (1996) 3 SCC 465



provided that for the assessee mentioned therein a sum equal to the 40 per cent of the amount paid or payable by the buyer as the purchase price in respect of such goods shall be deemed to be the profit and gain of the buyer and was to be taxed under the head of profit and gain of business and profession. The provision enabled the revenue to estimate the profits on a presumptive basis. The defense of the Government was it wanted to get over the problems in assessing income and recovering tax in case of certain assessee dealing in country liquor, timber and forest produce. Experience has revealed that a large number of such persons did not maintain any book of accounts. This Court, upholding the validity of provision, held as under: -

**“15.....The attack against the legislative competence is without substance. The impugned levy of income tax is not open to objection. The assumption that Sections 44-AC and 206-C are charging provisions is unsustainable. The legislation will fall within Schedule VII, List 1 Entry 82.** The relevant entry therein (taxes on income other than agricultural income) should be liberally construed. There were sufficient materials before Parliament to hold that due to very many causes, income from certain trades could not be brought to tax and there was large scale evasion. The sufficiency of the material in that regard is not open to scrutiny by court. All that is envisaged in the impugned statutory provisions is only an estimated (income tax) “advance tax”; (ii) since it came to light that the income from certain trades could not be properly brought to tax, the legislature enacted the instant machinery provisions. The provisions are reasonable and have sufficient nexus to the objects that are sought to be achieved. The statutory provisions were intended to operate in all trades where the evasion and chances of evasion were greater than others and due to practical experience over the years, it was felt that the particular trades or businesses necessitated speedier provision for recovery or collection. It is in this perspective only, trades in particular commodities, wherein evasion was predominant and called for appropriate machinery to secure the payment of tax, the legislation was enacted. **In the case of taxation laws, the legislature has got a wide discretion to pick and choose persons, objects, districts, etc. for legislating. The power of the legislature to classify or select certain objects or persons to which the law will apply is of great magnitude. The court permits a greater latitude to the discretion of the legislature. It has been invariably held by this Court that in tax matters, the State is allowed to pick and choose districts, objects, persons, methods and even rates for taxation, if it does so reasonably. The provisions attacked in this case are reasonable, as could be seen from the legislative history on the object and the objects sought to be achieved.”**

**21. ...Considered in the light of the practical difficulties envisaged by the Revenue to locate the persons and to collect the tax due in certain trades, if the legislature in its wisdom thought that it will facilitate the collection of the tax due from such specified traders on a “presumptive basis”, there is nothing in the said legislative measure to offend Article 14 of the Constitution. In the light of the legal principles stated above, we are unable to hold that Section 44-AC read with Section 206-C is wholly hit by Article 14 of the Constitution of India.”**

### **APPLICATION OF THE LAW TO THE FACTS: -**

**85.** It is time to apply the above principles to the case at hand. As adverted to earlier, there is no dispute on the legislative competence of the Parliament to enact the law and the power to make subordinate legislation in the Central Government. Under Section 9(2) of the MMDR Act read with Entry 24 of the Second Schedule, royalty is levied at 15% of ‘Average Sale Price’ on *ad valorem* basis. Sale value is a component of ASP under Rule 42 of the 2016 Rules. When it is prescribed in the Explanations to Rule 38 of the 2016 Rules and Rule 45(8)(a) of the 2017 Rules, that while computing the sale value, no deduction from the gross amount shall be made in respect of Royalty, payments to the DMF and NMET, all that occurs is that a measure is provided to compute sale value based on which average sale price will be arrived at. Under Rule 42, the ex-mine price is used



to compute the average sale price of mineral grade/concentrate and under Rule 42(2)(b), ex-mine price of mineral grade/concentrate where domestic sale has occurred, is the sale value of the mineral less the actual expenditure incurred towards transportation, loading, unloading, rent for the plot at the stocking yard, charges for sampling and analysis and any other charges beyond mining lease area, as notified by the Indian Bureau of Mines, from time to time, divided by the total quantity sold. Under Rule 42(3), the average sale price of any mineral grade/concentrate in respect of a month shall be the weighted average of the ex-mine prices of the noncaptive mines, computed in accordance with Rule 42, the weight being the quantity despatched from the mining lease area of mineral grade/concentrate, relevant to each ex-mine price. As to what is sale value, as mentioned in Rule 42(b) would be discernible from Rule 38, which has already been discussed.

**86.** It is further to be examined whether the measure has any nexus and rational connection with the nature of levy. Further, the justification offered by the Union of India for adopting such a measure also needs to be examined.

**87.** The justification offered by the Union of India is that unlike for coal, where the notified prices, auction prices of Coal India Limited and Singareni Collieries Company Limited or the import price form the basis of National Coal Index (NCI), there is no such mechanism for iron ore.

**88.** As far as the iron ore is concerned, the ASP is depended on market forces and is not decided by the Government.

**89.** The ASP is arrived at based on the data given by the miners themselves. Detailed instances of manipulation of ASP with regard to different grades of iron ore have been provided in the form of an appendix to the additional affidavit. For the period from August, 2022 to January, 2023, the Union of India has contended that since the successful bidders have quoted their bid price as a percentage of the ASP as far as premium for mining lease was concerned, in several quarters, all out efforts have been made to depress the ASP to keep the premium down. Further, depressing the ASP will also help in reducing the royalty and payments made towards DMF and NMET as royalty has a percentage of the average sale price and the other levies are a percentage of royalty.

**90.** The Union of India has demonstrated before us by producing graphs, charts and data that wherever highest exmine price was reported, the quantity despatched was NIL or very less. They also demonstrated that where the ex-mine price was low, the quantity despatched was high. It is contended that under the method of calculation of average sale price, weighted average of ex-mine price is relevant, and, in that context, despatched quantity is taken as the weight. They contend that by this jugglery, enormous loss is caused in royalty payments and in premium payments by beating down the average sale price. The graphs, charts and data have all been set out in the earlier part of this judgment.

**91.** It is the contention that the measure of levy and the decision not to exclude royalty and payments made towards DMF and NMET was taken as a regulatory measure to suppress the mischief, to prevent evasion to the extent possible and to advance the remedy, to arrive at a fair value of the mineral.

**92.** In this scenario, it cannot be said that the measure adopted is arbitrary and has no nexus and rational connection with the nature of the levy. The judgments of this Court in **Balaji (supra)**, **Sardar Baldev Singh (supra)**, **Navnit Lal C. Javeri (supra)** and **A. Sanyasi Rao (supra)**, which have been elaborately discussed hereinabove, fully justify the measure adopted in the Explanations to Rule 38 of the 2016 Rules and Rule 45(8)(a)

of the 2017 Rules for computation of sale value which, in turn, is an essential factor in computation of the ASP.

**93.** In fact, in *A. Sanyasi Rao (supra)*, while upholding the presumptive tax based on the purchase price, this Court made the following telling observations: -

“17. ....Having regard to the past difficulties in making a normal assessment and collection in the case of certain categories of assesseees, for convenience sake, the legislature has chosen to make appropriate provision for collection of tax at an anterior stage by adopting the purchase price as the measure of tax. **In our view, this is permissible and the standard by which the amount of tax is measured, being the purchase price, will not in any way alter the nature and basis of levy viz. that the tax imposed is a tax on income. It cannot be labelled as a tax on purchase of goods.**”

**94.** We find nothing manifestly arbitrary in the process adopted. There is nothing capricious or irrational about the measure and it cannot be said that it has been adopted without any determining principle nor do we find the measure excessive or disproportionate for it to be characterized as manifestly arbitrary.

**95.** We also do not find any violation of Article 14 of the Constitution from the angle of discrimination. The comparison with coal is completely unjustified as there is no concept of ASP in coal and that too based on data given by the miners. Hence, comparing coal and iron ore, in this context, is akin to comparing apples and oranges which we are not prepared to do. According to the petitioners, *ad valorem* cannot include in the value the levy of royalty, payments made towards DMF and NMET. We are not able to countenance that submission. As a means to check evasion, a measure has been prescribed under which *ad valorem* will be arrived at to check manipulation and to strike at evasion, certain factors have been loaded on to the sale value and we find nothing illegal in the same.

**96.** Perusal of the factual situation in *Balaji (supra)*, *Sardar Baldev Singh (supra)*, *Navnit Lal C. Javeri (supra)* and *A. Sanyasi Rao (supra)* clearly establish that certain legitimate measures needed to check evasion can always be adopted as the measure of levy. The argument on violation of Article 19(1)(g) also has no merit. In a classic passage of what broadly a reasonable restriction could encompass is available in the case of *State of Madras vs. V.G. Row*.<sup>12</sup>, wherein Patanjali Sastri, C.J., speaking for the Court, stated as under: -

“....The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the Judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorising the imposition of the restrictions, considered them to be reasonable....”

**97.** The measure of levy, as provided, read with the explanation, is intended to ensure that, to the extent possible, loss of revenue is offset. Such loss of revenue occurs due to manipulation of prices. With the aid of graphs and charts, we have been shown some instances of clever stratagems being deployed to beat down the ASP. These are much

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<sup>12</sup> [1952] SCR 597

more than mere canaries in the mine, literally and figuratively. It may be possible that all parties may not resort to such ingenious contrivances. However, as held in the precedents set out hereinabove, when a measure of levy is prescribed to check evasion, individual hardships cannot be determinative. Afterall, the grundnorm is “*Salus populi suprema lex*” – regard for the public welfare is the highest law. Private rights will have to cede to public interest. A Constitutional Court called upon to pronounce on the validity of such fiscal measures should be loath to interfere, for any interference in the absence of legitimate grounds would put public interest in jeopardy. For the reasons stated above, we do not consider the measure to be unreasonable or disproportionate.

**98.** Much was made out of the recommendations of Shri Praveen Kumar and Dr. Aruna Sharma Committee Reports. Committee Reports are only recommendatory in nature. If it were not, judicial review will be a meaningless exercise. In the challenge to the Constitutionality of the Rules as to demonstrate how the levy is illegal, the petitioners have not been able to establish unconstitutionality. On the contrary, the Union has offered proper justification for the measure of levy adopted and it passes constitutional muster.

**99.** The scope of the judgment of this Court dated 07.11.2024 in Writ Petition No. 715 of 2024 is clear in black and white. There was no pronouncement made on the constitutionality of the levy. The subsequent order dated 19.05.2025 left every liberty for the petitioners to challenge the decision of the government.

**100.** We have thoroughly and in a threadbare manner examined the contentions assailing the constitutional validity of the Explanations appended to Rule 38 of the 2016 Rules and Rule 45(8)(a) of the 2017 Rules and we do not find any infirmity in the impugned provisions. Hence, the judgement dated 07.11.2024 of this Court in Writ Petition No. 715 of 2024 cannot come to the aid of the petitioners.

**101.** The further argument that the levy breaches the three years’ cap under the proviso to Section 9(3) is also fallacious. Here, there is no revision of the rate of royalty. The injunction for three years is on the revision only for the rate of royalty.

**102.** The judgments cited by the petitioners have no relevance on the controversy in question and do not advance the case of the petitioners any further.

### **CONCLUSION: -**

**103.** For the reasons stated above, we hold that the Explanations to Rule 38 of the 2016 Rules and Rule 45(8)(a) of the 2017 Rules, insofar as they provide for inclusion of royalty and payments made towards DMF and NMET in the sale value for computing the average sale price for determination of royalty, is constitutional and valid. We hold that the impugned Rules are not violative of Article 14 and Article 19(1)(g) of the Constitution. We further hold that the impugned provisions are not *ultra vires* Section 9 of the MMDR Act.

**104.** The writ petition is dismissed. No order as to costs.