

ITEM NO.103

COURT NO.3

SECTION XIV/III/XII/XV/
IVB/XIIA/IX/IVS U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(S). 4487/2010

UNION OF INDIA & ORS.

APPELLANT(S)

VERSUS

UTV NEWS LTD.
WITH

RESPONDENT(S)

C.A. NO.1361/2011
C.A. NO.1323-1344/2011
C.A. NO.4193/2011
C.A. NO.1351-1358/2011
C.A. NO.1350/2011
C.A. NO.1346/2011
C.A. NO.1360/2011
C.A. NO.1348/2011
C.A. NO.4486/2010
C.A. NO.1359/2011
C.A. NO.1347/2011
C.A. NO.240/2016
C.A. NO.4011/2011
C.A. NO.241/2016
C.A. NO.242-243/2016
C.A. NO.244/2016
C.A. NO.8390/2011
C.A. NO.8391-8393/2011
C.A. NO.8397/2011
C.A. NO.9032/2011
C.A. NO.9021/2011
C.A. NO.9025/2011
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C.A. NO.9024/2011
C.A. NO.8428/2011
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C.A. NO.9026/2011
C.A. NO.9028/2011
C.A. NO.9031/2011
C.A. NO.9030/2011
C.A. NO.1459/2012
C.A. NO.1461/2012
C.A. NO.1460/2012

C.A. NO.9589/2011
C.A. NO.1232/2012
C.A. NO.11358/2011
C.A. NO.306/2012
C.A. NO.305/2012
C.A. NO.307/2012
C.A. NO.2621/2012
C.A. NO.308/2012
C.A. NO.216/2012
C.A. NO.11195/2011
C.A. NO.2143/2012
C.A. NO.2057/2012
C.A. NO.2738/2012
C.A. NO.1233/2012
C.A. NO.300/2012
C.A. NO.2059/2012
C.A. NO.2597/2012
C.A. NO.1035/2012
C.A. NO.1456/2012
C.A. NO.2740/2012
C.A. NO.846/2012
C.A. NO.2192/2012
C.A. NO.2193/2012
C.A. NO.2194/2012
C.A. NO.1031/2012
C.A. NO.3402/2012
C.A. NO.3802/2012
C.A. NO.2195/2012
C.A. NO.1479/2012
C.A. NO.1475/2012
C.A. NO.2739/2012
C.A. NO.3404/2012
C.A. NO.3167/2012
C.A. NO.3305/2012
C.A. NO.3172/2012
C.A. NO.3165/2012
C.A. NO.5870/2012
C.A. NO.3665/2012
C.A. NO.4290/2012
C.A. NO.3359/2012
C.A. NO.3345/2012
SLP(C) NO.9288/2013
C.A. NO.5691/2012
C.A. NO.5690/2012
C.A. NO.557/2013
C.A. NO.286/2013
C.A. NO.2680/2013
SLP(C) NO.11398/2013

SLP(C) NO.11399/2013
SLP(C) NO.11396/2013
SLP(C) NO.18147/2013
SLP(C) NO.20640/2013
C.A. NO.5006/2014
SLP(C) NO.12004/2014
C.A. NO.3087-3088/2015
C.A. NO.11109/2016
C.A. NO.1470/2017
C.A. NO.124/2018

(FOR ADMISSION AND I.R. AND IA NO.131707/2017-CONDONATION OF DELAY
IN FILING AND IA NO.131710/2017-EXEMPTION FROM FILING C/C OF THE
IMPUGNED JUDGMENT)

Date : 05-04-2018 These appeals were called on for hearing today.

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UPON hearing the counsel the Court made the following
O R D E R

We have heard the learned counsels for the parties at some length.

The question arising is whether "service tax" under Section 65(105)(zzzz) of the Finance Act, 1994 on renting of immovable property or any other service in relation to such renting, for use in the course of or, for furtherance of, business or commerce is within the legislative competence of the Union Parliament.

The above question is directly relatable to the scope and ambit of Entry 49 of List II of the Seventh Schedule to the Constitution of India dealing with "Taxes on lands and buildings". If the impost/levy is directly relatable to the lands/buildings contemplated in Entry 49 of List II of the Seventh Schedule to the Constitution of India we would have had no hesitation in saying that the Union Parliament would lack legislative competence to enact the particular provision in the Finance Act, 1994. At this stage, we are unable to take the said view as has been advanced before us on behalf of the individual Assessees.

However, the arguments advanced may indicate that even if there is no direct nexus there may be an indirect one. Whether such indirect connection or relation would be of any relevance to decide the issue of legislative competence appears to be pending before a nine judges Bench of this Court on a reference made in an order in Mineral Area Development Authority and others vs. Steel Authority of India and others¹. The questions referred are extracted below:

“1. Having heard the matter(s) for considerable length of time, we are of the view that the matter needs to be considered by a Bench of nine Judges. The questions of law to be decided by the larger Bench are as follows:

1. Whether “royalty” determined under Sections 9/15(3) of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957, as amended) is in the nature of tax?

2. Can the State Legislature while levying a tax on land under List II Entry 49 of the Seventh Schedule of the Constitution adopt a measure of tax based on the value of the produce of land? If yes, then would the constitutional position be any different insofar as the tax on land is imposed on mining land on account of List II Entry 50 and its interrelation with List I Entry 54?

3. What is the meaning of the expression “Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral

1. (2011) 4 SCC 450

development" within the meaning of Schedule VII List II Entry 50 of the Constitution of India? Does the Mines and Minerals (Development and Regulation) Act, 1957 contain any provision which operates as a limitation on the field of legislation prescribed in List II Entry 50 of the Seventh Schedule of the Constitution of India? In particular, whether Section 9 of the aforementioned Act denudes or limits the scope of List II Entry 50?

4. What is the true nature of royalty/dead rent payable on minerals produced/mined/extracted from mines?

5. Whether the majority decision in *State of W.B. v. Kesoram Industries Ltd.* [(2004) 10 SCC 201] could be read as departing from the law laid down in the *seven-Judge Bench* decision in *India Cement Ltd. v. State of T.N.* [(1990) 1 SCC 12]?

6. Whether "taxes on lands and buildings" in List II Entry 49 of the Seventh Schedule to the Constitution contemplate a tax levied directly on the land as a unit having definite relationship with the land?

7. What is the scope of the expression "taxes on mineral rights" in List II Entry 50 of the Seventh Schedule to the Constitution?

8. Whether the expression "subject to any limitations imposed by Parliament by law relating to mineral development" in List II Entry 50 refers to the subject-matter in List I Entry 54 of the Seventh Schedule to the Constitution?

9. Whether List II Entry 50 read with List I Entry 54 of the Seventh Schedule to the Constitution constitute an exception to the general scheme of entries relating to taxation being distinct from other entries in all the three Lists of the Seventh Schedule to the Constitution as enunciated in *M.P.V. Sundararamier & Co. v. State of A.P.* [AIR 1958 SC 468 : 1958 SCR 1422] [AIR p. 494 : SCR at p. 1481 (bottom)]?

10. Whether in view of the declaration under Section 2 of the Mines and Minerals (Development and Regulation) Act, 1957 made in terms of List I Entry 54 of the Seventh Schedule to the Constitution and the provisions of the said Act, the State Legislature is denuded of its power under List II Entry 23 and/or List II Entry 50?

11. What is the effect of the expression "... subject to any limitations imposed by Parliament by law relating to mineral development" on the taxing power of the State Legislature in List II Entry 50, particularly in view of its uniqueness in the sense that it is the only entry in all the entries in the three Lists (Lists I, II and III) where the taxing power of the State Legislature has been subjected to "any limitations imposed by Parliament by law relating to mineral development"?.

2. Before concluding, we may clarify that normally the Bench of five learned Judges in case of doubt has to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger coram

than the Bench whose decision has come up for consideration (see *Central Board of Dawoodi Bohra Community v. State of Maharashtra* [(2005) 2 SCC 673 : 2005 (SCC (L&S) 246 : 2005 SCC (Cri) 546]). However, in the present case, since prima facie there appears to be some conflict between the decision of this Court in *State of W.B. v. Kesoram Industries Ltd.* [(2004) 10 SCC 201] which decision has been delivered by a Bench of five Judges of this Court and the decision delivered by a seven-Judge Bench of this Court in *India Cement Ltd. v. State of T.N.* [(1990) 1 SCC 12], reference to the Bench of nine Judges is requested. The office is directed to place the matter on the administrative side before the Chief Justice for appropriate orders."

In view of the above, we are of the opinion that these matters should await the decision of the nine judges Bench whereafter the hearing of these matters will be taken up once again in the course of which it will be open for the parties to urge such additional points as may be considered relevant. The matter is accordingly deferred until disposal of the issues pending before the nine judges Bench in *Mineral Area Development Authority and others* (supra).

[VINOD LAKHINA]
AR-cum-PS

[ASHA SONI]
BRANCH OFFICER