States' taxation of mineral rights and land: Supreme Court of India expounds the law

Tarun Jain[1]

1. Introduction

A 9-judge bench of the Supreme Court of India has recently released its decision – in the case of *Mineral Area Development Authority*[2] – expounding the legal position on the rights of the States to tax mineral rights, and tax lands and building, both being distinct taxation powers of the States. The bench was called upon to examine the correctness of a 1989 decision of a 7-judge bench[3] which had been revisited in 2004 by a 5-judge bench[4] and doubted in 2011 to be referred for reconsideration[5]. Thus, this 9-judge bench decision addresses a decades old controversy. The impact of the decision, however, goes much beyond. It delineates the States' prerogative and limitations on its taxing power in respect of land generally and mineral rights in particular to unshackle the restraints imposed by the 1989 decision and those chronologically prior to it. In addition, a variety of other constitutionally significant propositions arise from the decision which pivot its significance. This article examines the decision of the 9-judge bench and its implications.

2. Issue before the 9-judge bench and its decision

The decision focused on delineation of the constitutional scheme relating to various facets of tax on mineral rights. In perspective was the interpretation of the legislative entries of the Seventh Schedule which provide for the regulatory framework and the tax ambit in relation to minerals and mineral development. The issue arose in view of the following constitutional background under the Seventh Schedule of the Constitution;

- Entry 50 of the State List enables the States to levy 'taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development';
- Entry 49 of the State List enables the States to levy of 'taxes on lands and buildings';

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[1] Advocate, Supreme Court of India; LL.M. (Taxation), London School of Economics, B.B.A.,LL.B. (Hons.), National Law University Jodhpur (Gold Medalist). Views are personal. This article was originally published in SCC Online Blog on August 2, 2024 available at https://www.scconline.com/blog/post/2024/08/02/states-taxation-of-mineral-rights-and-land-supreme-court-expounds-the-law/

[2] *Mineral Area Development Authority v. Steel Authority of India* 2024 SCC Online SC 1796 [Civil Appeal No. 4056/1999 dated 25.07.2024]

[3] *India Cements Ltd. v. State of Tamil Nadu* (1990) 1 SCC 12.

[4] *State of West Bengal v. Kesoram Industries Ltd.* (2004) 10 SCC 201.

[5] *Mineral Area Development Authority v. Steel Authority of India* (2011) 4 SCC 450.

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- Entry 23 of the State List brings with the regulatory fold of the States the subject of 'regulation of mines and mineral development subject to the provisions' of the Union List;
- Entry 54 of the Union List vests with the Union the 'regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by the Parliament by law to be expedient in the public interest'.

The dispute arose in view of the enactment of the Mines and Minerals (Development and Regulation) Act, 1957 ['MMDR Act'] by the Parliament which *inter alia* regulated mineral development and also determined the royalty to be charged by the States for allowing the mining-lease holders to extract minerals. The main question was whether royalty (or any other tax) could be levied and collected by the States in excess of royalty determined under the MMDR Act. There had been various conflicting decisions of the Supreme Court on the subject, including of its larger benches, and hence the issue was referred for a categorical determination by this 9-judge bench of the Supreme Court.

Addressing the issue, by 8:1 majority,[6] the Supreme Court concluded that (in view of Entry 54 of Union List) the Parliament has the right to enact a law limiting (which extend to prohibiting) the rights of the States (under Entry 50 of State List) to levy and collect taxes on mineral rights. However, the majority also concluded that 'royalty' determined by under MMDR Act is not a tax on mineral rights and even otherwise there is no limitation under the MMDR Act on the rights of the States to levy such tax. Put differently, it was concluded that in the absence of any actual limitation imposed by the Parliament by law, the States' taxation of mineral rights are unfettered. Further advancing the taxing rights of the States (under Entry 49 of State List), the majority also concluded that the States can adopt the mineral value of land as the basis even for levying taxes on land and building, which being an independent taxing power of the States is unconstrained by any limitations unlike their right for levying tax on mineral rights.

The conclusions drawn in the majority decision are set out below;[i]

> "342. In view of the above discussion, we answer the questions formulated in the reference in terms of the following conclusions:
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> a. Royalty is not a tax. Royalty is a contractual consideration paid by the mining lessee to the lessor for enjoyment of mineral rights. The liability to pay royalty arises out of the contractual

[6] The majority comprised of Hon'ble Dr. Justice Dhananjaya Y. Chandrachud, Chief Justice of India, Hon'ble Mr. Justice Hrishikesh Roy, Hon'ble Mr. Justice Abhay S. Oka, Hon'ble Mr. Justice J.B. Pardiwala, Hon'ble Mr. Justice Manoj Misra, Hon'ble Mr. Justice Ujjal Bhuyan, Hon'ble Mr. Justice Satish Chandra Sharma and Hon'ble Mr. Justice Augustine George Masih and the minority opinion was penned by Hon'ble Ms. Justice B.V. Nagarathna.

conditions of the mining lease. The payments made to the Government cannot be deemed to be a tax merely because the statute provides for their recovery as arrears;

b. Entry 50 of List II does not constitute an exception to the position of law laid down in *MPV Sundararamier*[7]. The legislative power to tax mineral rights vests with the State legislatures. Parliament does not have legislative competence to tax mineral rights under Entry 54 of List I, it being a general entry. Since the power to tax mineral rights is enumerated in Entry 50 of List II, Parliament cannot use its residuary powers with respect to that subject-matter;

c. Entry 50 of List II envisages that Parliament can impose "any limitations" on the legislative field created by that entry under a law relating to mineral development. The MMDR Act as it stands has not imposed any limitations as envisaged in Entry 50 of List II;

d. The scope of the expression "any limitations" under Entry 50 of List II is wide enough to include the imposition of restrictions, conditions, principles, as well as a prohibition;

e. The State legislatures have legislative competence under Article 246 read with Entry 49 of List II to tax lands which comprise of mines and quarries. Mineral bearing land falls within the description of "lands" under Entry 49 of List II;

f. The yield of mineral bearing land, in terms of the quantity of mineral produced or the royalty, can be used as a measure to tax the land under Entry 49 of List II. The decision in *Goodricke*[8] is clarified to this extent;

g. Entries 49 and 50 of List II deal with distinct subject matters and operate in different fields. Mineral value or mineral produce can be used as a measure to impose a tax on lands under Entry 49 of List II;

h. The "limitations" imposed by Parliament in a law relating to mineral development with respect to Entry 50 of List II do not operate on Entry 49 of List II because there is no specific stipulation under the Constitution to that effect; and

i. The decisions in *India Cement*[9], *Orissa Cement*[10], *Federation of Mining Associations of Rajasthan*[11], *Mahalaxmi Fabric Mills*[12], *Saurashtra Cement*[13], *Mahanadi Coalfields*[14], and *Kannadasan*[15] are overruled to the extent of the observations made in the present case."

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[7] *M.P.V. Sundararamier & Co. v. State of Andhra Pradesh* (1958) 1 SCR 1422

[8] *Goodricke Group Ltd v. State of West Bengal* 1995 Supp (1) SCC 707

[9] *India Cement Ltd. v. State of Tamil Nadu* (1990) 1 SCC 12

[10] *Orissa Cement Ltd v. State of Orissa* (1991) Supp 1 SCC 430

[11] *Federation of Mining Associations of Rajasthan v. State of Rajasthan* 1992 Supp (2) SCC 239

[12] *State of Madhya Pradesh vs. Mahalaxmi Fabric Mills Ltd.* 1995 Supp (1) SCC 642

[13] *Saurashtra Cement & Chemicals Industries Ltd. vs. Union of India* (2001) 1 SCC 91

[14] *State of Orissa v. Mahanadi Coalfields Ltd.* 1995 Supp. (2) SCC 686

[15] *P. Kannadasan v. State of Tamil Nadu* (1996) 5 SCC 670

By way of this decision, the tumultuous legal position which was on vogue for decades stands resolved. This decision has three major take-aways;

1. The Parliament has the ability to regulate, limit or prohibit the States' taxes on mineral rights. So far, the Parliament has not limited such right, either under the MMDR Act or otherwise, but that does not inhibit the Parliament from limiting the States' taxes on mineral rights in future.
2. *Qua* the mineral-bearing States, the only examination now required to be undertaken by them is whether tax on mineral rights is limited by a Parliamentary law and in the absence of any such limitation they are exclusively empowered to levy and collect tax on mineral rights as per their own tax policy and design.
3. In respect of all the States, there are no limitations on their right to tax land and building. The value of minerals below the land surface can also be included for the purpose of this levy.

3. Gauging the significance of the decision

This decision has wide consequences for various aspects of law. It is therefore critical to examine it from various perspective.

a. Reflections *qua* status and importance of 9-judge bench

There are various reasons for attaching significance to the decision. Many of these arise solely because the decision is of a 9-judge bench. Let us recount a few;

- First, being decisions by 9-judge bench, they moderate, clarify or overrule the earlier decisions of larger benches of the Supreme Court which have held the field in the past, thereby interjecting the legal position with a significant variance. Thus, these decisions change the tide of governance and even have a vital bearing on national growth.
- Second, the very fact that a 9-judge bench is constituted to decide an issue is in itself a testimony that either the legal position was precariously settled or that the issues involved were so complex that they could ordinarily not be resolved in adjudication by regular benches of the Supreme Court. Thus, the decisions of 9-judge benches mark resolution of significant constitutional and governance conflicts. For illustration, the decision of 9-judge benches of the Supreme Court in *Mafatlal Industries*[16] and *New Delhi Municipal Corporation*[17] have substantially contributed to constitutional exposition of tax laws.

[16] *Mafatlal Industries Ltd. v. Union of India* (1997) 5 SCC 536

[17] *New Delhi Municipal Corporation v. State of Punjab* (1997) 7 SCC 339

- Third, ordinarily a 9-judge bench examines constitutional issues and not simplicitor legal questions. Thus, the impact of their decisions are profound; in fact the foundational premises of many legislations itself comes under scanner owing to such decisions. Thus, assumptions held for generations are revisited and new legislations evolve.
- Fourth, 9-judge benches are not frequent and therefore they provide a rare opportunity, even for the Supreme Court, to categorically pronounce upon a legal position, and often course correct, which further adds to the criticality of the decision. If it often that the entire legal understanding on the subject dealt can be literally rewritten by a 9-judge bench, such as the abolished of decades old concept of 'compensatory taxes'.[18]
- Fifth, given that the 9-judge bench decision addresses an issue comprehensively, as a matter of course it revisits the legal position from a variety of perspectives. This results into the 9-judge bench decision being a rich-fodder of a wide-variety of legal propositions which may be incidentally addressed though not directly in issue before the 9-judge bench. Consequently, the decision results into vindication of existing or emergence of new legal propositions given the settled legal position that a well-considered *obiter* of a larger bench is also binding.[19]

b. <u>Reflections *qua* implications for States' taxing rights</u>

In addition to the aforesaid, there are multiple additional reasons for the significance of this particular decision, some of which are enlisted below;

- First, as the preface has revealed, this decision addresses a decades old controversy relating to the rights of the States to levy taxes on mineral rights. Furthermore, the decision also expounds upon the right of the States to levy taxes on land and building. Both of these taxing powers are very significant both for the States and the subject-citizens. The first – power to tax mineral rights – has a bearing upon scarce mineral resources of the country which are located in a few States, and thus has implications for overall national growth and also on account of regional imbalances. The second – power to levy taxes on land and building, is virtually exercised by every State and directly affects the citizens. Thus, the scope and manner of computation of this tax liability, which is addressed in this decision, affects virtually the entire citizenry which owns lands or buildings or is otherwise subject to such tax.
- Second, the decision makes significant observations on the need to further the spirit of 'fiscal federalism', which as a facet of federalism, is declared to be a pivotal feature of the Constitution of India. The majority in this decision has declared in clear terms that there are limited taxation rights

[18] *Jindal Stainless Steel v. State of Haryana* (2017) 12 SCC 1

[19] See generally, *Commissioner of Income Tax, Hyderabad-Deccan Vs. Vazir Sultan and Sons* [1959 Supp (2) SCR 375]

of the States and they need to be protected to ensure that the States' financial autonomy is maintained. This is necessary because the States have vital governance obligations under the Constitution and have the responsibility to carry out the welfare agenda *qua* their earmarked governance functions.

- Third, this decision furthers the conclusions of another 9-judge bench in *Jindal Stainless*[20] which had declared that there cannot by any implied limitations on the right of taxation which is an attribute of sovereignty. Thus, the majority has concluded that barring the limitation carved out in Entry 50 of the State List itself, no additional limitation can be read into or permitted directly or indirectly to impede the States' taxing rights. For this reason, while Entry 50 is subject to the Parliament's powers to limit the States' mineral tax rights, the majority has unequivocally declared Entry 49 has being unimpeded without any constraint (under any Parliamentary law) and permitting the States to levy taxes on lands and buildings in a manner of their choosing.
- Fourth, the majority decision spells the scope of the Parliament's regulatory powers on the subject of mines and mineral development to exemplify its contours. It has categorically declared that the Parliament is the sole judge of the manner it determines to regulate the subject and once it exercises it power, the States are denuded of their powers to legislate on the subject. Applying the constitutional doctrines to address the conflict arising from rival regulatory powers, the Supreme Court concluded that the Parliament having enacted the MMDR Act, the regulatory landscape was claimed by the Parliament and the States could not regulate the subject any further. Thus, the Supreme Court gave effect to the delicate balance of legislative power distribution, on the subject as envisaged by the constitution-framers. Having said that, the majority decision clearly vivisected the regulatory jurisdiction with the taxation prowess to highlight the different relationship of the Union and the States *vis-à-vis* the regulatory and taxation powers.
- Fifth, the Supreme Court has acknowledged that the power of the States to tax mineral rights is a unique example of a taxing power of the States which is subject to the regulatory powers of the Parliament. Declaring that this limitation is on account of the desire of the constitutional framers to ensure that all-round national growth is not impeded on account of vital minerals being located in the few States, the Supreme Court has declared that the Parliament has been entrusted with the function of limiting the States' taxing power in respect of minerals such that their taxes do not impede in the national growth.
- Sixth, the majority of the Supreme Court has simultaneously declared that the Parliament can only regulate and limit the States' tax on mineral rights but Parliament cannot on its own levy taxes on mineral rights. According to the majority, the Parliament has not been conferred with the right to

[20] *Jindal Stainless Steel v. State of Haryana* (2017) 12 SCC 1

tax minerals and thus the regulatory power cannot be exercised to impose a tax. Thus, a constitutional balance is achieved *vis-à-vis* taxation of mineral rights.

- Seventh, expanding the scope of taxes on lands and buildings, this decision explains the wide scope of immovable property which can be subjected to tax by the States. Highlighting the manner of exercise of this power, which permits levy only on basis of land as a unit or building as a unit, the majority has encapsulated the legal position flowing from other decisions on the subject to explain the various ways in which the States can compute the value for levying taxes on land and building. In particular, clarifying that there is no exclusion of the royalty or other mineral value from the value of the land, the Supreme Court has substantially expanded this taxation sphere for the States.

Thus, overall, on a going forward basis, this decision is bound to result into a slugfest between the mineral-rich States' taxation policy and law *vis-à-vis* the Union and the other States who would stand impacted on this count. One can imagine amendments to the MMDR Act being introduced to address the impact of this decision whereby there may be limitations – ranging either from dilution to complete moratorium – imposed by the Parliament on mineral taxes of the States. The extent of these amendments, however, would depend upon the political and economic bargain amongst these key governance functionaries.

c. <u>Other aspects of the decision</u>

The decision is also significant from a variety of aspects, some of which are listed below;

- Besides delineating the scheme of distribution of legislative powers between the Union and the States, as set out in the Seventh Schedule of the Constitution, the decision is also an exposition on the rule of interpretation governing the legislative entries under the Seventh Schedule. The majority decision lucidly explains the legal position flowing from Article 246 of the Constitution *qua* the respective legislative competence of the Union and the States, including the doctrines such as 'pith and substance', 'repugnancy', 'federal supremacy', to resolve disputes relating to legislative encroachment between the two legislatures.
- The majority decision also explains the difference between two types of legislative subjects envisioned under the Constitution i.e. regulatory subjects and taxing subjects, to explain their intrinsic difference, contrasted scope and the manner in which their contours are to be interpreted.
- The majority decision further explains other significant constitutional concepts, such as 'fiscal federalism', 'public trust doctrine', etc. which are pivotal in various aspects of constitutional and fiscal governance. The decision further enlists the manner in which these doctrines are juxtaposed within the exercise of legislative powers.
- One of the key takeaways from this decision is the exposition of the concept of 'tax' therein. For decades there have been varying meanings ascribed to the expression. In the context of its

constitutional bearing, the majority decision describes the facets and contours of 'tax'. It further distinguishes 'royalty' – as a consideration for 'grant' of a 'privilege' by the State – as contrasted from tax, which is a compulsory exaction. The majority decision enlists the distinguishing features of the concepts besides engrafting the application of Article 265 of the Constitution which governs the levy and collection of tax.

- The decision is also significant on account of its overbearing impact on various pending matters. The Supreme Court will soon commence hearing on the cases which challenge levy of service tax and Goods and Services Tax (GST) on immovable property.[21] There is no gainsaying that this categorical enunciation of the taxing rights of the States, particularly their right to tax lands and building, will have a vital bearing on these matters.

There is also a highlight likelihood that this decision will impact the evolution of the GST design. Even though purported as 'one nation one tax', so far GST has continued without subsummation of many indirect taxes; mineral taxes and land taxes being prominent exclusions from its scope. However, the Constitution empowers the GST Council to make recommendations for subsuming other taxes.[22] With the huge impact of this decision and the likely change in taxation regimes of the States after this decision, it is possible that discussions will advance on including these taxes within the fold of GST.

4. Conclusion

By widely interpreting the taxing fields of the States, buoyed by the premise that the States' fiscal autonomy and flexibility are paramount, the majority decision of the Supreme Court has endorsed wide powers for the States to tax mineral rights and land. Conversely, highlighting the ramifications of unimpeded assertion of such taxing rights by the States on the national growth, the majority decision has urged the need to limit them under Parliamentary law. This difference in approach has guided the respective answers with the majority overruling the decisions of the past decades which limited the States' powers versus the minority urging the need to maintain *status quo*. In any case, the constitutional exposition in the majority decision is likely to settle for generations the scope and remit of the different legislative subjects and the exercise of their legislative prerogative by the Union and the States.

[21] SLP(C) No. 37326/2017 (*Udaipur Chambers of Commerce and Industry v. Union of India*) and other connected matters.

[22] Article 279A(4)(a), Constitution of India. It states, "The Goods and Services Tax Council shall make recommendations to the Union and the States on – (a) the taxes, cesses and surcharges levied by the Union, the States and the local bodies which may be subsumed in the goods and services tax;".

[i] The minority concluded as under;

"41. Consequently, the following conclusions are arrived at by me:

a. I hold that royalty is in the nature of a tax or an exaction. It is not merely a contractual payment but a statutory levy under Section 9 of the Act (Section 9A relating to dead rent). The liability to pay royalty does not arise purely out of the contractual conditions of a binding lease. The payment of royalty to the Government is a tax in view of Entry 50 - List II being subject to any limitations imposed by Parliament by law in the context of Entry 54 - List I read with Section 2 of the MMDR Act, 1957.

b. Entry 50 - List II is an exception to the position of law laid down in *MPV Sundararamier vs. State of Andhra Pradesh* AIR 1958 SC 468 (*MPV Sundararamier).* Moreover, in the said case, the scope and ambit as well the implication of Entry 54 – List I on Entry 50 - List II was not considered at all. Therefore, the principle stated in *MPV Sundararamier* is foreign to the instant case and the ratio of the said decision does not apply to the present case. No doubt, the legislative power to tax mineral rights vests with the State legislature but Parliament, though may not have an express power to tax mineral rights under Entry 54 - List I, it being a general Entry, Parliament can, nevertheless on the strength of Entry 54 - List I read with Section 2 of the MMDR Act, 1957, impose any limitation on the power of the States to tax mineral rights under Entry 50 - List II. Sections 9 and 9A of the MMDR Act, 1957 are two such instances of limitations imposed by the Parliament on the taxing power of the State under Entry 50 - List II. This is a unique Entry and must be given its true and complete meaning and while interpreting the same one cannot be swayed by the principles laid down in *MPV Sundararamier* as the same do not apply in the instant case. At the cost of repetition, it is stated that Entry 50 - List II never came for consideration in the aforesaid case.

c. Parliament is not using its residuary power with respect to imposing any limitation on the taxing power of the State under Entry 50 – List II. In fact, even the Validation Act, 1992 enacted by Parliament was upheld having regard to Entry 54 - List I read with Section 2 of the MMDR Act, 1957 and not Entry 97 - List I.

d. Entry 50 - List II envisages that Parliament can impose "any limitations" on the legislative field created by that Entry under a law relating to mineral development. The MMDR Act, 1957 has imposed the limitations as envisaged in Entry 50 - List II in Sections 9, 9A and 25, etc. on the strength of Entry 54 – List I.

e. I, however, concur with the learned Chief Justice that the scope of the expression "any limitations" under Entry 50 - List II is wide enough to include the imposition of restriction, conditions, principles as well as a prohibition by Parliament by law.

f. The State legislatures have legislative competence under Article 246 read with Entry 49 - List II to tax lands and buildings but not lands which comprise of mines and quarries or have mineral deposits as mineral bearing lands do not fall within the description of lands (under Entry 49 - List II). Similarly, States can tax such mineral bearing lands which are not covered within the scope of MMDR Act, 1957 i.e., minor minerals, under Entry 50 – List II and not under Entry 49 – List II as tax on exercise of mineral rights. Thus, mineral bearing lands cannot be taxed under Entry 49 – List II.

g. Further, the yield of mineral bearing lands, in terms of quantity of mineral produced or royalty paid cannot also be used as a measure to tax such lands under Entry 49 - List II. In my view, the decision in *Goodricke Group Ltd v. State of West Bengal* 1995 Supp (1) SCC 707 (*Goodricke)* does not apply to the present case and hence does not require any clarification.

h. Entries 49 and 50 - List II, no doubt, operate in different fields. Entry 49 - List II deals with taxes on lands and buildings but Entry 50 - List II deals with taxes on mineral rights subject to any limitations imposed by Parliament

by law relating to mineral development. There is no constitutional limitation on the competence of the State legislature to tax lands and buildings. However, the State's competence to tax mineral rights is subject to any limitations imposed by the Parliament by law relating to mineral development. Entry 49 – List II and Entry 50 - List II are distinct and operate in distinct ways. Entry 49 - List II does not apply to mineral bearing lands as such lands are taxed in the form of royalty or dead rent in the context of exercise of mineral rights. Exercise of mineral rights is the basis for payment of royalty or dead rent. Consequently, value of mineral produced cannot be used as a measure to once again impose a tax on mineral bearing land under Entry 49 – List II. If so, Entry 50 – List II would be rendered

redundant.

i. As Entry 49 - List II does not apply to mineral bearing land, the limitations imposed by Parliament by law relating to mineral development with respect to Entry 50 - List II would restrict the power of the State legislature to impose tax on mineral rights under the latter Entry. Thus, the power of the State legislature to impose tax under Entry 50 - List II is subject to the Parliament imposing any limitation by law relating to mineral development.

42. In view of the above discussion, the eleven questions referred to this Bench are accordingly answered. In particular, I hold that:

(i) Sections 9, 9A and 25 of the MMDR Act, 1957 denude or limit the scope of Entry 50 - List II;

(ii) the majority decision in *Kesoram* is a serious departure from the law laid down by the seven-judge Bench in *India Cement* which was wholly unwarranted and therefore, in my view, the said majority judgment is liable to be overruled and is overruled to the extent of holding that royalty is not a tax;

(iii) taxes on lands and buildings under Entry 49 – List II contemplates a tax levied directly on the land as a unit having a defined relationship with the land and does not include mineral bearing lands within its scope;

(iv) in view of the declaration under Section 2 of the MMDR Act, 1957 made in terms of Entry 54 - List I and to the extent of the provisions of the said Act, the State legislature is denuded of its powers under Enry 50 - List II; and

(v) Entry 50 - List II is a unique Entry because it is the only taxation Entry in Lists I and II where the taxing power of a State legislature has been subjected to "any limitations imposed by Parliament by law relating to mineral development". The dictum in *MPV Sundararamier* has not discussed on Entry 50 – List II and hence the said decision has no bearing as such on the present controversy. The conclusion that 'royalty' is a 'tax' is the only exception to the position of law laid down in *MPV Sundararamier.* Of course, the scope of expression "any limitations" in Entry 50 - List II is wide enough to include the imposition of restrictions, conditions, principles as well as a prohibition.

43. In the result, in my view, the judgments in *India Cement, Orissa Cement, Mahalaxmi Fabric Mills, Saurasthra Cement, Mahanadi Coalfields, Kannadasan* excluding to the extent overruled in *Tata Iron and Steel,* and *Tata Iron and Steel* are correct and therefore are binding precedent and cannot be overruled. On the other hand, the majority judgment in *Kesoram*, is overruled to the extent it holds that royalty is not a tax."