IN THE HIGH COURT OF JUDICATURE AT PATNA

Broad Son Commodities Private Limited

Versus

The Union of India & Ors.

2022 of Civil Writ Jurisdiction Case No.-3531

18 April, 2025

(Hon'ble Mr. Justice Rajeev Ranjan Prasad & Hon'ble Mr. Justice Sourendra Pandey)

[With CWJC No.- 16361/2022, CWJC No.- 17070/2022, CWJC No.- 17077/2022, CWJC No.- 17078/2022, CWJC No.- 18535/2022, CWJC No.- 9140/2023, CWJC No.- 9162/2023, CWJC No.- 9947/2023, CWJC No.- 11538/2023, CWJC No.- 16764/2023, CWJC No.- 17700/2023, CWJC No.- 18206/2023, CWJC No.- 2730/2024, CWJC No.- 4297/2024, CWJC No.- 4562/2024, CWJC No.- 6389/2024.

Issue for Consideration

Whether dual proceedings initiated by both Central and State GST authorities for the same tax period are legally sustainable under the GST regime.
Whether the simultaneous action by both authorities amounts to harassment and violates principles of natural justice.
Whether the writ petition is maintainable in light of the alternative statutory remedies under the CGST and SGST Acts.

Headnotes

Constitution of India – Article 226 – Writ Petition – Challenge to GST Proceedings - Goods and Services Tax – Dual Proceedings – Centre vs. State Authorities – Legality and Maintainability - Violation of Principles of Natural Justice – Non-Opportunity of Hearing - Maintainability of Writ – Availability of Alternative Remedy-notwithstanding the Non-obstante clause cannot be pressed into service to confer legislative power on the State and the Centre to impost GST - Royalty is a hybrid of two constituents i.e. distinction between fee for services and compensatory fee - Taxable event – taking place prior to coming into force of GST on Execution of Agreement.
Royalty is not a Statutory Impost/Tax – MADA Judgment - Royalty is to be paid only upon Exercise of "Mineral Rights" – Incidence of Tax - Order of the Appellate Authority on Advance Ruling- approved - Claim of Exemption Rightly Negatived by the Appellate Authority - Transfer

of Interest is Different from Exercise of Mineral Rights – Royalty can be used as a Measure of Tax on Royalty - Contention that Royalty comprises a composite charge for regulatory and service fee – Negatived.

Held: The Hon'ble Court disposed of the writ petition with directions to the concerned authorities to coordinate amongst themselves and avoid multiplicity of proceedings. It emphasized the need to protect assessees from double jeopardy and procedural abuse under the GST framework.

Case Law Cited

(1974) 4 SCC 656, (2024) 10 SCC 1, (1989) 2 SCC 285, (1994) 3 SCC 1, AIR 1962 1044, AIR 1965 SC 1107, AIR 1997 SC 1168, (1997) 2 SCC 715, (2005) 2 SCC 762, 1985 (Supp) SCC 205, 1996 (83) ELT 3 (SC) : (1996) 3 SCC 434, (2000) 6 SCC 12, AIR 1959 SC 149, (1985) 3 SCC 545, (1990) 1 SCC 12, (CWJC No. 1200 of 2023), (2004) 10 SCC 201

List of Acts

The Constitution of India, 1950, The Central Goods and Services Tax Act, 2017 (CGST Act), The Bihar Goods and Services Tax Act, 2017 (BGST Act), The Integrated Goods and Services Tax Act, 2017 (IGST Act), The Companies Act, 1956.

List of Keywords

Goods And Service Tax; Royalty; Sand Ghats; Auction

Case Arising From

For quashing order contained in memo no 341 dated 10.12.2021 passed by Appellate Authority for Advance Ruling, Bihar in Case no. AAAR/01/2021

Appearances for Parties

(In Civil Writ Jurisdiction Case No. 3531 of 2022)

For the Petitioner/s : Mr. Sujit Ghosh, Sr. Advocate Mr. Suraj Samdarshi, Advocate Mr. Avinash Shekhar, Advocate Mr. Vijay Shanker Tiwari, Advocate Ms. Abhilasha Jha, Advocate Ms. Simran Kumari, Advocate For the UOI : Dr. Krishna Nandan Singh, Sr. Advocate Mr. Anshuman Singh, Sr. SC (CGST & CX) Mr. Shivaditya Dhari Sinha, Advocate

(In Civil Writ Jurisdiction Case No. 16361 of 2022)

For the Petitioner/s : Mr. Sujit Ghosh, Sr. Advocate Mr. Suraj Samdarshi, Advocate Mr. Avinash Shekhar, Advocate Mr. Vijay Shanker Tiwari, Advocate Ms. Abhilasha Jha, Advocate Ms. Simran Kumari, Advocate For the Respondent/s : Mr.Vikash Kumar (SC-11)

(In Civil Writ Jurisdiction Case No. 17070 of 2022)

For the Petitioner/s : Mr. Sujit Ghosh, Sr. Advocate Mr. Suraj Samdarshi, Advocate Mr. Avinash Shekhar, Advocate Mr. Vijay Shanker Tiwari, Advocate Ms. Abhilasha Jha, Advocate Ms. Simran Kumari,

Advocate For the Respondent/s : Mr.Vikash Kumar (SC-11)

(In Civil Writ Jurisdiction Case No. 17077 of 2022)

For the Petitioner/s : Mr. Sujit Ghosh, Sr. Advocate Mr. Suraj Samdarshi, Advocate Mr. Avinash Shekhar, Advocate Mr. Vijay Shanker Tiwari, Advocate Ms. Abhilasha Jha, Advocate Ms. Simran Kumari,

Advocate For the Respondent/s : Mr.Vikash Kumar (SC-11)

(In Civil Writ Jurisdiction Case No. 17078 of 2022)

For the Petitioner/s : Mr. Sujit Ghosh, Sr. Advocate Mr. Suraj Samdarshi, Advocate Mr. Avinash Shekhar, Advocate Mr. Vijay Shanker Tiwari, Advocate Ms. Abhilasha Jha, Advocate Ms. Simran Kumari,

Advocate For the Respondent/s : Mr.Vikash Kumar (SC-11)

(In Civil Writ Jurisdiction Case No. 18535 of 2022)

For the Petitioner/s : Mr. Sujit Ghosh, Sr. Advocate Mr. Suraj Samdarshi, Advocate Mr. Avinash Shekhar, Advocate Mr. Vijay Shanker Tiwari, Advocate Ms. Abhilasha Jha, Advocate Ms. Simran Kumari, Advocate

For the Respondent/s : Mr.Vikash Kumar (SC-11)

(In Civil Writ Jurisdiction Case No. 9140 of 2023)

For the Petitioner/s : Mr. D.V.Pathy, Sr. Advocate Mr. Sadashiv Tiwari, Advocate Mr. Hiresh Karan, Advocate Ms. Shivani Dewalla, Advocate Ms. Prachi Pallavi,

Advocate For the Respondent/s : Mr.Vikash Kumar (SC-11)

(In Civil Writ Jurisdiction Case No. 9162 of 2023)

For the Petitioner/s : Mr. D.V.Pathy, Sr. Advocate Mr. Sadashiv Tiwari, Advocate Mr. Hiresh Karan, Advocate Ms. Shivani Dewalla, Advocate Ms. Prachi Pallavi,

Advocate For the Respondent/s : Mr.Vikash Kumar (SC-11)

(In Civil Writ Jurisdiction Case No. 9947 of 2023)

For the Petitioner/s : Mr. D.V.Pathy, Sr. Advocate Mr. Sadashiv Tiwari, Advocate Mr. Hiresh Karan, Advocate Ms. Shivani Dewalla, Advocate Ms. Prachi Pallavi,

Advocate For the Respondent/s : Mr.Vikash Kumar (SC-11)

(In Civil Writ Jurisdiction Case No. 11538 of 2023)

For the Petitioner/s : Mr. Anurag Saurav, Advocate Mr. Abhishek Kumar, Advocate Ms. Prity Kumary, Advocate Mr. Sharda Raje Singh, Advocate Mr. Ankesh Bibhu, Advocate Mr. Vaibhav Kumar,

Advocate For the State : Mr. Vivek Prasad, GP-7 Ms. Roona, AC to GP-7

For the UOI : Dr. Krishna Nandan Singh, Sr. Advocate Mr. Anshuman Singh, Sr. SC (CGST & CX) Mr. Shivaditya Dhari Sinha, Advocate

(In Civil Writ Jurisdiction Case No. 16764 of 2023)

For the Petitioner/s : Mr. Mohit Agarwal, Advocate Mr. Lokesh Kumar, Advocate Mr. Vikash Khanna,

Advocate For the Respondent/s : Mr. Vivek Prasad (GP 7) Ms. Roona, AC to GP-7

(In Civil Writ Jurisdiction Case No. 17700 of 2023)

For the Petitioner/s : Mr.Gautam Kumar Kejriwal, Advocate

For the Respondent/s : Mr.Standing Counsel (11)

(In Civil Writ Jurisdiction Case No. 18206 of 2023)

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Advocate For the Respondent/s : Mr. Standing Counsel (11)

(In Civil Writ Jurisdiction Case No. 2730 of 2024)

For the Petitioner/s : Mr. Sujit Ghosh, Sr. Advocate Mr. Suraj Samdarshi, Advocate Mr. Avinash Shekhar, Advocate Mr. Vijay Shanker Tiwari, Advocate Ms. Abhilasha Jha, Advocate Ms. Simran Kumari,

Advocate For the Respondent/s : Mr. Standing Counsel (11)

(In Civil Writ Jurisdiction Case No. 4297 of 2024)

For the Petitioner/s : Mr. Sujit Ghosh, Sr. Advocate Mr. Suraj Samdarshi, Advocate Mr. Avinash Shekhar, Advocate Mr. Vijay Shanker Tiwari, Advocate Ms. Abhilasha Jha, Advocate Ms. Simran Kumari,

Advocate For the Respondent/s : Mr. Standing Counsel 11

(In Civil Writ Jurisdiction Case No. 4562 of 2024)

For the Petitioner/s : Mr. Sujit Ghosh, Sr. Advocate Mr. Suraj Samdarshi, Advocate Mr. Avinash Shekhar, Advocate Mr. Vijay Shanker Tiwari, Advocate Ms. Abhilasha Jha, Advocate Ms. Simran Kumari,

Advocate For the Respondent/s : Mr. Standing Counsel (11)

(In Civil Writ Jurisdiction Case No. 6389 of 2024)

For the Petitioner/s : Mr. Abdul Mannan Khan, Advocate Mr. Binay Kumar, Advocate Mr. Hafiz Shahbaz Arif,

Advocate For the Respondent/s : Mr. Vivek Prasad, GP-7 Ms. Roona, AC to GP-7

Headnotes Prepared by: **Ravi Raj**

Judgment/Order of the Hon’ble Patna High Court

INDEX

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3531 of 2022

==

Broad Son Commodities Private Limited A Company incorporated under the provisions of the Companies Act, 1956 having its registered office at Dr. Himanshu complex, Block Road, Koilwar Chouk, P.S. Koilwa, District Bhojpur (Ara), through its Director Ashok Kumar aged about 66 years (male), son of Ram Chandra Saw, resident of Village / Mohalla - Pareo, P.S. Bihta, District- Patna.

... ... Petitioner

Versus

1. The Union of India Through the Commissioner, Central GST and Central Excise, Patna, having its office at Annexe Building, Central Revenue Building, Bir Chand Patel Marg, Patna.
2. The State of Bihar Through the Principal Secretary, Commercial Taxes Department, Government of Bihar.
3. The Principal Secretary cum Commissioner, State Tax, Commercial Taxes Department, Government of Bihar.
4. The Additional Commissioner, Commercial Taxes Department, Patna.
5. The Joint Commissioner of State Tax, Shahabad Circle, Ara.

... ... Respondents

==

with

Civil Writ Jurisdiction Case No. 16361 of 2022

==

Broad Son Commodities Private Limited a Company incorporated office at Dr. himanshu Complex, Block Road, Koilwar Chouk, P.S. Koilwar, District Bhojpur (Ara), through its Director Ashok Kumar aged about 67 Years (Male), Son of Ram Chandra Saw, Resident of Village/Mohalla-Pareo, P.S. Bihta, District-Patna.

... ... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Commercial Taxes Department, Government of Bihar.
2. The Principal Secretary Cum Commissioner, State Tax, Commercial Taxes Department, Government of Bihar.
3. The Joint Commissioner of State Tax, Shahabad Circle, Ara.

... ... Respondents

==

with

Civil Writ Jurisdiction Case No. 17070 of 2022

==

Broad Son Commodities Private Limited a Company incorporated under the provisions of the Companies Act, 1956 having its registered office at Dr. Himanshu Complex, Block Road, Koilwar Chouk, P.S. Koilwar, District Bhojpur (Ara), through its Director Ashok Kumar, aged about 67 years (male), son of Ram Chandra Saw, resident of Village/Mohalla-Pareo, P.S. Bihta, District Patna.

... ... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Commercial Taxes Department, Government of Bihar.
2. The Principal Secretary cum Commissioner, State Tax, Commercial Taxes Department, Government of Bihar.
3. The Joint Commissioner of State Tax, Shahabad Circle, Ara.

... ... Respondents

==

with

Civil Writ Jurisdiction Case No. 17077 of 2022

==

Broad Son Commodities Private Limited a Company incorporated under the provisions of the Companies Act, 1956 having its registered office at Dr. Himanshu Complex, Block Road, Koilwar Chouk, P.S. Koilwar, District Bhojpur (Ara), through its Director Ashok Kumar aged about 67 years (male), son of Ram Chandra Saw, resident of Village/ Mohalla- Pareo, P.S. Bihta, District- Patna.

... ... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Commercial Taxes Department, Government of Bihar.
2. The Principal Secretary cum Commissioner, State Tax, Commercial Taxes Department, Government of Bihar.
3. The Joint Commissioner of State Tax, Shahabad Circle, Ara.

... ... Respondents

==

with

Civil Writ Jurisdiction Case No. 17078 of 2022

==

Broad Son Commodities Private Limited a Company incorporated under the provisions of the Companies Act, 1956 having its registered office at Dr. Himanshu Complex, Block Road, Koilwar Chouk, P.S. Koilwar, District Bhojpur (Ara), through its Director Ashok Kumar, aged about 67 years (male), son of Ram Chandra Saw, resident of Village/Mohalla-Pareo, P.S. Bihta, District Patna.

... ... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Commercial Taxes Department, Government of Bihar.
2. The Principal Secretary cum Commissioner, State Tax, Commercial Taxes Department, Government of Bihar.
3. The Joint Commissioner of State Tax, Shahabad Circle, Ara.

... ... Respondents

==

with

Civil Writ Jurisdiction Case No. 18535 of 2022

==

Broad Son Commodities Private Limited a Company incorporated under the provisions of the Companies Act, 1956 having its registered office at Dr. Himanshu Complex, Block Road, Koilwar Chouk, P.S. Koilwar, District Bhojpur (Ara), through its Director Ashok Kumar, aged about 67 years (male), son of Ram Chandra Saw, resident of Village/Mohalla-Pareo, P.S. Bihta, District Patna.

... ... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Commercial Taxes Department, Government of Bihar.
2. The Principal Secretary cum Commissioner, State Tax, Commercial Taxes Department, Government of Bihar.
3. The Joint Commissioner of State Tax, Shahabad Circle, Ara.

... ... Respondents

==

with

Civil Writ Jurisdiction Case No. 9140 of 2023

==

Singh and Giri Infrastructure Pvt. Ltd. a Private Limited Company incorporated Under the Companies Act, 1956 having its office at Narayanpur, Bagha-845105 through its Director Shri Harendra Singh (Male, aged about 68 Yeats) Son of Late Nagina Singh residing at Ward No.5, Sukhwan Road, Narayanpur, Bagha 02, P.S. Naryanpur, West Champaran, Bihar.

... ... Petitioner

Versus

1. State of Bihar through Commissioner of State Tax, Bihar, Patna Having its Office at Vikas Bhawan, Patna.
2. Addl. Commissioner of State Tax (Appeal), Tirhut Division, Muzaffarpur.
3. Asst. Commissioner of State Tax, Bagaha Circle, Bagaha.

... ... Respondents

==

with

Civil Writ Jurisdiction Case No. 9162 of 2023

==

Singh and Giri Infrastructure Pvt. Ltd. A Private Limited Company incorporated under the Companies Act, 1956 having its office at Narayanpur, Bagha- 845105 through its Director Shri. Harendra Singh (Male, aged about 68 years) son of Late Nagina Singh residing at Ward No. 5, Sukhwan Road, Narayanpur, Bagha- 02, P.S.- Naryanpur, West Champaran, Bihar.

... ... Petitioner

Versus

1. The State of Bihar through Commissioner of State Tax, Bihar, Patna having its office at Vikas Bhawan, Patna.
2. Addl. Commissioner of State Tax (Appeal), Tirhut Division, Muzaffarpur.
3. Asst. Commissioner of State Tax, Bagaha Circle, Bagaha.

... ... Respondents

==

with

Civil Writ Jurisdiction Case No. 9947 of 2023

==

Singh and Giri Infrastructure Pvt. Ltd. a Private Limited Company incorporated under the Companies Act, 1956 having its office at Narayanpur, Bagha-845105 through its Director Shri Harendra Singh, Male, aged about 68 years, son of Late Nagina Singh, residing at Ward No. 5, Sukhwan Road, Narayanpur, Bagha-02, P.S. Naryanpur, West Champaran, Bihar.

... ... Petitioner/s

Versus

1. State of Bihar through Commissioner of State Tax, Bihar, Patna having its office at Vikas Bhawan, Patna.
2. Addl. Commissioner of State Tax (Appeal), Tirhut Division, Muzaffarpur.
3. Asst. Commissioner of State Tax, Bagaha Circle, Bagaha.

... ... Respondent/s

==

with

Civil Writ Jurisdiction Case No. 11538 of 2023

==

M/s Umesh Kumar (a sole proprietorship firm) having it registered office - Shekhpur, P.S. - Yehaipur, District - Muzaffarpur through its Sole Proprietor Mr. Umesh Kumar, aged about 54 years, S/o Jiyalal Rai.

... ... Petitioner

Versus

1. The Union of India through the Secretary, Ministry of Finance, Department of Revenue, having its office at Room No. 46, North Block, P.O. and P.S. North Block, New Delhi - 110001.
2. The Chief Commissioner, CGST and CX, Office at - C.R Building, 1st Floor, Bir Chand Patel Path, Patna, Bihar.
3. The State of Bihar through Commissioner, BGST, New Secretariat Patna.
4. Joint Commissioner of State Tax, Muzaffarpur East Circle, District - Muzaffarpur, Bihar.
5. Deputy Commissioner of State Tax, Muzaffarpur East Circle, Muzaffarpur.
6. Assistant Commissioner of State Tax, Muzaffarpur East Circle, Muzaffarpur.
7. Additional Commissioner of State Tax (Appeal) Tirhut Division, Muzaffarpur.

... ... Respondents

==

with

Civil Writ Jurisdiction Case No. 16764 of 2023

==

M/s Buddha Uttam J.V., a Joint Venture, having its Office at 302, Maya Enclave, Road No.10, Patel Nagar, P.S. Shastri Nagar, Town and District Patna through its Authorized Representative Amit Kumar, Male, Aged about 43 Years son of Sri Vinod Kumar Singh, Resident of 302, Maya Enclave, Road No.10, Patel Nagar, P.S. Shastria Nagar, Town and District Patna.

... ... Petitioner

Versus

1. The State of Bihar through the Commissioner cum Principal Secretary, Department of Commercial Taxes, Vikash Bhavan, Bailey Road, Patna.
2. The Commissioner cum Principal Secretary, Department of Commercial Taxes, Vikash Bhavan, Bailey Road, Patna.
3. The Principal Secretary, Department of Mines and Geology, Government of Bihar, Vikash Bhavan, Bailey Road, Patna.
4. The Additional Chief Secretary cum Mines Commissioner, Department of Mines and Geology Government of Bihar, Vikash Bhavan, Bailey Road Patna.
5. The Joint Commissioner, State Tax, Sahabad Circle Bhojpur at Arrah.
6. The Collector-cum-District Mining Officer, Bhojpur (Arrah).
7. The Mines Development Officer, District Mining Office, Bhojpur at Arrah.

... ... Respondents

==

with

Civil Writ Jurisdiction Case No. 17700 of 2023

==

M/s Mahadev Enclave Pvt. Ltd. a registered company having its registered office at B- 37, Ayodhya Marg, Hanuman Nagar, Jaipur, Rajasthan through its authorised signatory namely Rajendra Singh male aged about 41 years S/o Bahadur Singh R/o Village And Post- Sawnlodha, Ladkhani, Khuribadi, District - Sikar, Rajasthan - 332315.

... ... Petitioner

Versus

1. The State of Bihar through the Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Additional Chief Secretary, Department of Mines and Geology, Govt. of Bihar, Patna.
3. The Director, Department of Mines and Geology, Govt. of Bihar, Patna.
4. The Joint Commissioner of State Taxes (Incharge), Bhagalpur Circle - 2, Bhagalpur.
5. The Mines Development Officer, Banka.

... ... Respondents

==

with

Civil Writ Jurisdiction Case No. 18206 of 2023

==

M/s Maiher Developers a Partnership firm having its Place of Business at First Floor, D-2 MIG, Harmu Housing Colony, P.O. Harmu, District-Ranchi, Jharkhand-834002 through one of its Partners Namely Anil Kumar Singh, Resident of Kumhar Para, Sonwadangal, Dumka, Jharkand -814101.

... ... Petitioner

Versus

1. The State of Bihar through the Commissioner, Department of State Taxes, Government of Bihar, Patna.

2. The Additional Chief Secretary, Department of Mines and Geology, Govt. of Bihar, Patna.
3. The Director, Department of Mines and Geology, Govt. of Bihar, Patna.
4. The Joint Commissioner of State Taxes (In Charge) Bhagalpur Circle-2, Bhagalpur.
5. The Mines Development Officer, Banka.

... ... Respondents

==

with

Civil Writ Jurisdiction Case No. 2730 of 2024

==

M/s Sanjay Kumar, a Proprietorship Firm, Having its Office at Village and P.O. Ekbalganj Nisarpura, P.S. Rani Talab Kampa, District Patna, through its Partner, Sanjay Kumar, aged about 47 Years (Male), Son of Yamuna Singh Yadav, Resident of Village and P.O. Ekbalganj Nisarpura, P.S. Rani Talab Kampa, District- Patna

... ... Petitioner

Versus

1. The State of Bihar through the Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Additional Commissioner of State Taxes, Patna.
3. The Deputy Commissioner, State Taxes, Danapur Circle-1, Patna.
4. The Additional Chief Secretary, Department of Mines and Geology, Government of Bihar, Patna.
5. The Director, Department of Mines, Bihar, Patna.
6. The District Magistrate, Patna.

... ... Respondents

==

with

Civil Writ Jurisdiction Case No. 4297 of 2024

==

Damas Civil Construction India Private Limited a Company incorporated under Companies Act, having its Officer at Ward No.- 18, Near Kaimur Astambh, Belwatia Pokhara, Kaimur, Bhabhua through its Director Mukesh Kumar, aged about 44 years (male), son of Abhiram Sharma, Resident of Village- Bambhai, P.S.- Karpi, District- Arwal.

... ... Petitioner

Versus

1. The State of Bihar through the Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Additional Commissioner of State Taxes, Patna.
3. The Joint Commissioner, State Taxes, Bhabhua Circle, Bhabhua.
4. The Director, Department of Mines and Geology, Government of Bihar, Patna.
5. The District Magistrate cum Collector, Patna.

... ... Respondents

==

with

Civil Writ Jurisdiction Case No. 4562 of 2024

==

Rana Uday Pratap Singh son of Rana Ran Vijay Pratap Singh, Resident of Village Bishunpur Nala, Jaiprakash Nagar, P.S. Dhanbad, District Dhanbad.

... ... Petitioner

Versus

1. The State of Bihar through the Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Additional Commissioner of State Taxes, Patna.
3. The Joint Commissioner State Taxes, Shahabad Circle, Ara, Bhojpur.
4. The Additional Chief Secretary, Department of Mines and Geology, Government of Bihar, Patna.
5. The Director, Department of Mines and Geology, Government of Bihar, Patna.
6. The District Magistrate cum Collector, Bhojpur.

... ... Respondents

==

with

Civil Writ Jurisdiction Case No. 6389 of 2024

==

M/s. Mona Bricks Shahjangi, Mouza Parbatti, Bhagalpur through its proprietor Shah Afroze Hossain @ S. Afroze Hossain (Male), aged about 60 years, son of Shah Mansoor Hussain, resident of Shahjangi, Near Shahjangi Mazar, Habibpur, P.S. Habibpur, District- Bhagalpur.

... ... Petitioner

Versus

1. The State of Bihar through the Commissioner State Tax-cum-Principal Secretary, Commercial Taxes Department, Bihar, Patna having its office at Vikas Bhawan, Patna.
2. The Commissioner State Tax-cum Principal Secretary, Commercial Taxes Department, Bihar, Patna having its office at Vikas Bhawan, Patna.
3. The Joint Commissioner State Tax, Bhagalpur Circle- 2, Bhagalpur.
4. The Deputy Commissioner of State Tax, Bhagalpur Circle- 2, Bhagalpur.

... ... Respondents

==

Appearance :

(In Civil Writ Jurisdiction Case No. 3531 of 2022)

For the Petitioner/s	:	Mr. Sujit Ghosh, Sr. Advocate Mr. Suraj Samdarshi, Advocate Mr. Avinash Shekhar, Advocate Mr. Vijay Shanker Tiwari, Advocate Ms. Abhilasha Jha, Advocate Ms. Simran Kumari, Advocate
For the UOI	:	Dr. Krishna Nandan Singh, Sr. Advocate Mr. Anshuman Singh, Sr. SC (CGST & CX) Mr. Shivaditya Dhari Sinha, Advocate

(In Civil Writ Jurisdiction Case No. 16361 of 2022)

For the Petitioner/s	:	Mr. Sujit Ghosh, Sr. Advocate Mr. Suraj Samdarshi, Advocate Mr. Avinash Shekhar, Advocate Mr. Vijay Shanker Tiwari, Advocate Ms. Abhilasha Jha, Advocate Ms. Simran Kumari, Advocate
For the Respondent/s	:	Mr.Vikash Kumar (SC-11)

(In Civil Writ Jurisdiction Case No. 17070 of 2022)

For the Petitioner/s	:	Mr. Sujit Ghosh, Sr. Advocate Mr. Suraj Samdarshi, Advocate Mr. Avinash Shekhar, Advocate Mr. Vijay Shanker Tiwari, Advocate Ms. Abhilasha Jha, Advocate Ms. Simran Kumari, Advocate
For the Respondent/s	:	Mr.Vikash Kumar (SC-11)

(In Civil Writ Jurisdiction Case No. 17077 of 2022)

For the Petitioner/s	:	Mr. Sujit Ghosh, Sr. Advocate Mr. Suraj Samdarshi, Advocate Mr. Avinash Shekhar, Advocate Mr. Vijay Shanker Tiwari, Advocate Ms. Abhilasha Jha, Advocate Ms. Simran Kumari, Advocate
For the Respondent/s	:	Mr.Vikash Kumar (SC-11)

(In Civil Writ Jurisdiction Case No. 17078 of 2022)

For the Petitioner/s	:	Mr. Sujit Ghosh, Sr. Advocate Mr. Suraj Samdarshi, Advocate Mr. Avinash Shekhar, Advocate Mr. Vijay Shanker Tiwari, Advocate Ms. Abhilasha Jha, Advocate Ms. Simran Kumari, Advocate
For the Respondent/s	:	Mr.Vikash Kumar (SC-11)

(In Civil Writ Jurisdiction Case No. 18535 of 2022)

For the Petitioner/s	:	Mr. Sujit Ghosh, Sr. Advocate Mr. Suraj Samdarshi, Advocate Mr. Avinash Shekhar, Advocate Mr. Vijay Shanker Tiwari, Advocate Ms. Abhilasha Jha, Advocate Ms. Simran Kumari, Advocate
For the Respondent/s	:	Mr.Vikash Kumar (SC-11)

(In Civil Writ Jurisdiction Case No. 9140 of 2023)

For the Petitioner/s	:	Mr. D.V.Pathy, Sr. Advocate Mr. Sadashiv Tiwari, Advocate Mr. Hiresh Karan, Advocate Ms. Shivani Dewalla, Advocate Ms. Prachi Pallavi, Advocate
For the Respondent/s	:	Mr.Vikash Kumar (SC-11)

(In Civil Writ Jurisdiction Case No. 9162 of 2023)

For the Petitioner/s	:	Mr. D.V.Pathy, Sr. Advocate Mr. Sadashiv Tiwari, Advocate Mr. Hiresh Karan, Advocate Ms. Shivani Dewalla, Advocate Ms. Prachi Pallavi, Advocate
For the Respondent/s	:	Mr.Vikash Kumar (SC-11)

(In Civil Writ Jurisdiction Case No. 9947 of 2023)

For the Petitioner/s	:	Mr. D.V.Pathy, Sr. Advocate Mr. Sadashiv Tiwari, Advocate Mr. Hiresh Karan, Advocate

Ms. Shivani Dewalla, Advocate
Ms. Prachi Pallavi, Advocate
For the Respondent/s : Mr.Vikash Kumar (SC-11)
(In Civil Writ Jurisdiction Case No. 11538 of 2023)
For the Petitioner/s : Mr. Anurag Saurav, Advocate
Mr. Abhishek Kumar, Advocate
Ms. Prity Kumary, Advocate
Mr. Sharda Raje Singh, Advocate
Mr. Ankesh Bibhu, Advocate
Mr. Vaibhav Kumar, Advocate
For the State : Mr. Vivek Prasad, GP-7
Ms. Roona, AC to GP-7
For the UOI : Dr. Krishna Nandan Singh, Sr. Advocate
Mr. Anshuman Singh, Sr. SC (CGST & CX)
Mr. Shivaditya Dhari Sinha, Advocate
(In Civil Writ Jurisdiction Case No. 16764 of 2023)
For the Petitioner/s : Mr. Mohit Agarwal, Advocate
Mr. Lokesh Kumar, Advocate
Mr. Vikash Khanna, Advocate
For the Respondent/s : Mr. Vivek Prasad (GP 7)
Ms. Roona, AC to GP-7
(In Civil Writ Jurisdiction Case No. 17700 of 2023)
For the Petitioner/s : Mr.Gautam Kumar Kejriwal, Advocate
For the Respondent/s : Mr.Standing Counsel (11)
(In Civil Writ Jurisdiction Case No. 18206 of 2023)
For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Advocate
For the Respondent/s : Mr. Standing Counsel (11)
(In Civil Writ Jurisdiction Case No. 2730 of 2024)
For the Petitioner/s : Mr. Sujit Ghosh, Sr. Advocate
Mr. Suraj Samdarshi, Advocate
Mr. Avinash Shekhar, Advocate
Mr. Vijay Shanker Tiwari, Advocate
Ms. Abhilasha Jha, Advocate
Ms. Simran Kumari, Advocate
For the Respondent/s : Mr. Standing Counsel (11)
(In Civil Writ Jurisdiction Case No. 4297 of 2024)
For the Petitioner/s : Mr. Sujit Ghosh, Sr. Advocate
Mr. Suraj Samdarshi, Advocate
Mr. Avinash Shekhar, Advocate
Mr. Vijay Shanker Tiwari, Advocate
Ms. Abhilasha Jha, Advocate
Ms. Simran Kumari, Advocate
For the Respondent/s : Mr. Standing Counsel 11
(In Civil Writ Jurisdiction Case No. 4562 of 2024)
For the Petitioner/s : Mr. Sujit Ghosh, Sr. Advocate
Mr. Suraj Samdarshi, Advocate
Mr. Avinash Shekhar, Advocate
Mr. Vijay Shanker Tiwari, Advocate
Ms. Abhilasha Jha, Advocate
Ms. Simran Kumari, Advocate
For the Respondent/s : Mr. Standing Counsel (11)
(In Civil Writ Jurisdiction Case No. 6389 of 2024)
For the Petitioner/s : Mr. Abdul Mannan Khan, Advocate
Mr. Binay Kumar, Advocate
Mr. Hafiz Shahbaz Arif, Advocate
For the Respondent/s : Mr. Vivek Prasad, GP-7
Ms. Roona, AC to GP-7

==

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SOURENDRA PANDEY
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 18-04-2025

In the present batch of writ applications, the petitioners are raising a common question for consideration. On the request of the parties, the writ applications have been tagged and heard together on various dates. Mr. Sujit Ghosh, learned Senior Advocate, assisted by Mr. Suraj Samdarshi, learned Advocate has led the arguments. CWJC No. 3531 of 2022 has been taken as lead case. This Court would, therefore, refer the prayers and pleadings in the said writ application at first instance. The other learned Advocates for the petitioners have also made their submissions. The main contesting respondent is the State of Bihar. Mr. Vikas Kumar, learned Advocate and Standing Counsel No. 11 for the State has argued the matter at length.

2. By this common judgment, all the writ applications are being disposed of. In the lead case being CWJC No. 3531 of 2022, the petitioner has prayed for various reliefs. This Court would reproduce the reliefs prayed in the writ application hereinbelow:-

"i) To issue an appropriate writ, order or direction in the nature of certiorari for quashing order contained in memo no 341 dated 10.12.2021 passed by Appellate Authority for Advance Ruling, Bihar in Case no. AAAR/01/2021 (Annexure 11) whereby and wherein the appeal of the department against order dated 29.09.2020 passed by the Bihar Authority for Advance Ruling Goods And Service Tax contained in Advance Ruling no. BIH/13AAR/02/2020, has been rejected however the services of the petitioner has been held to be taxable at the rate of 18% (9% CGST+ 9% SGST) during the period 01.07.2017 to 31.12.2018 and at the rate of 18% 18% (9% CGST + 9% SGST) post 01.01.2019, on wholly erroneous grounds and without considering the case of the petitioner.

ii) During the pendency of this writ application the Respondents may be directed not to take any coercive steps against the petitioner for recovery of the disputed tax amount.

iii) This Hon'ble Court may further adjudicate and hold that the services provided by the State of Bihar to the petitioner by way of grant of mineral concession for winning sand is not leviable with GST in light of the specific exemption granted by Sl no. 64 of notification no 12/2017 dated 28.06.2017 and therefore the petitioner is not liable to pay GST under Reverse Charge Mechanism.

iv) This Hon'ble Court may adjudicate and hold that royalty being in the nature of statutory impost is a tax and therefore the same cannot be exigible to further taxation?

v) This Hon'ble Court may adjudicate and hold that the grant of mineral concessional is merely a statutory function/duty under provisions of law and therefore would not be exigible to Good and Service Tax.

vi) This Hon'ble Court may adjudicate and hold that the grant of mineral concessional does not amount of rendition of any service and therefore the same does not attract the levy of Good and Service Tax.
vii) This Hon'ble Court may adjudicate and hold that the grant of mining lease does not involve any skill based or performance based activity and thus the same will not attract the levy of Good and Service Tax.
viii) This Hon'ble Court may further adjudicate and hold that the expression "assignment of "right to use" any natural resource" would include within its ambit the right to exploit/extract and sell the natural resource
ix) This Hon'ble Court may further adjudicate and hold that the order of Appellate Authority for Advance Ruling, Bihar dated 10.12.2021 is bad in law inasmuch as the same has been passed without considering the order contained in memo no. 8763 dated 22.12.2020 passed by the Commissioner, Central GST and Central Excise, Patna 1, (Annexure 13), which was an order passed in relation to this petitioner with respect to a proceeding initiated under service tax regime, in which the claim of similar exemption under Sl. No. 61 of the Notification no. 22/2016-ST dated 13.04.2016 was allowed and the proceeding was dropped.
x) To grant any other relief or reliefs which the Petitioner may be found entitled to in the facts and circumstances of the case."

Brief Facts of the Case

3. The petitioner is a company registered under the Companies Act, 1956 (hereinafter called 'the petitioner-company' or 'M/s BSCPL'). It is engaged in taking settlement of the sand ghats in the auction held by the Department of Mines and Geology, Government of Bihar. The petitioner-company became the successful bidder for the sand ghats of the district of Patna, Bhojpur and Saran as one unit, Rohtas and Aurangabad as one unit, Jamui and Lakhisarai as one unit and other district as individual units for a period of five years i.e. from 2015 to 2019. A copy of the tender document has been brought on record as Annexure ‘3’ to the writ application.

4. It is the case of the petitioner that a work order was issued in favour of M/s BSCPL for the district of Patna, Saran and Bhojpur. Yearly agreements were executed between the State of Bihar and the petitioner for the district of Patna and Bhojpur. For Saran, it is stated that the agreements were not executed, rather only yearly work orders were issued. For all the three districts i.e. Patna, Saran and Bhojpur, the auction amount for the year 2015 was Rs. 1,15,31,00,000/- (Rs. 115 crores and 31 lakhs only). The petitioner has given the yearly royalty amount required to be paid by the petitioner for the three districts which are as under:-

2015	Rs. 1,15,31,00,000/-
2016	Rs. 1,38,37,20,000/-
2017	Rs. 1,66,04,64,000/-
2018	Rs. 1,99,25,56,800/-
2019	Rs. 2,39,10,68,160/-

5. According to the petitioner, under the Sand Policy as contained in Notification No. 2887 dated 22.07.2014, tender document and Letter No. 506 dated 21.10.2014, the State Government had settled the sand ghats for a period of five years. It was clarified that the settlement amount for the said period for five years shall be payable in five equal yearly installments. The yearly settlement amount for the year 2015 shall be the auction amount. It was specified that for the subsequent years, the settlement amount shall be 120% of that of the previous year. The first installment of 50% of the yearly installment amount was to be paid by 15th December of the previous year, 25% was to be paid before 15th April and rest 25% was to be paid before 15th September.

6. It is the case of the petitioner that at the time of conferment of the right upon the petitioner i.e. 21.12.2014, Bihar Value Added Tax Act, 2005 (hereinafter referred to as the 'Bihar VAT Act' or the 'Act of 2005') was prevailing and according to the Sand Policy, the petitioner was liable to pay Value Added Tax (in short 'VAT') only at the rate of 5%. It is the case of the petitioner that till the promulgation of the Goods and Services Tax Law (hereinafter referred to as the 'GST'), the petitioner was discharging its tax liability under the Bihar VAT Act. The petitioner discharged its tax liability on the royalty paid to the

Government under Reverse Charge Mechanism (in short 'RCM') by paying GST at the rate of 5% (2.5% CGST and 2.5% SGST) under the heading 9973, group 99733 and tariff code 99337 "licensing services for the right to use minerals including its exploration and evaluation" which attracted the same rate of GST as on supply of like goods involving transfer of title in goods.

7. It is the case of the petitioner that the aforesaid classification of services has been accepted by the Central Board of Indirect Taxes and Customs (In short 'CBIC') in its Circular No. 164/20/2021 and GST dated 06.10.2021 in which at paragraph '9.3.1' it has been clarified that supply of service by way of granting mineral exploration and mining rights most appropriately fall under service code 997337. It has also been clarified that for the period 01.07.2017 till 31.12.2018 such services shall attract tax at the rate of 18%.

8. It is the case of the petitioner that in order to confirm whether the petitioner was rightly discharging its tax liability on royalty paid to the Government under 'RCM' at the rate of 5% by classifying the same under residual entry of serial no. 17 of Notification No. 11 of 2017, the petitioner filed an application for advance ruling under Section 97 of the Central Goods and Services Tax Act, 2017 (in short 'CGST Act') and Section 97 of the Bihar

Goods and Services Tax Act, 2017 (in short ‘BGST Act’). The Advance Ruling Authority opined *vide* order as contained in Memo No. 1517 dated 29.09.2020 that the service received by the petitioner is covered under the Service Accounting Code (In short ‘SAC’) 997337. The Advance Ruling Authority held that the activity undertaken by the applicant attracts 5% GST (2.5% CGST + 2.5% SGST) up to 31.12.2018 and is taxable at the rate of 18% (9% CGST + 9% SGST) from 01.01.2019 onwards under the residual increase of serial no. 17 of the Notification No. 11 of 2017 dated 28.06.2017 as amended by Notification No. 27 of 2018 dated 31.12.2018.

9. The petitioner challenged the order of the Advance Ruling Authority before this Court in a writ application, the writ was disposed of *vide* order dated 07.07.2021 with liberty to the petitioner to prefer an appeal before the Appellate Authority for advance ruling. Learned counsel for the petitioner has submitted that the petitioner has not preferred any appeal against the order of Advance Ruling Authority. The order of the Advance Ruling Authority as contained in Memo No. 1517 dated 29.09.2020 has been brought on record as Annexure ‘7’ to the writ application.

10. It appears that while the petitioner chose not to file an appeal against the order of the Advance Ruling Authority, the respondent Joint Commissioner, State Tax Shahabad Circle, Ara preferred an appeal on 24.01.2021 before the Appellate Authority for advance ruling against the order as contained in Annexure '7' to the writ application. It was contended on behalf of the appellant that the service received by the petitioner is covered under SAC 999113 which attracts GST at the rate of 18% from 01.07.2017. It was also contended that if there is any doubt then the service should be covered by heading 9997, other service group 99979 service code 999799 on which GST is payable at the rate of 18%. The appeal was registered as Case No. AAAR/01/2021. A memo of appeal has been enclosed with the writ application as Annexure '9'.

11. It is the case of the petitioner that the petitioner appeared before the Appellate Authority for advance ruling, Bihar and filed its counter affidavit raising all the grounds. The petitioner claimed exemption from levy of GST by virtue of entry at serial no. 64 of Notification No. 12 of 2017 dated 28.06.2017. The petitioner also placed reliance on the order contained in Memo No. 8763 dated 22.12.2020 passed by the Commissioner, Central GST and Central Excise, Patna 1 which was an order passed in relation to this petitioner with respect to a proceeding initiated under service tax regime, in which the claim of similar exemption under

Serial No. 61 of the Notification No. 22/2017-ST dated 13.04.2016 was allowed and the proceeding was dropped.

12. Learned counsel for the petitioner has further stated that *vide* order contained in Memo No. 341 dated 10.12.2021, the Appellate Authority for advance ruling allowed the appeal preferred by the Joint Commissioner, State Taxes/Department. However, the services of the petitioner has been held to be taxable at the rate of 18% (9% CGST+ 9% SGST) during the period 01.07.2017 to 31.12.2018 and at the rate of 18% (9% CGST+ 9% SGST) post 01.01.2019. The claim for exemption by the petitioner has been rejected. A copy of the appellate order of the Appellate Authority for advance ruling, Bihar is Annexure '11' to the writ application which is under challenge in the present writ application.

Submissions on behalf of the Petitioner

13. The contention of the petitioner is that the service of 'renting or leasing of immovable property/sand ghats' is rendered by the Government of Bihar in accordance with Section 7 of the CGST Act, it comes within the scope of "supply" as envisaged under the said provision and it is foremost duty of the Government of Bihar to pay the GST amount. The petitioner claims that it is not the liability of the recipient i.e. the petitioner to make payment of

GST on 'RCM' basis, otherwise it would completely defeat the purpose of Section 7 of the CGST/BGST Act, 2017.

14. It is the contention of the petitioner that no service tax was leviable prior to 2016 on mining royalty/dead rent as the same were in the nature of statutory levies and services provided by the Government in pursuance/performance of their statutory functions. Post the amendments in 2015 and 2016, all services provided by a Government or local authority were brought under the ambit of service tax. By expressly providing that only those services by way of assignment of right to use any natural resource where such right was assigned before 01.04.2016 are exempted from service tax, it has been impliedly provided that any services provided by the government by way of assignment of right to use any natural resource where such right was assigned after 01.04.2016 would be exigible to service tax. It is the case of the petitioner that the mining royalty/dead rent was fixed and determined way back in January 2015, therefore, the incidence of tax has occurred much before coming into force of the GST laws.

15. Mr. Sujit Ghosh, learned Senior counsel leading the arguments on behalf of the petitioners has formulated his arguments under the following heads:-

> "**A**. Assuming arguendo that the grant of mineral concession/mining leases amounts to supply of

services, the imposition of GST on such a transaction is violative of Article 14 and 19(1)(g);

B. Assuming arguendo that the grant of mineral concession/mining leases are not hit by Article 14 and 19(1)(g), the imposition of GST under Article 246A is without jurisdiction, since the power to levy tax on mineral rights is exclusively with the State Government under Entry 50, List II of the Seventh Schedule;

C. Assuming arguendo that grant of mineral concession/mining leases entail supply of services for a consideration, such consideration does not comprise only of service fee. Instead, it is a composite charge for regulatory as well as service fee and absent any mechanism to statutorily split these two elements, a charge of GST on the entire sum would be bad in law;

D. Assuming arguendo that the entire royalty amount is construed as being towards service fee, then, if the taxable event has taken place prior to coming into force of GST, the State would have no jurisdiction to impose GST on such cases, merely because periodic payment of royalty is made post the commencement of GST; and

E. Assuming arguendo that this Hon'ble Court is not persuaded with the proposition enumerated in Para A to D above, then the impugned decision of the Appellate Authority of Advance Ruling is bad in law and accordingly, the decision rendered by the Original Advance Ruling Authority holding that the rate of GST on services falling under SAC 997337 attracts GST at 5% up to 31.12.2018 and 18% from 1.1.2019, should be upheld."

(i) Exclusion from GST – as has been provided to Liquor Industry

16. In order to support his submissions under (A) above, learned Senior counsel would submit that the present dispute falls within the principles laid down by the Hon'ble Supreme Court in the case of **State of Gujarat vs. Shri Ambica Mills Ltd.** reported in **(1974) 4 SCC 656**. Paragraph '55' has been relied upon to submit that under the Constitution of India, equals are required to be treated equally and unless there is an intelligible differentia having a rational nexus with the object of the legislation, classification amongst equals cannot be carried out so as to confer privilege on one set of individuals and to deny such a privilege to other set of individuals falling within the same group. Elaborating the submissions, learned Senior counsel submits that in order to ascertain whether the persons are similarly situated, one must look beyond the classification and into the purpose of the law. Keeping in mind these fundamental principles, there can be no denying that those that are granted mining leases form part of the same class as those that are granted license for carrying on business in alcoholic liquor for human consumption. This is so because in both the cases there is a conferment of permissive privilege to the licence holder/mining lease holder to engage in their respective businesses and absent any conferment of such privilege thereof. If the purpose of the law is to impose GST on services of this nature rendered by the Government, then there can be no manner of doubt that business holding alcohol licences and those who are the holder of mining licences form part of the same class. Further, the fact that they fall within the same class also stands buttressed by the opening paragraphs of the Circular No. 121/40/2019-GST dated 11.10.2019 issued by Ministry of Finance, Department of Revenue. Learned Senior counsel has referred paragraph '114' of the Constitution Bench judgment of the Hon'ble Supreme Court in the case of **Mineral Area Development Authority And Anr. Vs. M/s Steel Authority of India and Anr. Etc.** reported in **(2024) 10 SCC 1** (hereinafter referred to as the '**MADA** Judgment') where while examining whether royalty is a tax or not in the context of mining leases, the Hon'ble Supreme Court made an observation which in the submission of the petitioner goes to establish the contextual similarity between mining leases and licences for carrying out business in alcohol. It is his submission that even though these two sets of businesses form part of the same class, the State *vide* Notification No. 25/2019-Central Tax (Rate) dated 30.09.2019 has declared that services by way of grant of alcoholic liquor licence, against consideration in the form of licence fee or application fee or whatever name called is to be treated neither as supply of goods nor as supply of services. The said Notification also explains that the same has been issued to implement the recommendations of the 26th GST Council Meeting where it was recommended that no GST shall be leviable on licence fee/application fee of the aforesaid nature. It is submitted that once a transaction is treated neither as a supply of goods nor a supply of service, the charging section *viz* Section 9 of the CSGT Act, 2017 would not stand attracted and therefore the authority to impose GST stands denuded. It is pointed out that this Notification was followed by Circular dated 11.10.2019 wherein the Ministry of Finance has recorded that the said is a special dispensation only for supply of services by way of grant of liquor licences by the State Governments as an agreement between the Centre and States and has no applicability or precedence value in relation to grant of other licences and privileges for a fee in other situations, where GST is applicable. It is his submission that a special dispensation/largesse has been conferred on supply of services by way of grant of liquor licences by the State Government and it has expressly been admitted that such a special dispensation is not to be extended to situations such as conferment of mining leases. This, according to the petitioner, itself demonstrates that classification is being sought to be created between individuals who fall within the same class.

17. Learned Senior counsel for the petitioner admits that the petitioner has no *locus standi* to challenge the Notification No. 25 of 2019 dated 30.09.2019, nor is the notification under challenge before this Court in this petition. Still, it is submitted that the case of the petitioner, however, is non-consideration of services provided by the Government to itself by way of granting of mining rights/privileges against payment of royalty, from being entitled to the same exclusion from GST as has been provided to the liquor industry. The petitioner relied on the judgement of the Hon'ble Supreme Court in the case of **Ayurveda Pharmacy & Anr. v. State of Tamil Nadu** reported in **(1989) 2 SCC 285** where the Hon'ble Supreme Court had put one of the constituent members of the same class (which were subject to higher rate of sales tax) at par with another constituent of the same class (which was subject to significantly lower rate of tax) and also directed the differential and excess tax paid to be refunded. In that case, the directions were issued by the Hon'ble Supreme Court without disturbing the rate notification which provided lower rate of tax for one of the constituent members. The submission is that the Notification No. 25 of 2019 dated 30.09.2019 is effective from

30.09.2019 and, therefore, the mining industry can be put at par with the liquor industry only from that date. However, the petitioner cannot claim any exclusion from GST for the period from 01.01.2017 to 29.09.2019 on this ground alone.

(ii) Article 246A, notwithstanding the Non-obstante clause cannot be pressed into service to confer legislative power on the State and the Centre to impost GST.

18. As regards his submission under (B) of paragraph '15' hereinabove, it is submitted that in terms of Entry 50, List II of the Seventh Schedule of the Constitution of India, the field of legislation in respect of taxes on mineral rights has been exclusively conferred on the States subject to any limitation imposed by Parliament relating to mineral development. This field of legislation relates back to Article 245 read with Article 246, which confers the source of power for enacting legislation in respect of the fields of legislation enumerated in the Seventh Schedule. The legislative competence to impose GST is however, located in Article 246A and it also contains a non-obstante clause seeking to override the provisions of Article 246.

19. Learned Senior counsel has submitted that conferment of mining licences is essentially an exercise of mineral right and any tax in respect thereof, can be levied only by the State Government and the provisions of Article 246A, notwithstanding the non-obstante clause contained therein, cannot be pressed into service to confer legislative competence on the State and the Centre to impose GST on such transaction. It is submitted that in the **MADA** judgment several legal issues pertaining to the mining industry were settled by the Hon'ble Supreme Court. Amongst these the expression 'taxes on mineral rights' as found in Entry 50 of List II of the Seventh Schedule has been elaborately discussed from paragraph '177' to '260' of the majority judgment. Referring to various paragraphs of the judgment of the Hon'ble Supreme Court in **MADA** case, the learned Senior counsel has submitted that the natural meaning of the term 'mineral rights' will include the entire bundle of rights that follow ownership on minerals, including rights that can be transferred to a lessee through a mining lease. In paragraph '189', the Hon'ble Supreme Court observed that in a situation where the minerals vest with the State by operation of law, the right to those minerals also vests with the State and the State can assign/transfer its mining rights by way of a mining lease to the lessee. In paragraph '195' it has been held that the taxable event under Entry 50 of List II would relate to exercise of mineral rights. In paragraph '197', it was observed that the right to receive royalty is an integral part of the mineral rights of the lessor and that the taxes on mineral rights also take within their fold other aspects relating to the exercise of mineral rights such as working the mines and dispatching of minerals from the leased areas. It is submitted that in paragraph ‘198’ of the **MADA** judgment, the Hon’ble Supreme Court has held that the taxable event with respect to taxes on mineral rights shall be the exercise of mineral rights and incidence of tax on mineral rights depends upon who is exercising the rights and such a tax can be levied on any person who has an interest in the minerals. It is submitted that the power to levy tax by whatever name called on such arrangement rests only with the State Government in terms of the Entry 50 of List II of the Seventh Schedule. It is this very taxable event that is also being sought be taxed under GST.

20. Learned Senior counsel points out that on a perusal of paragraph ‘9’ of the Board Circular dated 06.10.2021, it would appear that GST on mining leases is sought to be imposed on services by way of grant of mineral exploration and mining rights in exchange for which the State receives royalty. The Circular at Para ‘9.3.1’ makes a reference to Service Code 997337 as the appropriate classification. The said Service Code refers to licensing service for the right to use minerals including its exploration and evaluation. The crux of these entries inevitably goes to demonstrate that, the lessor in exercise of its mineral rights (one of them being the right to receive royalty and the other being the transfer of mineral rights) recovers such royalty, by execution of lease agreements in exchange of receipts of such royalty. As such therefore, the substance of the transaction (even though it may be termed as grant of mining rights) is intrinsically exercise of mineral right by lessor while making available such grant. It is submitted that although the pith and substance of the two articulations i.e. right to receive royalty and grant of mineral rights is one and the same and consequently if the jurisdiction to levy tax on mineral right falls exclusively within the domain of State Legislature (Entry 50, List 11 Schedule VII) then the same cannot be said to fall within the jurisdiction of Article 246A to impose GST on a concurrent basis.

21. It is submitted that admittedly Article 246A contains a non-obstante clause which expressly seeks to override the provisions of Article 246. In keeping with this non-obstante clause, a view may emerge that even though power to levy tax on mineral rights may exclusively be with the State Government, however, notwithstanding that power, in terms of Article 246A, the Centre and the State can override such power and impose GST on the very same taxable event i.e. transfer of mineral right, thereby, confirming the legislative competence to impose GST. However, learned Senior counsel for the petitioner submits that this view is required to be eschewed and the integrity and the exclusivity of the State Government to levy tax on mineral rights ought not to be diluted. Relying upon paragraph ‘52’ and ‘53’ of the **MADA judgment** (*supra*), it is submitted that in these paragraphs the jurisprudence of fiscal federalism has been set out. It is submitted that in the case of **S.R. Bommai v Union of India** reported in **(1994) 3 SCC 1,** it has been held that the Courts should not adopt an approach, an interpretation, which has the effect of or tends to have the effect of whittling down the powers reserved to the States.

22. It is submitted that if it is held by the Court that there is no exclusivity on the power of the State to levy tax on mineral rights, then Entry 50 of List II of Schedule VII becomes a useless lumber and otiose. It is trite in law that an interpretation that makes an entry/a provision of the Constitution a useless lumber cannot be perpetuated. The Constitution Bench in **Calcutta Gas Company vs. State of West Bengal** reported in **AIR 1962 1044** (paragraph ‘8’) has held that it is well settled rule of interpretation that attempt should be made at harmonising the different entries in the Constitution and to reject the construction which would rob one of the entries of its entire content and make it nugatory. It is submitted that GST is not to be levied on a transaction involving exercise of mineral rights which is manifested by execution of the lease deed, and the only outcome of such a conclusion would be that such exercise of right does not involve any rendition of service and accordingly does not fall within the ken of Article 246A.

(iii) Royalty is a hybrid of two constituents i.e. distinction between fee for services and Compensatory fee

23. To support his submissions under (C) of paragraph '15' hereinabove, learned Senior counsel for the petitioner admits that the argument under this head is predicated on the assumption that there is some element of service that is entailed in a mining lease, in respect of which royalty is paid, however, the entire royalty is not necessarily towards any alleged service. Referring to paragraph '130' of the **MADA** judgment, it is submitted that their Lordships have held that royalty is a consideration paid by the mining lessee to the lessor for enjoyment of mineral rights and also to compensate for loss of value of minerals suffered by the owner of the minerals.

24. At paragraph '131', their Lordships have held that Section 9 of Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as 'the MMDR Act') statutorily regulates the right of the lessor to receive consideration in form of royalties from the lessee. It is, thus submitted that on perusal of two observations of the Constitution Bench, it may be noticed that the Hon'ble Supreme Court has not said in so many words that royalty is a consideration for rendition of service. Instead, what has been said is that it is a consideration for enjoyment of mineral right, which right of the lessor to receive consideration in the form of royalty is regulated by Section 9 of the MMDR Act.

25. It is submitted that assuming for argument sake that the act that leads to enjoyment of mineral right is a service and that a part of the royalty relates to such service, then the entire amount of royalty is certainly not towards the enjoyment of this right. This is so because according to the Hon'ble Supreme Court, royalty comprises of another aspect i.e. a compensation for loss of values of minerals suffered by the owner of the minerals. As such, the quantum of royalty is a hybrid of two constituents; one, being for the alleged services and the other being the compensation for loss. It is submitted that the second aspect i.e. compensation for loss of mineral is essentially in the nature of a regulatory fee, to regulate the exploitation of mother earth and to compensate the natural resources of the country, such that, excessive mining leading to depletion of mother nature does not take place at the drop of the hat, and intergenerational equity which requires ensuring fairness and justice in distribution of resources, opportunities and burdens across different generations including the current and the future ones to promote sustainable development is perpetuated. The concept of inter-generational equity and natural resources and public trust doctrine has been pithily summarised by the Hon’ble Supreme Court in the **MADA** Judgment at paragraphs 59-66. It is his submission that royalty comprises of two parts, one is compensatory in nature i.e. towards the alleged supply of service in the nature of grant of a privilege and the other being a regulatory fee. Relying upon the Constitution Bench judgment of the Hon’ble Supreme Court in the case of **Corporation of Calcutta & Anr. v. Liberty Cinema** reported in **AIR 1965 SC 1107** (paragraph ‘8’), it is submitted that in the said judgment the Hon’ble Supreme Court has drawn a distinction between fee for services and fee for licence and it has been held that imposition of licence fee does not lead to a conclusion that the fee must only be for the services rendered. Learned Senior counsel has relied upon the decision of the Hon’ble Supreme Court in the case of **State of Tripura and Ors. vs. Sudhir Ranjan Nath** reported in **AIR 1997 SC 1168** (paragraph ‘14’ and ‘15’) and the decision in the case of **Vam Organic Chemicals Ltd. & Anr. v. State of UP and Ors.** reported in **(1997) 2 SCC 715**. It is submitted that in the case of

State of Bihar and Ors. vs. Shree Baidyanath Ayurved Bhawan (P) Ltd. & Ors. reported in **(2005) 2 SCC 762** in the context of the Bihar Excise Act, the distinction between regulatory fee and compensatory fee was once again reiterated.

26. It is submitted that power to levy tax under Article 246A is restricted only to supply of goods and services and does not extend to transactions involving loss of mineral, compensation of damages, charges which are regulatory in nature. According to him, power to levy tax is restricted only on the service element. The portion of royalty relatable to enjoyment of mineral right may be a service, whereas, the compensation for loss of minerals read with Section 9 of MMDR Act is a regulatory fee and not fee for services. It is thus submitted that for a valid imposition of tax under Article 265, there should be clarity and certainty in respect to the measure of tax. Relying upon the judgment of the Hon'ble Supreme Court in the case of **Govind Saran Ganga Saran v. Commissioner of Sales Tax & Ors.** reported at **1985 (Supp) SCC 205** (paragraph '5') it is submitted that in the said judgment it has been held that if the components of taxation (measure of tax, taxable event, rate of tax and the taxable person) are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law. Any uncertainty or vagueness in legislative scheme defining any of those components of levy will be fatal to its validity. On the basis of the aforementioned submissions, it is the contention of the petitioner that under the GST regime since there is no machinery provision to dissect the portion of royalty that pertains to supply of service and that which pertains to regulatory fee, the State would have no jurisdiction to levy tax on the entire amount of royalty. It is submitted that in absence of a valuation mechanism the entire value of royalty would be outside the ken of GST notwithstanding that an unalienable portion of such royalty may be towards services.

(iv) Taxable event – taking place prior to coming into force of GST on Execution of Agreement

27. In his next argument in terms of (D) of paragraph ‘15’ hereinabove, learned Senior counsel submits that assuming that the entire royalty amount is construed as being towards service fee, then, if the taxable event has taken place prior to coming into force of GST, the State would have no jurisdiction to impose GST on such cases, merely because periodic payment of royalty is made post the commencement of GST. It is submitted that there are four components that go into taxation namely, taxable person, measure of tax, rate of tax and the taxable event, and if there is vagueness in respect of any of these components then charge of tax cannot be fastened. While this principle is of golden vintage and was laid down in the landmark judgment of the Supreme Court in **Govind Saran** (*supra*) it has been once again reiterated in the **MADA** judgment at paragraph '192' of the majority opinion and paragraph '10.10' in the minority judgment, where paragraph '6' of the decision of the Hon'ble Supreme Court in **Govind Saran** (*supra*) has been referred to by the Hon'ble Supreme Court. It is submitted that the importance of the fact that taxable event must take place on or after the date when the legislation imposing tax is in force and not prior to that date had come for consideration before the Hon'ble Supreme Court in the case of **Collector of Central Excise, Hyderabad vs. Vazir Sultan Tobacco Company Limited** reported in **1996 (83) ELT 3 (SC) : (1996) 3 SCC 434**. Learned Senior counsel has also relied upon Constitution Bench judgment in the case of **20th Century Finance Corporation Limited & Anr. vs. State of Maharashtra** reported in **(2000) 6 SCC 12** where the purposes of ascertaining when transfer of right to use any goods (as contemplated under Article 365(29A)(d) takes place, it was observed in paragraph '27' that the transfer of right takes place once a written contract is entered into between the parties and the taxable event would be the execution of contract for the right to use goods. It is submitted that in respect of grant of mineral exploration rights which is manifested by execution of mining lease, the taxable event for transfer of such right would therefore be the date on which the formal contractual arrangement is executed transferring and vesting of such mineral rights from the lessor to the lessee.

28. It is submitted that in the present case, on 21.10.2014, the petitioner was declared as the highest bidder in respect of auction of sand ghats carried out for a five-year period starting 01.01.2015 to 31.12.2019. *Vide* letter of even date, the same was communicated to the petitioner directing it to pay 25% of the auction amount of Rs. 115.31 crores within seven days for issuance of an in-principle sanction order. The said in-principle sanction order was issued *vide* letter dated 06.11.2014 for the district of Patna which clearly mentioned that the period of sanction duration was 2015-2019. Reference to the said sanction order can be found at page no. 138, second paragraph of the writ petition which is a part of the settlement deed. It may be noted that in terms of Rule 7 of the 1972 Bihar Mineral Concession Rules, as also Rule 16 of the 2019 Rules, the duration of mineral concession is to be for five years. Further, the in-principle sanction order is the first step which is followed by issuance of a work order and thereafter execution of the settlement deed. In the 2019 Rules, Rule 29A(1)(b) deals with issuance of an in-principle sanction order, sub-clause (c) thereof deals with the issuance of a work order and Rule 29(2) makes reference to the signing of a deed for a period of five years. It is submitted that in this case, the petitioner made the necessary payments as directed in the letter dated 21.10.2014 and was accordingly issued appropriate work order and thereafter executed the settlement deed on 16.09.2015 in respect of sand ghats of Patna and at or about the same time for the other sand ghats. The petitioner has given the precise settlement amount that was required to be paid by the petitioner for the five calendar years starting 2015. It is his submission that the vestiture of the right to carry out mining activity was conferred on the petitioner as early as in September, 2015 and even prior to that the in-principle sanction order was issued sometime in November, 2014, all of which took place prior to 01.07.2017 i.e. the date of commencement of GST. While admittedly, yearly settlement deeds were executed and there were agreements that were executed post 01.07.2017, however, those executions according to the petitioner were a mere formality since the in-principle sanction order under which the vesting of right took place was issued on 06.11.2014 and even the first agreement for the calendar year 2015 also contemplated that the settlement amounts are to be paid for the five calendar years, thereby binding the petitioner with an obligation to pay the settlement amounts for those five years. Under these circumstances, the petitioner humbly submits that (a) Those settlement deeds which were signed prior to 01.07.2017, the taxable event has taken place pre-commencement of GST (i.e. 01.01.2017), charge of GST on settlement payments made under these agreements cannot be subjected to GST. (b) In respect of those settlement agreements that may have been signed post 01.01.2017, since both the principle sanction orders and the settlement deed for the calendar year 2015 clearly bound down the petitioner with an obligation to pay the settlement amount for the five calendar years clearly indicating the amounts payable for each calendar year, the rights and obligations of the parties stood frozen on that date, which would be in substance the date when the petitioner acquired the right which would have given rise to approaching the writ court for protection of such right. The subsequent execution of the settlement agreements post 01.01.2017 was at best a mere formality since no new rights or obligations were created between the parties. In any case, statutorily in terms of the Rule 7 of the 1972 Rules and Rule 16 of the 2019 Rules, settlement deeds were required for a period of five years thereby clearly laying down the intent of the present statutory contract. It is submitted that upon the end of the settlement deed for the calendar year 2019 while fresh agreements were required to be signed, however, the State of Bihar instead of issuing fresh agreements extended the existing agreement from 31.12.2019 to 31.10.2020, and thereafter further extensions were granted up to 30.09.2021. It is his submission that these extensions are not renewal or execution of a new agreement. In law, the term 'extension' means continuation of an existing arrangement and therefore, if under the original agreement, the taxable event took place prior to the commencement of GST then such extension cannot be said to trigger a new taxable event. To demonstrate the distinction between the word 'extension' and 'renewal', learned Senior counsel has cited the judgment of the Hon'ble Supreme Court in the case of **Provash Chandra Dalui vs. Bisawanath Banerjee** reported in **1989 Supp (1) SCC 487** (paragraph '14').

29. Learned Senior counsel for the petitioner has further advanced his submissions as formulated under (E) of paragraph '15' hereinabove. It is submitted that even if this Hon'ble Court is not persuaded with the proposition as enumerated in paragraph 'A' to 'D' above, then the impugned decision of the appellate authority of advance ruling is bad in law and accordingly, the decision rendered by the original Advance Ruling Authority holding the rate of GST on services falling under SAC 997337 attracts GST at 5% up to 31.12.2018 and 18% from 01.01.2019, should be upheld. It is submitted that Advance Ruling Authority categorically held that the petitioner is liable to GST at the rate of 5% up to 31.12.2018 and at the rate of 18% with effect from 01.01.2019 in view of the amendment of the rate Notification No. 27/2018 dated 31.12.2018, w.e.f. 01.01.2019. The authority has held in paragraph '12.4' that after meticulous examination of service accounting code, it was found that the nature of service received by the petitioner is covered under the service accounting code 997337 i.e. licencing services for right to use minerals, including their exploration and evaluation.

30. It is submitted that the petitioner did not file an appeal against the said order, the Revenue filed an appeal before the appellate authority of advance ruling. On perusal of grounds of appeal set out in the appeal memo, it can be seen that the only ground of the appeal was *qua* the correctness of service accounting code applicable to the petitioner which was held by the original authority to fall under 997337. In specific terms, the Revenue in its appeal memo had contended that the correct service accounting code should be 999113 and if there is any doubt then the correct classification should be 999799. *Vide* the impugned order dated 10.12.2021, the appellate authority upheld the classification as held by the original authority i.e. 997337. To that extent, such an affirmation was against the appellant revenue's contention. However, in breach of the basic propriety of an appellate authority's jurisdiction, it travelled beyond the scope of appeal by holding that rate of GST payable would be 18% with effect from 01.01.2017 and for that purposes reliance was placed on a circular of the Board dated 06.10.2021 where at paragraph '9.3', the Board had clarified that the intention of the Government has always been to tax the activity at a standard rate of 18%.

31. It is submitted that the appellate authority has recorded an erroneous finding on merits as well as in law. In paragraph '8.2' of the impugned appellate order, the appellate authority holds that the petitioner's case does not involve any assignment of any right to use any natural resources since the activity of the petitioner in no way involves using the sand extracted by it and instead parts with sand extracted. Thereafter, at paragraph '8.3' it went to hold that in the petitioner's case what actually transpires between the Government and the petitioner is the grant of a licence by the Government whereunder the petitioner is entitled to explore/extract sand and sell the sand as opposed to using the sand and the arrangement does not involve assigning the right to use sand. It is submitted that these findings are not only perverse but also in the teeth of the very classification 997337 that it has affirmed. It is submitted that the rate of tax necessarily would be governed by the rate notification and not by any administrative instruction. In the realm of taxation, levy of tax cannot be fastened through administrative circular. Reference in this context is placed on the decision of the Hon'ble Supreme Court in **Punit Rai vs. Dinesh Chaudhary** reported in **(2003) 8 SCC 204** where in paragraph '42' it has been clearly laid out that a circular/letter being an administrative instruction is not law within the meaning of Article 13. In **Harivansh Lal Mehra vs. State of Maharashtra** reported in **(1971) 2 SCC 54** (paragraph '6'), it has been clearly held that no tax can be levied through circular. It is submitted that *vide* Notification No. 27/2018 dated 31.12.2018 with effect from 01.01.2019, Entry 17 of the earlier notification stood amended and the residuary category was made subject to a rate of tax of 9% CGST (cumulative GST being 18% comprising of CSGT and SGST).

32. It is submitted that during the course of the hearing, this Court had raised a query on whether the petitioner not having filed an appeal against the original order of advance ruling and having thus accepted the rate of 5% and 18% respectively can be permitted to agitate at this stage that these activities are not at all taxable, before a writ court. In response to the pointed query, the petitioner had submitted that the grounds on which the non-taxability was canvassed before the Court are aspects which go to the jurisdiction of the legislatures to levy GST and are also pure questions of law. Reliance has been placed on the recent judgment of Hon'ble Supreme Court in the case of **Raju Ramsing Vasave vs. Mahesh Deorao Bhivapurkar** reported in **(2008) 9 SCC 54** where in paragraph '32' the Hon'ble Supreme Court had categorically held that the principle of *res judicata* though undoubted is a salutary principle, the said principle however amongst other has some exceptions, for example (i) when judgment is passed is without jurisdiction, (ii) a matter involves pure question of law or (iii) when judgment has been obtained by committing fraud on court. The petitioner also relied upon Constitution Bench judgment in **Basheshar Nath vs. Commissioner of Income Tax, Delhi** reported in **AIR 1959 SC 149** (paragraph '15' and '19'). Reliance has also been placed on the judgment of the Hon'ble Supreme Court in the case of **Olga Tellis and Ors. vs. Bombay Municipal Corporation and Ors.** reported in **(1985) 3 SCC 545** where at paragraph '28' and '29' it has been held that doctrine of acquiesce or waiver cannot apply where the issue involved pertains to violation of Article 14 and 19(1)(g).

Submissions on behalf of the State

33. Mr. Vikash Kumar, learned Standing Counsel-11 has opposed the submissions of the learned Senior Counsel for the writ petitioners. Learned counsel has adopted the stand of the State as disclosed in the counter affidavit filed in CWJC No. 18206 of 2023, in all these writ applications. It is submitted that earlier during 'VAT' there was a provision for periodic payment of advance tax. If the settlee fails to pay 'VAT' in advance, he would have been liable to be declared defaulter and ineligible for extension of settlement agreement. In post GST era, the incidence of settlement of sand ghat and sale of sand are taxable. Settlement of sand ghat is supply of service where Government is supplier and the settlee is recipient of supply. GST has been introduced across the country. For implementing this new tax system with effect from 1st of July, 2017, seventeen different indirect taxes of the Centre as well as States have been subsumed and the Central and State Governments have been empowered to levy and collect tax on supply of goods and services simultaneously. The present is entirely a new tax regime and for implementing this tax system, several amendments were made in the Constitution of India itself through the 101st Constitutional Amendment Act, 2016. In the Constitution itself, a very broad and comprehensive definition of "services" was introduced under Article 306 of the Constitution of India. Clause 26A was inserted after Clause 26 of Article 366 which defines the word "services" means anything other than goods;

In line with the spirit of the Constitution, GST Act also defines "services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged. It is submitted that on going through the definition of services given under the Constitution as well as the GST Act, it is very clear that the definition of 'Services' is very broad. At the same time, going through the definition of the word "consideration" under the GST Act it would appear that any activity of awarding license for sand mining comes under the category of service and payment of settlement amount is the consideration against that service.

34. It is submitted that the mining lease executed is nothing but a contract to undertake mining operations in the leased mining area. The settlement amount paid by the settlee to the

Government is nothing but a “consideration” to have mining operations in the leased area on execution of a mining lease. It is a part of agreement arrived between the parties to have lease of a mining area for undertaking mining operations. The settlement amount being consideration certainly places assignment of right to use natural resources deposited in the leased area as a service as any activity carried out by a person for another for consideration is a service.

35. The stand of the respondent department regarding its taxability is substantiated by the scope of supply under Section 7 of GST Act and scheme of classification of services wherein it is clearly visible that this activity not only comes under the category of service but is also a service taxable at 18%. Learned counsel has referred Section 7 and the scheme of classification which is Annexure ‘R/2’ to the counter affidavit.

36. Learned counsel submits that on the recommendation of the GST Council, Circular No. 164/20/2021-GST dated 6th October, 2021 has been issued. It has been clarified that even if the rate schedule did not specifically mention the rate of taxation on service by way of grant of mining rights, during the period 01.07.2017 to 31.12.2018, it was taxable at 18% in view of principle laid down in the 14th meeting of the Council for residuary GST rate. Post 1st January, 2019, no dispute remains.

37. It is submitted that the consideration received as settlement amount for the right to use minerals including its exploration and evaluation as per the Notification No.11/2017- CT (rate) dated 28.06.2017 as amended and included in sub-heading 997337 attracts GST rate at 18% (9% CGST and 9% SGST) on reverse charge mechanism basis as stipulated in Section 2(98) of BGST/CGST Act, 2017.

38. It is submitted that since the supply of services by the government to a business entity located in the taxable territory are covered under serial no. 5 of the Notification No. 13/2017-central tax dated 28.06.2017 the liability to pay the tax gets transformed to the recipient of such services under Reverse Charge Mechanism as the services for right to use minerals including exploration and evaluation are provided by the Government of Bihar to the business entity. It is submitted that the settlement amount is itself a tax or not is irrelevant in this context because as per Section 15 (2) of the CGST/SGST Act, value of taxable supply shall include any taxes, duties, cesses, fees and charges levied under any law the time being in force other than GST Act. The relevant provision is sub-section (2) which states that the value of supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation of States) Act, if charged separately by the supplier. It is his submission that from all these provisions, it would be established that the activity of awarding license to mine sand by the Mines Department is not only a service but is also a service taxable at the rate of 18% under GST. The submissions of learned Standing Counsel-11 for the State have been summarised in paragraph '16' of the counter affidavit which we quote hereunder for a ready reference:-

> "16. That from the submission made hereinabove it is clear that-
> i. The taxable event in GST is "supply" of goods or services or both.
> ii. As per the provision of Section-7 of CGST/GST Act, 2017 license, rental or lease covered within the meaning of "supply"
> iii. Scheme of Classification of services and rate of tax on different types of services notified vide Notification No.11/2017 CT(rate) dt. 28/06/2017
> iv. As per the annexure appended with the above notification, Leasing services have been classified under entry no.257 under Group No.99733 and sub Heading 997337 which are as follows…
> v. "Licensing services for the right to use minerals including its exploration and evaluation."

vi. Settlement amount paid by the Settlee (of sand ghats) to the government is nothing but an amount paid for getting right to use the minerals granted to it for a specified period as per term of lease.

vii. As per above explanation leasing /settlement of Sand Ghats covered at Sr. no. 17of Notification no.11/2017 CT(Rate) dt. 28/06/2017.

viii. Since description of services under serial no. 17 (i) to vii (a) does not cover such services therefore, it would fall under the residual entry at sr. no. 17(viii).

a. Rate of tax on the services classified under entry no.17(viii) of the Notification No.11/2017 CT(Rate) dt. 28/06/2017 is notified as 18% (9% CGST & 9% SGST) [Substituted vide Notification No.27/2018 dt. 31/12/2018]

ix. Liability of such tax is to be discharged by the recipient under Reverse Charge Basis (RCM) if supplier of the service is government. (Ref. Sr.no.5 of Notification No.13/2017 CT (Rate) dt. 28/06/2017]

x. Thus, in the light of the above provisions Settlees are required to pay GST @ 18% on the entire settlement amount paid to the government on Reverse Charge Basis.

xi. GST Paid on such lease rent will be eligible for ITC as it does not covered in the list of blocked credit u/s.17(5).**”**

39. Learned counsel submits that the petitioner has placed reliance on Section 9 of the MMDR Act but as per the provision of Section 14 of MMDR Act, Section 9 is not applicable in the case of Minor Minerals.

40. It is further submitted that before introduction of the GST Act i.e. prior to 1st July, 2017 VAT Act was completely independent of service tax Act. As per Section 9(3) of the

CGST/SGST Act, the petitioner is liable to pay taxes on services received by him.

41. It is submitted that appellate authority on advance ruling of Bihar and Orissa clearly establish the fact that the activity of awarding license to mine sand by the Mines Department is not only a service but is also a service taxable at the rate of 18% under GST. Petitioner has mentioned some of the orders of Hon'ble High Courts wherein interim stay has been granted on the payment of GST for grant of mining lease. However, it is pertinent to mention that the Hon'ble Apex Court has already dismissed the various petitions including one of **M/s Lakhwinder Singh** (supra). It is submitted that the tender document itself says that the settlee have to pay the amount of the GST as per the applicable rate. It means that the taxpayer (petitioner), by participating in the tender, has already accepted the applicability of GST liability on the said transaction.

42. In course of argument, learned Standing Counsel-11 has submitted that so far as the scope of the present writ applications are concerned, it is liable to be restricted to the issues raised by the petitioner before the Advance Ruling Authority. The petitioner itself admits in paragraph '16' of the writ application that the petitioner under *bona fide* advise discharged its tax liability on the royalty paid to the Government under reserve charge mechanism by paying GST at the rate of 5% (2.5% CGST and 2.5% SGST) under the heading 9973, group 99733 and tariff code 997337 “Licensing services for the right to use minerals including its exploration and evaluation.” The only issue which was raised by the petitioner before the Advance Ruling Authority was with regard to the rate and whether the petitioner was rightly discharging its tax liability of royalty paid to the government under ‘RCM’ at the rate of 5%.

43. It is submitted that the petitioner did not raise any grievance before the appellate authority for advance ruling against the order of the Advance Ruling Authority. It was the Department who had gone to the appellate authority. It would appear from the submissions of the writ petitioner made before the Advance Ruling Authority recorded in the order (Annexure ‘7’) that before the Advance Ruling Authority, the petitioner never contended that the GST would not be payable on the royalty or that they would be entitled for exemption under serial no. 64 of the Notification No. 12/2017 dated 28.06.2017. It is submitted that in the counter affidavit filed before the appellate authority for advance ruling, the petitioner has categorically stated in paragraph ‘9’ of its counter affidavit that “since the classification of the services being received by the respondent is now settled, the dispute in the instant appeal remains only regarding the rate of tax for the disputed period i.e. from 01.07.2017 to 31.12.2018 and also from 01.01.2019 onwards."

44. It is pointed out that before the appellate authority for advance ruling, the petitioner did not raise any contention with regard to the taxability of the amount paid on account of royalty, though the petitioner contended that it would be entitled for exemption under serial no. 64 of the Notification No. 12 of 2017 dated 28.06.2017. The submission of the petitioner before the appellate authority that it would not be liable to pay any GST on the royalty paid to the State of Bihar for the disputed period i.e. from 01.07.2017 till 31.12.2018 and even thereafter is based on the contention that the rate of GST mentioned in Circular No. 164/20/2021-GST dated 06.10.2021 for the period 01.07.2017 to 31.12.2018 shall not apply to the respondent because the settlement for the entire five years was finalised on 21.10.2014 after issuance of the in-principle approval which is much before 01.04.2016 and the settlement amount for the entire period of five years was decided after culmination of the auction and issuance of the in-principle work order. It is submitted that such a contention was not open to the petitioner by way of submissions in the counter affidavit on the face of the fact that the petitioner had moved the Advance Ruling Authority only on the point of classification and rate of tax applicable in case of the petitioner.

45. Learned counsel has further submitted that most of the submissions of Mr. Sujit Ghosh, learned Senior counsel with regard to the taxability under the GST regime are only the repetitions of the submissions made before the Hon'ble Supreme Court in **MADA** case. Learned counsel has taken this Court through paragraph '508' of the judgment in **MADA** case to submit that the views expressed in the said paragraph is the minority view and this is not the view of the majority. Learned counsel has taken this Court through paragraph '135' to '137' and paragraph '365' of the **MADA** judgment. It is submitted that the judgment of the Hon'ble Supreme Court in the case of **20th Century Finance Corpn. Ltd** (*supra*) has nothing to do with the grant of mining rights. This case is related to the Finance Act. In the present case, the only issue is the classification issue. The petitioners were already making payment under the Bihar VAT Act and thereafter under the GST Act. Under Bihar VAT Act, 5% was payable as advance tax which they were paying.

46. Learned counsel submits that GST is payable on settlement amount. It is payable with payment of every installment of the settlement amount and in case where royalty on extracted quantity of sand which is more than the settlement amount, then the settlee shall be liable to pay additional settlement amount. The settlement amount is the consideration. Learned counsel submits that from the order of the Advance Ruling Authority, (Annexure '4') it would appear that the petitioner agreed to deposit GST liabilities in accordance with the updated notification. The appellate authority has also upheld the classification in the same category i.e. 997337 but rightly relied upon the GST Council recommendation. The GST Council has been given a constitutional status. In this regard, learned counsel has relied upon the judgment of this Court in case of **M/s Barhonia Engicon Private Limited and Ors. vs. The State of Bihar and Ors**. **(CWJC No. 4180 of 2024)**.

47. Learned counsel submits that the petitioner has not argued on 'exemption' because the Notification No. 12 of 2017-Central Tax dated 28.06.2017 in (Annexure '14'), service code 64 talks of exemption on tax payable on one-time charge whereas the petitioner is paying the settlement amount in installments.

<u>Rejoinder on behalf of the Petitioners</u>

48. Learned Senior counsel for the petitioner has responded to the contention of the learned Standing Counsel-11. It is submitted that the contention of learned Standing Counsel-11 saying that the petitioner has accepted its liability to pay tax on the services rendered by the State Government and that advance ruling was sought only to the extent of a rate of tax, is only trying to persuade this Court to reject the petitioner's contention on the very jurisdiction to levy GST on the transactions in question and to foreclose it from agitating violations of Article 14 and 19(1)(g) and other constitutional restriction that apply on State's Jurisdiction to levy GST. Learned counsel submits that principles of *res judicata* would not apply to the present case where issues of jurisdiction exists and also where it involves a pure question of law.

49. Learned counsel further submits that learned Standing Counsel for the State has sought to distinguish the argument of the petitioner *qua* royalty in the context of GST by saying that it would not be applicable to the settlement amounts which is a distinct concept. It is submitted that the MMDR Act, 1957 was enacted by the Parliament in exercise of the regulatory power conferred on the Central Government under Entry 54 of List I. Section 4 thereof, specifically prohibits any person from undertaking any mining operation without appropriate mining lease granted under the Act. It is submitted that while Section 9 contemplates payment of royalty in respect of mining leases, in terms of Section 14 it has been provided that, even though Section 4 applies to minor minerals, Sections 5-13 *inter alia* includes Section 9 pertains to royalty would not apply to minor minerals. In fact, Section 15 confers powers on the State Government to make rules in respect of minor minerals. Pursuant to that power at present Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019 (hereinafter called the ‘2019 Rules’) are in force, though earlier the 1972 Rules used to prevail. In the said Rules, in Rule 2(xvi), the term ‘mining concession’ has been defined to mean mining lease or settlement in respect of minor minerals and includes quarrying permits permitting the mining of minor minerals.

50. The term 'mineral concession holder/ settlee/ lessee has been defined in Rule 2(xvii) to mean a person holding a valid mineral concession for quarrying sand and other minor minerals from the settled/leasehold areas. Rule 2 (xxvi) defines the term ‘settlement’ to mean the mining right given on behalf of the government to quarry, win, work and carry away sand and other minor minerals through a competitive bidding process. Rule 11 of the said Rules echoes the same principle as provided in Section 4 of the MMDR Act inasmuch as that no person can undertake any mining operation except under and in accordance with the terms and conditions of the mining lease. Chapter V of the said 2019 Rules provides for the concept of settlement of sand and Rule 29A provides for a mode of settlement through public auction and thereafter issuance of an in-principle sanction order, followed by an issuance of work order. As per Rule 29B(2), the successful bidder is awarded the concession to mine sand for a period of five years and the parties are required to execute a settlement deed in a prescribed statutory format (Form B). Rule 29B(3) provides for the mode of payment of royalty and settlement amount according to which a settlee shall make the payment of the settlement amount in terms of the bid and any excess mineral extracted beyond the annual settlement amount, the lessee is required to pay an additional royalty in respect of additional quantity as extracted in addition to the settlement amount. Chapter XII deals with mining revenue and as per Rule 51 thereof, once a mineral concession is granted apart from surface rent and debt rent, royalty is required to be charged at the rates specified in Schedule IIIA. Further, Rule 51(5) provides that notwithstanding anything contained in any instrument of lease, the mineral concession holder shall pay rent/royalty in respect of any minor mineral owned, extracted at rates specified from time-to-time under Schedule II and IIIA. It is submitted that on perusal of Schedule IIIA referred to in Rule

51(1)(b), the rate of royalty for sand from auctioned ghats have been prescribed as the auction amount. Under these circumstances, according to the learned Senior counsel for the petitioner, it goes without saying that the settlement amount is nothing but a royalty both in substance as also in terms of specific language that can be discerned from Rule 51 read with Rule 51(4) and other rules alluded to in the preceding paragraphs.

51. Learned Senior counsel further contested the submission of the State that since the royalty for each year was increased by 20% in respect of which the State executed yearly agreements, it cannot be said that the assignment was for 5 years.

52. As regards the submission of learned Standing Counsel for the State that the petitioner has built its central argument on the basis of the minority judgment in the **MADA** case, it is submitted that the State are wholly in error in making such submission. Since the petitioner has relied upon the specific para forming part of majority view of the Court which starts from paragraph ‘1’ and ends at paragraph ‘343’ whereas the minority decision starts at paragraph ‘1.1’ and ends at paragraph ‘44’. The only place where the minority decision was referred to was to assist the Court in appreciating the law laid down by the Hon’ble Supreme Court in the case of **Govind Saran** (*supra*) in paragraph

'10.10' and to that extent there is no divergence between majority and minority view on this aspect. In fact, even at paragraph '184' read with foot note 254 of the majority decision the said judgment has also been referred thereupon.

53. Learned counsel for the petitioner submits that the contention of the State justifying Notification No. 25/2019 dated 30.09.2019 saying that the recommendations of the GST Council are binding and that on the recommendation of the Council the services by way of grant of alcoholic liquor license was held to be neither supply of goods nor supply of service is unfounded and the same is to be rejected. It is contended that if the recommendations of the GST council was the be-all and end-all for a particular tax dispensation, it would mean that the GST Council, a Constitutional body created under Article 279A, is immune to rigors of Part III of the Constitution and thus exercises an extra-constitutional authority sitting above the Constitution. Such a position cannot be countenanced by any means when it is well known that no authority howsoever high is above the rule of law.

54. As regards the submission of the State with respect to serial no. 64 of the Notification No. 12/2017 dated 28.06.2017, it is submitted on behalf of the petitioner that the Entry 64 read with the proviso contained therein provided that the service provided by the Government by way of assignment of any right to use natural resources where such right to use was assigned before 01.04.2016 would bear a GST of nil rate. However, the proviso states that the exemption shall apply only to tax payable on a one time charge payable in full upfront or in installments for assignment of right to use in such natural resource. It is submitted that perhaps learned counsel for the State sought to canvass that while the petitioner is exempt from GST, in respect of assignment that took place prior to 01.04.2016, the exemption is restricted to only a one-time charge (whether paid upfront or in installments) but cannot be extended to royalties paid on an intermittent basis during the subsistence of the lease.

55. It is submitted that there is a fundamental flaw in the State's submission which essentially is predicated on the basis that apparently, the exercise of jurisdiction to levy tax can be determined by looking at delegated legislation in the form of exemption notifications and if through a delegate legislation exemption has not been accorded to certain aspects, the corollary of that would be that such aspect is taxable. Such an argument of the State is wholly bad in law for it is well known that the aspects of jurisdiction to levy tax inheres under Article 265, other Constitutional restrictions and embargos and also the substantive legalisations enacted therein. It is submitted that in the case of **Commissioner Central Excise and Customs, Kerala vs. Larsen and Toubro** reported in **2015 (35) GSTR 168 : AIR 2015 SC 3600** (paragraph '44'), the Hon'ble Supreme Court had held that were the levy of service tax itself has been found to be non-existent, no question of any exemption would arise.

56. Dr. K.N. Singh, learned ASG, who is assisted by Mr. Anshuman Singh, learned Senior Standing Counsel, appears for the Union of India. The Union of India has endorsed the submissions of learned SC-11.

<u>Consideration</u>

57. Having heard learned Senior counsel for the petitioners and learned SC-11 for the State as also learned ASG for the Union of India, at first instance, we find that at least six out of eleven writ applications which are under consideration have been filed by M/s BSCPL. M/s 'BSCPL' had filed an application under Section 97 of the CGST/BGST Act, 2017 before the Advance Ruling Authority.

58. Section 97 permits filing of an application for obtaining advance ruling, stating the question as enumerated under Sub-Section (2) of Section 97 on which advance ruling is sought.

The scope and ambit of Section 97 may be appreciated on going through the said Section which we quote hereunder:-

> "**97. Application for advance ruling.**
>
> (1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and manner and accompanied by such fee as may be prescribed, stating the question on which the advance ruling is sought.
>
> (2) The question on which the advance ruling is sought under this Act, shall be in respect of,--
>
> (a) classification of any goods or services or both;
>
> (b) applicability of a notification issued under the provisions of this Act;
>
> (c) determination of time and value of supply of goods or services or both;
>
> (d) admissibility of input tax credit of tax paid or deemed to have been paid;
>
> (e) determination of the liability to pay tax on any goods or services or both;
>
> (f) whether applicant is required to be registered;
>
> (g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.
>
> This clause provides for form, manner and fee for filing of an application for advance ruling. This clause also lists the nature of questions on which advance ruling can be sought. *(Notes on Clauses)*."

Acceptance of Liability to pay GST

59. In its application, the petitioners/applicants submitted before the authority that they have a lease agreement with the Department of Mines, Bihar Patna *vide* Letter No. 2961/M dated 31.10.2018 for a period of five years (2015-2019) and *vide* Letter No. 3391/Mines-Patna dated 28.12.2019. It was extended upto 31.10.2020 for mining of sand. It was contended that the value of lease decided by the Department of Mines, Bihar, Patna is worth Rs. 85,33,72,729/- and this value is enhanced by 50% of the lease value for the extended period. Paragraph '7' of the lease agreement dated 31.12.2018 agrees that the applicants will pay GST applicable at the present rate and the proof of payment shall he submitted to District Mining Office, Patna, paragraph '1(ii)' of Letter No. 3391/Mines, Patna dated 28.12.2019 agrees that the applicant shall deposit GST liability in accordance with the updated notification.

Question on which Advance Ruling sought

60. The petitioners being applicant before the Advance Ruling Authority submitted that they have deposited the tax liability in Government treasury by reverse charge mechanism ('RCM') at the same rate of tax as on supply of like goods involving transfer of title in goods. The applicant sought advance ruling on the following question:- “(i) Whether M/s Broad Son Commodities Pvt. Ltd. is rightly discharging the taxable liability @ 5% through reverse charge mechanism?”

Order of the Advance Ruling Authority

61. In the aforementioned background, after hearing learned Advocates for the parties, the concerned authority recorded a finding in paragraph ‘12.3’, ‘12.4’ and ‘12.5’ which are relevant to take note of hereunder for the purpose of this case:-

> “**12.3.** The applicant has obtained Government land on lease for mining sand. The leasing of the Government land to the applicant is considered as supply of services, as per subsection (1) of Section 7 of the CGST Act, 2017.
>
> **12.4.** Regarding the classification of service received by the applicant an annexure to the Notification No. 3.-11/2017- Central Tax (Rate) dated 28.06.2017 has been referred. The annexure attached to the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 has defined the Service Accounting Code for each type of services. After meticulous observation of the above mentioned service accounting codes, it has been found that the nature of service received by the application is covered under the Service Accounting Code 9073 37- “licensing services for the right to use minerals including its explorations and evaluation. The Government has been providing the service of licensing services for the right to use minerals after its exploration and evaluation to the applicant and the applicant has to pay a consideration

in the form of rent/ royalty to the Government of Bihar for the same.

12.5. The applicability of GST rate for the aforementioned service is based on the classification of service. In the present case, the mining rights so granted are covered under the sub-heading 9973 37 that specifies - Licensing services for the right to use minerals including its exploration and evaluation. We have gone through the notification no. 11/2017 dated 28-6-2017 and the amendments made there under time to time particularly notification no 27/2018 dated 31-12-2018. We now find that the royalty in respect of mining lease is a part of the consideration payable for the licensing Services for right to use minerals including exploration and evaluation falling under the Head 9973, which is taxable at the rate applicable on supply of like goods involving transfer of title in goods up to 31-12-2018 and thereafter taxable at 9% CGST and 9% SGST from 04-01-2019, under the residual entries of Serial No.17 of the Notification No. 11/2017 Central Tax dated 28.06.2017 as amended by Notification No. 27/2018 Central Tax (Rate) dated 31-12-2018.”

62. The Advance Ruling Authority answered the question in the following words:-

“The activity undertaken by the applicant attracts 5% GST (2.5%. CGST + 2.5% SGST) upto 31-12.2018 and taxable at the rate of 18% (9% CGST + 9% SGST) from 01.01.2019 onwards under the residual entries of serial no 17 of the Notification No. 11/2017

> dated 28-06-2017 as amended by Notification 27/2018 dated 31-12-2018."

<u>Challenge to the Order of Advance Ruling Authority in Writ Jurisdiction</u>

63. At this stage, it is required to be mentioned that being aggrieved by the order of the Advance Ruling Authority, the petitioner preferred a writ application being CWJC No. 3286 of 2021 in which the following reliefs were prayed for:-

> "i) the order dated 17.09.2020 (as contained in Annexure -1) passed by the respondent no.1 and 2 under section 98 of the Central Goods and Services Tax Act 2017 (hereinafter called the CGST Act) and Bihar Goods and Services Tax Act, 2017 (hereinafter called BGST Act) classifying mining activity in the nature of licensing services for the right to use minerals including its exploration and evaluation taxable at the rate of 9% CGST and 9% BGST with effect from 01.01.2019 under the residual entries of serial no. 17 of the Notification No.11/2017, Central Tax dated 28.06.2017 as amended by Notification No.27/2018 dated 31.12.2018 Central Tax (Rate) dated 31.12.2018 be quashed.
>
> ii) for a declaration that licensing services for the right to use minerals including its exploration and evaluation fall specifically under heading 9973 (licensing or rental services with or without operator) as notified in item 17 of Notification No.11/2017 Central Tax (Rate) dated 28.06.2017 particularly clause (iii) thereof read with the subsequent Notification No.31/2017 Central Tax (Rate) dated 13.10.2017, Notification No.1/2018 Central Tax (Rate) Central Tax (Rate) dated 25.01.2018 and

> Notification No.27/2018 Central Tax (Rate) dated 31.12.2018.
>
> iii) for a declaration that classification of mining activity in the nature of licensing services for the right to use minerals including its exploration and evaluation taxable at the rate of 9% CGST and 9% BGST with effect from 01.01.2019 under the residual entries of serial no. 17 of the Notification No.11/2017, Central Tax dated 28.06.2017 as amended by Notification No.27/2018 dated 31.12.2018 Central Tax (Rate) dated 31.12.2018 would only fall under the inverted duty structure and consequently, would be refundable and that levy of tax at higher rates on like goods would be constitutionally impersssible.
>
> iv) for granting any other relief (s) to which the petitioner is otherwise found entitled to."

64. When the writ application was taken up for consideration, the Hon'ble Court was informed by learned Standing Counsel for the State that the appellate authority under the provisions of the BGST Act, 2017 stands constituted. The writ application was disposed of in the following terms:-

> "Shri Vikash Kumar, learned Standing Counsel No. 11 invites our attention to the notification dated 21st of September, 2017 whereby the Appellate Authority under the provisions of the Bihar Goods and Services Tax Act, 2017 stands constituted.
>
> In this view of the matter, as prayed for by Shri D.V. Pathy, learned counsel for the petitioner, we dispose of the present petition in the following mutually agreeable terms:-
>
> (a) The petitioner shall file appeal within a period of eight weeks from today;
>
> (b) We accept the statement of the petitioner that ten per cent of the total amount, being condition prerequisite for

hearing of the appeal, already stands deposited. If that were so, the appeal shall be decided on merits. However, if the amount is not deposited for whatever reason(s), same shall be done before the next date;

(c) This deposit shall be without prejudice to the respective rights and contention of the parties and subject to the order passed by the Appellate Authority. However, if it is ultimately found that the petitioner’s deposit is in excess, the same shall be refunded within two months from the date of passing of the order;

(d) We also direct for de-freezing/de-attaching of the bank account(s) of the writ-petitioner, if attached in reference to the proceedings, subject matter of present petition. This shall be done immediately.

(e) The Appellate Authority shall condone the delay, if any, in filing the appeal and decide the appeal on merits after complying with the principles of natural justice;

(f) Opportunity of hearing shall be afforded to the parties to place on record all essential documents and materials, if so required and desired;

(g) During pendency of the appeal, no coercive steps shall be taken against the petitioner.

(h) The Appellate Authority shall pass a fresh order only after affording adequate opportunity to all concerned, including the writ petitioner;

(i) Petitioner through learned counsel undertakes to fully cooperate in such proceedings and not take unnecessary adjournment;

(j) The Appellate Authority shall decide the appeal on merits expeditiously, preferably within a period of two months from the date of filing of the appeal;

(k) The Appellate Authority shall pass a speaking order assigning reasons, copy whereof shall be supplied to the parties;

(l) Liberty reserved to the petitioner to challenge the order, if required and desired;

(m) Equally, liberty reserved to the parties to take recourse to such other remedies as are otherwise available in accordance with law;

(n) We are hopeful that as and when petitioner takes recourse to such remedies, before the appropriate forum, the same shall be dealt with, in accordance with law, with a reasonable dispatch;

(o) We have not expressed any opinion on merits and all issues are left open;

(p) If possible, proceedings during the time of current Pandemic [Covid-19] be conducted through digital mode;

The instant petition sands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, also stands disposed of.

Learned counsel for the respondents undertakes to communicate the order to the appropriate authority through electronic mode**”**

<u>No Appeal Preferred by the Petitioner(s)</u>

65. It is an admitted position that the petitioners did not approach the appellate authority for advance ruling. It was the Department through the Joint Commissioner, State Tax who preferred an appeal giving rise to case No. AAAR/01/2021-22. The Department was aggrieved by the order dated 29.09.2020 passed by the Advance Ruling Authority to the extent that the amount received for settlement of sand ghat (*bandobasti*) by Mines and Geology Department during settlement of sand ghats shall be chargeable to tax at the rate of 5% between the period 01.07.2017 to 31.12.2018.

Stand of M/s BSCPL-Petitioner before the Appellate Authority

66. M/s BSCPL being respondent before the appellate authority appeared and contested the said appeal by filing a counter affidavit. In paragraph '9' of their counter affidavit, the respondents made the following submissions:-

> "That since the classification of the services being received by the Respondent is now settled the dispute in the instant appeal remains only regarding the rate of tax for the disputed period i.e. from 01.07.2017 to 31.12.2018 and also from 01.01.2019 onwards."

67. Having said so, the respondent went on to make further submissions in the counter affidavit. They contended that pursuant to the Sand Policy, Notification No. 2887 dated 22.7.2014, tender document and Letter No. 506 dated 21.10.2014 the State Government had settled the sand ghats for a period of 5 years. The settlement amount for the said period of five years was payable in five equal yearly installments. In these documents it was stated that the yearly settlement amount for the year 2015 shall be the auction amount. In the subsequent years the settlement amount shall be 120% of that of previous year. The schedule for payment of the yearly installment amount was also provided for in all the documents. The first installment of 50% of the yearly installment amount was to be paid by 15th December of the previous year, 25% was to be paid before 15th April and rest 25% was to be paid before 15th September. The said settlement period was extended till 31.10.2020 *vide* Resolution contained in Memo No. 4948 dated 27.12.2019 with an increase of 50% of the settlement amount. Thereafter, it was further extended till 31.12.2020 *vide* Resolution No. 2646 dated 14.09.2020 and then it was extended till 31.03.2021 *vide* Resolution No. 3435 dated 30.12.2020. The extension was lastly granted *vide* Notification No. 986/M Patna dated 31.03.2021 from 01.04.2021 to 30.09.2021. It is in this background, at this stage, in this writ application, it is being contended that the petitioner cannot be subjected to GST because the taxable event has taken place prior to coming into force of the GST regime. Admittedly, this issue was not raised before the Advance Ruling Authority in the application filed under Section 19 of the SGST/BGST Act, 2017.

68. This Court further finds that another issue which was in the counter affidavit by way of submission is with regard to the exemption under serial no. 64 of the Notification No. 12 of 2017 dated 28.06.2017. The said notification has been issued by the Government of India in the Ministry of Finance (Department of Revenue), in exercise of power conferred by subsection (3) and subsection (4) of Section 9, subsection (1) of Section 11, subsection (5) of Section 15 and Section 148 of the CGST Act, 2017. The preamble of the notification states as follows:- "...the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts the intra-State supply of services of description as specified in column (3) of the Table below from so much of the central tax leviable thereon under sub-section (1) of section 9 of the said Act, as is in excess of the said tax calculated at the rate as specified in the corresponding entry in column (4) of the said Table, unless specified otherwise, subject to the relevant conditions as specified in the corresponding entry in column (5) of the said Table…."

Serial No. 64 of the Notification No. 12 of 2017 reads as under:-

> "Services provided by the Central Government, State Government, Union territory or local authority by way of assignment of right to use any natural resource where such right to use was assigned by the Central Government, State Government, Union territory or local authority before the 1st April, 2016:
> Provided that the exemption shall apply only to tax payable on one time charge payable, in full upfront or in installments, for assignment of right to use such natural resource"

69. The respondent before the appellate authority submitted that under the GST regime, the respondent would be covered by the exemption granted under serial no. 64 of the Notification No. 12/2017 and is not liable to pay any GST on 'RCM' basis on the royalty paid to the government. It is apparent on the record that this was not the subject matter of the discussion falling within the scope of Section '97' of the CGST/BGST, Act, 2017 before the Advance Ruling Authority in the original application.

70. We have already taken note of the fact that the petitioners had moved this Court in the writ application and several reliefs were prayed for therein. One of the reliefs prayed in the writ application was to quash the order dated 17.09.2020 passed by respondent nos. 1 and 2 under Section 98 of the CGST Act, 2017 and BGST Act, 2017 by which the mining activity of the petitioner was classified in the nature of licensing services for the right to use minerals including its exploration and evaluation taxable at the rate of 9% CGST and 9% BGST with effect from 01.01.2019 under the residual entries of serial no. 17 of the Notification No.11/2017, Central Tax dated 28.06.2017 as amended by Notification No. 27/2018 dated 31.12.2018. It is evident that the petitioner did not challenge the entire order dated

17.09.2020 of the Advance Ruling Authority. Further, the petitioner sought for a declaration that licensing services for the right to use minerals including its exploration and evaluation fall specifically under heading 9973 (licensing or rental services with or without operator) as notified in item 17 of Notification No.11/2017 Central Tax (Rate) dated 28.06.2017 particularly clause (iii) thereof read with the subsequent Notification No.31/2017 Central Tax (Rate) dated 13.10.2017 Notification No.1/2018 Central Tax (Rate) Central Tax (Rate) dated 25.01.2018 and Notification No.27/2018 Central Tax (Rate) dated 31.12.2018.

Shift of Stand of the Petitioner

71. It is evident that while the petitioner did not challenge the entire order of the Advance Ruling Authority in the writ petition, even as they did not prefer any appeal before the appellate authority for the advance ruling against the said order, when it came to file a counter affidavit in the appeal preferred by the Department, they raised two issues beyond the scope of Appeal which we have taken note of hereinabove. The tentative kind of approach of the respondent M/s 'BSCPL' may be seen from the kind of prayer made in paragraph '35' of their counter affidavit before the appellate authority. There, they prayed for setting aside the order of the Advance Ruling Authority as it is bad in law.

Contrary to the said prayer in the counter affidavit filed before the appellate authority, in this Court a submission has been made in alternative that in case this Court is not persuaded with the proposition enumerated in paragraph 'A' to 'D', then the impugned decision of the appellate authority of advance ruling be held bad in law and the decision rendered by the original Advance Ruling Authority holding that the rate of GST on services falling under SAC 997337 attracts GST at 5% up to 31.12.2018 and 18% from 01.01.2019 should be upheld. This is a shift of stand by way of alternative submission on behalf of the petitioner in the present writ application.

72. It is evident from a bare reading of Section 97 of the CGST/BGST Act that the scope for seeking advance ruling is limited to the certain questions. Sub-Section (2) of Section 97 lays down the questions in respect of which the advance ruling may be sought. M/s BSPCL/respondent chose to obtain advance ruling with regard to the question no. (a) of Sub-Section (2). They wanted an advance ruling on the classification of the service. Within the scope of the said question, the Advance Ruling Authority opined that the activity undertaken by the applicant would be covered under the sub-heading 9973 37 that specifies that "licensing services for the right to use minerals including its exploration and evaluation". M/s BSCPL/respondent neither preferred any appeal even while opposing the appeal preferred by the Department, despite there being an opportunity granted by the Hon'ble Division Bench of this Court in CWJC No. 3286 of 2021.

73. It is a matter of record that in the writ filed before this Court, the respondent-M/s BSCPL was rather looking for a declaration that licensing services for the right to use minerals including its exploration and evaluation fall specifically under heading 9973 (leasing or rental services, with or without operator) as notified in Item No. 17 of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 particularly clause (iii) thereof read with the subsequent Notification No. 31/2017 Central Tax (Rate) dated 13.10.2017, Notification No. 1/2018 Central Tax (Rate) Central Tax (Rate) dated 25.01.2018 and Notification No. 27/2018 Central Tax (Rate) dated 31.12.2018. Thus, in no way, the submissions which are being advanced by learned Senior Counsel for the petitioner under 'A' to 'D' of paragraph '37' hereinabove were ever raised at any stage of the proceeding. We are, therefore, of the considered opinion that the law being very clear on the subject, the present petitioners well understood the law and never raised any issue of taxability under head 9973.

**Royalty is not a Statutory Impost/Tax --
MADA Judgment**

74. We further find that when the present writ application was filed, the petitioner prayed for various reliefs. They went on to seek declaration that royalty being in the nature of statutory impost is a tax and, therefore, the same cannot be exigible to further taxation (paragraph no. 1 (iv)). The petitioner further sought a declaration that the grant of mineral concession is merely a statutory function/ duty under provisions of law, it does not amount to rendition of any service, therefore, the same does not attract the levy of GST. We have taken note of the arguments formulated by learned Senior Counsel under paragraph '15' of our judgment. We are of the opinion that most of the arguments which have been convassed by learned Senior Counsel for the petitioners were already discussed and have been answered by the Hon'ble Supreme Court in **MADA** judgement. While dealing with the issues as to whether royalty is in the nature of a tax?, in paragraph '130', their lordship held as under:-

> "**130.** On first principles, royalty is a consideration paid by a mining lessee to the lessor for enjoyment of mineral rights and to compensate for the loss of value of minerals suffered by the owner of the minerals. The marginal note to Section 9 states that royalties are "in respect of mining leases." The liability to pay royalty arises out of the contractual conditions of the mining lease.[170]

170. [See Mineral Concession Rules, 1960, Rules 27 and 45]

> A failure of the lessee to pay royalty is considered to be a breach of the terms of the contract, allowing the lessor to determine the lease and initiate proceedings for recovery against the lessee."

75. In paragraph '133' of the judgment, their lordships have 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;
> (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;[171] and
> (iii) royalty generally flows from the lease deed as compared to tax which is imposed by authority of law."

76. In the same judgment, the Hon'ble Supreme Court has held that 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.

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

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".

77. The Hon'ble Supreme Court in **MADA** judgment specifically held in paragraph '129' and '130' that the principles applicable to royalty apply to dead rent because: (i) dead rent is imposed in the exercise of the proprietary right (and not a sovereign right) by the lessor to ensure that the lessee works the mine, and does not keep it idle, and in a situation where the lessee keeps the mine idle, it ensures a constant flow of income to the proprietor; (ii) the liability to pay dead rent flows from the terms of the mining lease; (iii) dead rent is an alternate to royalty; if the rates of royalty are higher than dead rent, the lessee is required to pay the former and not the latter; and (iv) the Central Government prescribes the dead rent not in the exercise of its sovereign right, but as a regulatory measure to ensure uniformity of rates. It has been clearly held that both royalty and dead rent do not fulfil the characteristic of tax or impost.

78. As regards the transfer of mineral rights to the lessee, the Hon'ble Supreme Court has held in paragraphs '340', '341', '342', '343' and '344' as under:-

> "**340**. A mining lease contemplated under the MMDR Act relates to the mining rights and mineral rights. It does not grant surface rights to the mining lessee. However, surface rights are essential to begin any mining operations. In fact, obtaining of the surface rights by a mining lessee over the area where mining operations will be conducted is a prerequisite condition for grant of both a prospecting licence as well as a mining lease. The lessee requires access to the surface rights to effectively exercise their mining rights and privileges enumerated under Part II of Form K. Moreover, as held in Burrakur Coal[346], the mining lessee requires enjoyment of surface rights to effectively carry out the mining operations. There cannot be any severance between the two during the continuance of the mining operations.
>
> **341**. The more important question is when do the mineral rights transfer to the lessee? Since Independence, State legislatures have enacted a spate of land reform laws vesting the right to mines and minerals in the State Government.[348] Through the instrument of a mining lease, the State Government transfers its rights in the sub-soil minerals to the lessee for the period of the lease. The nature of the leasehold rights accruing to the lessee can be determined on the basis of the Transfer of Property Act.

346. [Burrakur Coal Co. Ltd. v. Union of India, 1961 SCC OnLine SC 23 : AIR 1961 SC 954]

348.[Gujarat Land Revenue Code, 1879, Section 69-A; Madhya Pradesh Land Revenue Code, 1959, Section 247; Chhatisgarh Land Revenue Code, 1959, Section 247; Goa, Daman and Diu Land Revenue Code, 1968, Section 36.]

A right to carry on mining operations in land to extract a specified mineral and to remove and appropriate that mineral is a "right to enjoy immoveable property" within the meaning of Section 105 of the Transfer of Property Act.[118] In case of a mining lease, the property can be enjoyed by working the mine as indicated in Section 108 of the Transfer of Property Act.

342. Section 110 of the Transfer of Property Act deals with the exclusion of the day on which the term of the ease commences. It provides that where the time limited by a lease of immoveable property is expressed as commencing from a particular day, in computing that time such day shall be excluded. It further provides that in situations where the lease does not mention the day of commencement, the time limited by the lease commences from the day of the making of the lease. The model mining lease under Form K specifies the day from which the mineral rights are granted and demised unto the lessee. Thus, the transfer of right to enjoy the property under a mining lease commences from the specified day of commencement. Resultantly, the rights and interests in the minerals specified in the mining lease are transferred from the State Government to the lessee on the specified day of the commencement of the lease deed.

343. Once the interest in the minerals is transferred under a mining lease, the lessee acquires the right to work the mine and win the minerals. It is through this process of working the mine and winning of minerals that minerals are extracted or obtained from the earth irrespective of whether such activity is carried out on the surface or in the bowels of the earth.[349] Although the title to minerals vests in the State Government, the mining lease transfers the interest in the mineral from the State Government to the mining lessee.

118. [Tarkeshwar Sio Thakur Jiu v. Dar Dass Dey & Co., (1979) 3 SCC 106, para 37]
349. [Tarkeshwar Sio Thakur Jiu Case, (1979) 3 SCC 106, para 15]

> During the whole process, the minerals continue to remain embedded in the earth, either over or above. Thus, there is no decoupling of minerals from land. It is well established that tax on land can also be imposed on an occupier. When a mining lease is granted, the lease holder necessarily has to occupy the surface rights of the area specified in the lease. Resultantly, the leaseholder has rights to both the minerals and surface during the subsistence of the mining lease.
> **344**. We do not agree with the respondent's submission that the mineral rights are transferred from the State to the mining lessee only upon the extraction of minerals. Once the lease deed is signed, the interest in the minerals is transferred from the State Government (in case the minerals vest in the State Government) to the lessee. The interest of the lessee in the minerals continues until the determination of the lease deed. It is only upon the exercise of mineral rights by the lessee, that is removal or consumption of minerals, that the lessee is required to pay royalty. Thus, the transfer of interest in the minerals is distinct from the exercise of the mineral rights. In view of the above discussion, it is clear that minerals are "decoupled" from land only upon the exercise of mineral rights by the lessee."

<u>Royalty is to be paid only upon Exercise of "Mineral Rights" – Incidence of Tax</u>

79. From the discussions made in the above-mentioned paragraphs of the **MADA** judgment, it is crystal clear that while the transfer of right to enjoy the property under a mining lease commences from the specified day of commencement and the rights and interest in the minerals specified in the mining lease are transferred from the State Government to the lessee on the specified day of the commencement of the lease deed, the lessee is required to pay royalty only upon exercise of minerals right, that is removal or consumption of minerals. This gains importance as it resolves the issues raised by learned Senior Counsel for the petitioner in his submissions in terms ‘D’ of paragraph ‘15’. Learned Senior Counsel for the petitioner has argued that merely because periodic payment of royalty is made post the commencement of GST, the State would have no jurisdiction to impose GST because the taxable event has taken place prior to coming into force of GST. It is his submission that the petitioner was declared the highest bidder on 21.10.2014 in respect of auction of sand ghats for a period of five years advancing from 01.01.2015 to 31.12.2019. The submission in this regard have been taken note of hereinabove in paragraph ‘50’ of the jugdment. According to him, the the vestitute of the right to carry out mining activity was conferred upon the petitioner as early as in September, 2015 and even prior to that the in-principle sanction order was issued sometime in November, 2014, all of which took place prior to 01.07.2017 i.e. the date of commencement of GST. While learned Senior Counsel admits that yearly settlement deeds were executed and there were agreements that were executed post 01.07.2017, however, those executions according to the petitioner were a mere formality. We find no merit in this submission. Learned Senior Counsel for the State has rightly submitted that the GST is payable on the payment of every installment of the settlement amount and in case where royalty on extracted quantity of sand is more than the settlement amount, then the settlee shall be liable to pay additional settlement amount. In view of the judgment of the Hon'ble Supreme Court, there is no iota of doubt that the transfer of interest in minerals is distinct from the exercise of minerals rights and the royalty is required to be paid only upon exercise of the mineral rights by the lessee.

Entry 50 of List II under Seventh Schedule, Article- 246A of the Constitution of India

80. We further find that while discussing the measure to determine the tax, the Hon'ble Supreme Court has discussed Entry 49 and 50 of List II under Seventh Schedule of the Constitution of India. It has been held that both the Entries operate in different fields without any overlap. The nature of tax under both the Entries i.e. Entry 49 and 50 of List II are distinct. In paragraph '364' of the **MADA** judgment, the Hon'ble Supreme Court has held as under:-

> "**364**. In view of the above discussion, we conclude that mineral value or mineral produce could be used as a measure of the tax on land under List II Entry 49. The fact that List II Entry 50 pertains to taxes on mineral rights would not preclude the State

legislature to use the measure of mineral value or mineral produce under List II Entry 49. The State legislature has legislative discretion to determine the appropriate measure for the purposes of quantifying taxes, so long as there is a reasonable nexus between the measure and the nature of the tax. The measure does not determine the nature of the tax. The words "lands" under List II Entry 49 includes mineral-bearing land. The mineral produce is the yield from a mineral-bearing land. Since royalty is determined on the basis of the mineral produce, royalty can also be used as a measure to determine the tax on royalty. The fact that the State legislature uses mineral produce or royalty as a measure does not overlap with List II Entry 50."

(underline is mine)

81. The conclusions reached by the Hon'ble Supreme Court in **MADA** judgment may be found in paragraph '365' of the judgment which we reproduce hereunder for a ready reference:-

"**365**. In view of the above discussion, we answer the questions formulated in the reference in terms of the following conclusions:

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;

365.2. List II Entry 50 does not constitute an exception to the position of law laid down in M P V

Sundararamier[6]. The legislative power to tax mineral rights vests with the State legislatures. Parliament does not have legislative competence to tax mineral rights under List I Entry 54, it being a general entry. Since the power to tax mineral rights is enumerated in List II Entry 50, Parliament cannot use its residuary powers with respect to that subject-matter;

365.3. List II Entry 50 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 List II Entry 50;

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

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

365.6. 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 List II Entry 49. The decision in Goodricke[7] is clarified to this extent;

6. [M.P.V. Sundararamier & Co. v. State of A.P., 1958 SCC OnLine SC 22 : AIR 1958 SC 468 : 1958 SCR 1422]

7. [Goodricke Group Ltd. v. State of W.B., 1995 Supp (1) SCC 707]

365.7. List II Entries 49 and 50 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 List II Entry 49;

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

365.9. The decisions in India Cement[1] (India Cement Ltd. v. State of T.N., (1990) 1 SCC 12), Orissa Cement[163], Federation of Mining Associations of Rajasthan[338], Mahalaxmi Fabric Mills[165] , Saurashtra Cement[164], Mahanadi Coalfields[251], and P Kannadasan[261] are overruled to the extent of the observations made in the present case.”

82. Now, coming to the GST Laws, the Constituion (101st Amendment) Act, 2016. Section 9 inserted Article 269A in the Constitution of India. Article 269A is as under:-

---

163. Orissa Cement Ltd. v. State of Orrisa, 1991 Supp (1) SCC 430, para 36
338. Federation of Mining Associations of Rajasthan v. State of Rajasthan, 1992 Supp (2) SCC 239
165. State of M.P. v. Mahalaxmi Fabric Mills Ltd., 1995 Supp (1) SCC 642
164. Saurashtra Cement & Chemical Industries v. Union of India, (2001) 1 SCC 91
251. State of Orissa v. Mahanadi Coalfieds Ltd., 1995 Supp (2) SCC 686
261. P. Kannadasan v. State of T.N., (1996) 5 SCC 670

"**269-A**. Levy and collection of goods and services tax in course of inter- tate trade or commerce.— (1) Goods and services tax on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.

Explanation.—For the purposes of this clause, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter- State trade or commerce.

(2) The amount apportioned to a State under clause (1) shall not form part of the Consolidated Fund of India.

(3) Where an amount collected as tax levied under clause (1) has been used for payment of the tax levied by a State under Article 246-A, such amount shall not form part of the Consolidated Fund of India.

(4) Where an amount collected as tax levied by a State under Article 246-A has been used for payment of the tax levied under clause (1), such amount shall not form part of the Consolidated Fund of the State.

(5) Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce."

83. At the same time, Article 246-A has also been inserted which is quoted hereunder:-

> "**246-A**. Special provision with respect to goods and services tax.—(1) Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.
> (2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.
> *Explanation*.—The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of article 279-A, take effect from the date recommended by the Goods and Services Tax Council."

84. In the above background, the Parliament enacted the Central Goods and Services Tax Act, 2017. The preamble of the Act reads as under:-

> "An Act to make a provision for levy and collection of tax on intra-State supply of goods or services or both by the Central Government and for matters connected therewith or incidental thereto.
> BE it enacted by Parliament in the Sixty-eighth Year of the Republic of India as follows: -- "

85. The contention of learned Senior Counsel for the petitioners that conferment of mining licenses is essentially an exercise of mineral right, therfore, any tax may be levied only by State Government and the provision of Article 246A notwithstanding the non-obstante clause contained therein cannot be pressed into service to confer legilative competence on State and Centre to impose GST, is liable to be rejected. Artcle 246A of the Constitution of India is a special provision with respect to goods and services tax. The power of State to make laws on the subject under List II, Entry 50 of Seventh Schedule and power under special provisions may be well harmonised.

86. Similarly, the Legislature of the State of Bihar enacted BGST Act, 2017 which makes provision for levy and collection of tax on intra-State supply of goods or services or both by the State Government and for matters connected therewith or incidental thereto. Various provisions of the CGST Act were notified on different dates. The Central Government appointed the 22nd Day of June 2017 as the date on which the provisions of Sections 1, 2, 3, 4, 5, 10, 22, 23, 24, 25, 26, 27, 28, 29, 30, 139, 146 and 164 of the said Act shall come into force (Notification No. 1/2017-Central Tax, dated 19.06.2017 w.e.f. 22.06.2017). Again vide Notification No. 9/2017-Central Tax, dated 28.06.2017, the Central Government appointed the First day of July, 2017 as the date on which the provisions of Sections 6 to 9, 11 to 21, 31 to 41, 42 except the proviso to sub-section (9) of section 42, 43 except the proviso to sub-section (9) of sections 43, 44 to 50, 53 to 138, 140 to 145, 147 to 163, 165 to 174 of the said Act to come into force.

87. For the purpsoe of the present case, we take note of the definition of the word "services" as provided under Section 2, clause (102) -- "services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged; 1[Explanation.—For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities;]

88. The word "State Tax" has been defined under Section 2 clause (104) which means the tax levied under any State Goods and Services Tax Act.

89. Section 7 of the CGST/BGST Act, 2017 talks of scope of "supply". Clause (a) of Sub-Section (1) of Section 7 includes all forms of supply of goods or services including licence, rental and lease for consideration within the expression "supply". It is, therefore, evident that leasing of mines and grant of mineral rights to a lessee for consideration comes within the meaning of supply of services.

90. Before the Appellate Authority for advance ruling, one of the arguments raised on behalf of the petitioner was with regard to his claim for exemption under Serial No. '64' of the Exemption Notification No. 12/2017. While arguing the writ application, learned Senior Counsel has not specifically argued this point.

<u>Classification of Services – Notification No. 11/2017-Central Tax (Rate); 27/2018- Central Tax (Rate) dated 31.12.2018 and Circular No. 164/2021 dated 06.10.2021-discussed</u>

91. Now, we would firstly deal with Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 which has been issued by the Central Government on recommendations of the Council, in exercise of its power conferred in Sub-Section (1) of Section 9, Sub-Section (1) of Section 11, Sub-Section (5) of Section 15 and Sub-Section (1) of Section 16 of the CGST Act, 2017. The Notification specifically states that "the Central Government, on the recommedations of the Council, and on being specified that it is necessary in the public interest so to do hereby notify that the Central Tax, on the Intra-State supply of services of description as specified in Column (3) of the table below, falling under Chapter, Section or Heading of scheme of classification of services as specified in Column (2) shall be levied at the rate as specified in the corresponding Entry in Column (4) subject to the conditions as specified in the corresponding Entry in Column (5) of the said table which is as under:-

Sl No.	**Chapter, Section or Heading**	**Description of Service**	**Rate (per cent.)**	**Condition**
(1)	(2)	(3)	(4)	(5)

92. The scheme of the classification of services is also provided with the Notification No. 11/2017 by way of annexure. The relevant classification of group 99733 is as under:-

250	**Group 99733**		**Licensing services for the right to use intellectual property and similar products**
251		997331	Licensing services for the right to use computer software and databases
252		997332	Licensing services for the right to broadcast and show original films, sound recordings, radio and television programme and the like
253		997333	Licensing services for the right to reproduce original art works
254		997334	Licensing services for the right to reprint and copy manuscripts, books, journals and periodicals
255		997335	Licensing services for the right to use research and development products
256		997336	Licensing services for the right to use trademarks and franchises
257		**997337**	Licensing services for the right to use minerals including its exploration and evaluation
258		997338	Licensing services for right to use other natural resources including telecommunication spectrum
259		997339	Licensing services for the right to use other intellectual property products and other resources nowhere else classified

(underline is mine)

93. Vide Notification No. 27/2018-Central Tax (Rate), dated 31.12.2018 the Central Government brought further amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue) No. 11/2017-Central Tax (Rate) dated 28th June, 2017. One of the amendments were brought against Serial No. 17 for Item No. VIII in Column (3) and the entries relating thereto in Column '3', '4' and '5'. The following were substituted:-

"(e) against serial number 17, for item (viii) in column (3) and the entries relating thereto in columns (3), (4) and (5), the following shall be substituted, namely ;-

(3)	(4)	(5)
"(viia) Leasing or renting of goods	**Same rate of central tax as applicable on supply of like goods involving transfer of title in goods**	-
(viii) Leasing or rental services, with or without operator, other than (i), (ii),(iii), (iv), (v), (vi), (vii), and (viia) above	9	-

94. In view of the aforementioned notifications, the Advance Ruling Authority held in the original order that the activity undertaken by the applicant attracts 5% GST (2.5% CGST + 2.5% SGST) up to 31.12.2018 and taxable at the rate of 18% (9% CGST + 9% SGST) from 01.01.2019 onwards under the residual Entries of serial no. 17 of Notification No. 11/2017 dated 28.06.2017 as amended vide Notification No. 27/2018 dated 31.12.2018.

95. The Department, however, brought to the notice of the Appellate Authority the Circular No. 164 of 2021 dated 06.10.2021 which was issued on the recommendation of the GST Council in its 45th meeting. The relevant portion of the said circular has been quoted in paragraph '7.3' of the appellate order and we reproduce the same hereunder:-

> "7.3 While considering the issue of rate of tax applicable to the said service the Council took note of the following facts:-
>
> "(a) GST Council in its 4th meeting held on 3rd & 4th November, 2016 had decided that supply of services shall be generally taxed at the rate of 18%;
>
> (b) More importantly, the GST Council in its 14th meeting held on 18th & 19th May, 2019, while recommending the rate schedules of services (5%, 12%, 18% and 28%) specifically recommeded that all the residuary services would attract GST at the rate of 18%.
>
> (c) The rate applicable on the service of grant of mineral exploration license and mining lease under Service Tax was also the standard rate of 15.5%. Services under this category have been standard rated in GST at 18%;
>
> (d) Therefore, the intention has always been to tax this activity/supply at standard rate of 18%."

Order of the Appellate Authority on Advance Ruling -- Approved

96. In paragraph '7.4' of the appellate order, the Appellate Authority has quoted the relevant part of the circular which states that "as recommended by the Council, it is clarified that even if the rate schedule did not specifically mention the service by way of grant of mining rights, during the period 01.07.2017 to 31.12.2018, it was taxable at 18% in view of principle laid down in the 14th meeting of the Council for residuary GST rate. Post 1st January, 2019, no dispute remains as stated above".

97. We find from the above-mentioned notifications that the Notification No. 11 of 2017 under serial no. 17 made the leasing or rental services, with or without operator other than (i), (ii), (iii) and (iv) above taxable at the same rate of central tax as applicable on supply of like goods involving transfer of title in goods. The GST Council has been established as an Constitutional Body and the said GST Council in its 4th meeting held on 3rd and 4th November, 2016 had decided that supply of services shall be generally taxed at the rate of 18%. In its 18th and 19th May, 2019 meeting, the GST Council while recommeding the rate schedule for services (5%, 12%, 18% and 28%) specifically recommeded that all the residuary services would attract GST at the rate of

18%. In these circumstances, in our opinion, the Appellate Authority on advance ruling has not committed any error taking a view with regard to the rate of tax for the period 01.07.2017 to 31.12.2018 at the rate of 18% (9% CGST + 9% SGST).

Claim of Exemption Rightly Negatived by the Appellate Authority

98. As regards the exemption claimed under serial no. 64 of the Notification No. 12 of 2017, the Appellate Authority for advance ruling has rightly taken a view that the said exemption would not be available to M/S BSCPL. Paragraph '9.1' of the impugned appellate order provides the reason which we quote underunder for a ready reference:-

> "9.1 Before, parting with the issue it is also being clarified that the expression "... where such right to use was assigned by the Central Government, State Government, Union Territory or local authority before the 1st April, 2016:... "occurring in the said serial number 64 of the impugned notification number 12/2017 (supra) also does not come to the rescue of the Respondent on factual grounds alone. A perusal of the agreement and other document submitted by the Respondent before this Court as also before the Authority for Advance Ruling reveals that the separate yearly agreement and work orders were issued by the Authorities of the Mining Department, Government of Bihar in

> respect of each calender year. Even the Respondent himself has stated in para 16 of this reply that:-
>
> *"Separate yearly work orders were issued in favor of the Respondent for the district of Patna, Saran and Bhojpur. Consequent thereto,* ***separate yearly agreements were executed*** *by the District Magistrate of Patna and Bhojpur."*

99. We have already reproduced Serial No. 64 of the Notification No. 12 of 2017 in paragraph '68' hereinabove.

100. Perhaps for the aforesaid reason, learned Senior Counsel for the M/S BSCPL/petitioner in the writ application has not raised this issue of exemption under any of his formulations of arguments which have been noted in paragraphs 'A' to 'D' of the written notes of submissions which we have reproduced in paragraph '15' hereinabove.

Transfer of Interest is Different from Exercise of Mineral Rights – Royalty can be used as a Measure of Tax on Royalty

101. From the entire discussions made hereinabove, to this Court it is crystal clear that the submissions advance by learned Senior Counsel for the petitioner under paragraphs A to E of paragraph '15' have no basis to stand. The judgment of the Hon'ble Supreme Court in **MADA** case has made it very clear that royalty is not a tax. It is a contractual consideration paid by the mining lessee to the lessor for enjoyment of minerals rights. Royalty becomes payable only upon exercise of minerals rights by the lessee that is removal or consumption of minerals. The transffer of interest in minerals is distinct from the exercise of the mineral rights and further it is evident that since royalty is determined on the basis of the mineral produce, royalty can also be used as a measure to determine the tax on royalty.

Contention that Royalty Comprises a Composite Charge for Regulatory and Service Fee- Negatived

102. The contention of learned Senior Counsel for the petitioner that grant of mineral concession/ mining leases entail supply of services for consideration and such consideration comprises a composite charge for regulatory as well as service fee is in the teeth of the judgment of the Hon'ble Supreme Court in **MADA** case. The judgment makes it very clear that royalty is a consideration paid by a mining lessee to the lessor for enjoyment of mineral rights and to compensate for the loss of value of minerals suffered by the owner of the minerals. It arises out of the contractual condition of the mining lease.

103. One of the submissions made by learned Senior Counsel for the petitioner is that there is a discrimination on the part of Government in the matter of levy of tax on royalty in case of exercise of mineral rights. It is submitted that the liquor licenses are not treated as supply of goods and services. It would appear that Notification No. 25/2019 – Central Tax (Rate) dated 30.09.2019 declares that services by way of grant of alcoholic liquor license, against consideration in the form of licence fee or application fee or whatever name called is to be treated neither as supply of goods nor as supply of services. The notification explains that the same has been issued to implement the recommendations of the 26th GST Council meeting where it has been recommeded that no GST shall be leviable on licence fee/application fee of the aforesaid nature. In his submissions, Mr. Ghosh, learned Senior Counsel has taken a plea that this is in the nature of special dispensation only for supply of the services by way of grant of liquor licences by the State Government and this conferment of special dispensation is not based on a reasonable classification. According to him, the mining industry can be put at par with the liquor industry at least w.e.f. the date of the Notification No. 25/2017 w.e.f. 30.09.2019. This Court is of the opinion that the argument has to be taken note of, only for purpose of rejection. This Court has already discussed the scope and ambit of an application under Section 97 of the CGST/BGST Act, 2017. This Court has also noticed how some of the issues which were never raised earlier have been taken up and argued in this Court. Learned Senior Counsel for the petitioner, in his attempt to challenge the impugned order of the Appellat Authority on advance ruling, has gone to the extent of saying that the liquor industry and the mining industry should be treated at par. The fallacy in the argument of learned Senior Counsel may be found apparent on the face of it. Once the GST Council being a Constitutional body has taken a view that the grant of licence to a liquor industry is not sale of goods or supply of services and for that reason no GST would be chargeable on the license fee/application fee, it cannot be allowed to be contended that the grant of license for sale of liquor is in the nature of a supply of ‘services’ for consideration. Grant of mineral rights under a lease deed is not the same as a license for sale of liquor. The contention of learned Senior Consel on this score is liable to be rejected. In **Liberty Cinema** (supra), the Hon’ble Supreme Court has considered the distinction between fee for services and fee for licenses. Imposition of license fee does not lead to a conclusion that the fee is for the services rendered, paragraphs ‘7’, ‘14’ and ‘17’ of the judgment is being reproduced hereinafter:-

> “**7.** Now, on the first question, that is, whether the levy is in return for services, it is said that it is so because. s. 548 uses the word "fee". But, surely, nothing turns on words used. The word ‘fee’ cannot be said to have acquired a rigid technical meaning in

the English language indicating only a levy in return for services. No authority for such a meaning of the word was cited. However that may be, it is conceded by the respondent that the Act uses the word ‘fee’ indiscriminately. It is admitted that some of the levies authorised are taxes though called fees. Thus, for example, as Mitter J. pointed out, the levies authorised by Ss. 218, 222 and 229 are really taxes though called fees, for no services are required to be rendered in respect of them. This Act, therefore, did not intend to use the word fee as referring only to a levy in return for services.

14. The nature of services to be rendered in return for a levy so as to make it a fee has been considered by this Court in several cases and in all of them it has been said that the services must confer some benefit on the person paying the fee. The earliest case on the subject appears to be Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, 1954 SCR 1005 : (AIR 1954 SC 282) where it was said at page 1042 (of SCR) : (at p. 295 of AIR) “a fee is a payment for a special benefit or privilege. Public interest seems to be at the basis of all impositions, but in a fee it is some special benefit which the individual receives". It was again said at p. 1043 (of SCR) : (at p. 296 of AIR) that in the case of fees for services "the Government does some positive work for the benefit of persons and the money is taken as the return for the work done or services rendered." This case was concerned with a statute which imposed a levy on religious institutions expressly said to be in return for services. The services mentioned in the statute consisted among others in the Government supervising the management of the institutions, auditing their accounts and seeing that their income was duly appropriated to the purposes for which they were founded. Though it did not expressly say so. this Court was presumably of the view that these were services to the institutions making the levy a fee, for it declared the levy invalid on the ground it was not correlated to the costs of those services and therefore was a tax which was beyond the competence of the Madras Legislature which had enacted the statute. It would appear that the services here considered were not for controlling the institutions but for doing work which secured to them their funds and the proper application of them. The statute might have involved a check on the conduct of the Mathadipatis who managed the institutions but that control also was for the benefit of the institutions. It has to be remembered, as was said in another case to which we shall presently refer, that the Mathadipatis were in the position of trustees of the institutions. It would follow that control of their wrongful activities must result in special benefits to the institutions for their funds would not then be frittered away.

17. The other case to which we wish to refer in this connection is Hingir Rampur Coal Co. Ltd. v. State of Orissa, (1961) 2 SCR 537 : (AIR 1961 SC 459). There the imposition by a certain statute of a levy on lessees of coal mines in a certain area and the creation of a fund with it, was called in question. It was held that the levy was a fee in return for services and was valid. It was there said at p. 549 (of SCR) : (at p. 466 of AIR). "If the special rendered is distinctly and primarily meant for the benefit of a specified class or area, the fact that in benefitting the specified class or area the State as a whole may ultimately and indirectly be benefitted would not detract from the character of the levy as a fee." It may be mentioned that the levy there went to meet expenditure necessary or expedient for providing amenities like communication, water supply and electricity for the better development of the mining area and to meet the welfare of the labour employed and other persons residing or working in the area of the mines. Here again there is no element of control but the services resulted in real benefit specially accruing to the persons on whom the levy was imposed. These decisions of this Court clearly establish that in order to make a levy a fee for services rendered the levy must confer special benefit on the persons on whom it is imposed. No case has been brought to our notice in which it has been held that a mere control exercised on the activities of the persons on whom the levy is imposed so as to make these activities more onerous is service rendered to them making the levy a fee."

104. Notification No. 12 of 2017 imposes tax on the services covered under Head 99733. In the garb of a challenge to the order of Appellate Authority for Advance Ruling, this Court would not allow the petitioners to contend that imposition of tax under head 99733 in the Notification No. 12 of 2017 is discriminatory for the reason that the licence to alcohol industry has been kept out of the purview of scope of supply of services. The contention is not well founded.

105. In result, we find no merit in any of the contentions of the learned Senior Counsel for the petitioner. The writ applications are disposed of.

CWJC No. 9140 of 2023, CWJC No. 9162 of 2023 and CWJC No. 9947 of 2023

106. In these writ applications, the petitioner has challenged the order dated 23.01.2023 (Annexure ‘3’) passed by respondent no. 2 dismissing the appeal of the petitioner for the period 2017-18 : 2018-19 and 2019-20 respectively.

107. It appears that the petitioner entered into an agreement with the Government of Bihar for mining of sand (as minor mineral) in accordance with the New Sand Policy of Bihar Minor Mineral Concession Rules, 1972 (as amended by Bihar Minor Mineral Concession (Amendment) Rule 2014) and notifications issued thereunder. The copy of agreement dated

28.05.2019 entered into with the Mining Department, State Government of Bihar for mining of sand has been annexed as Annexure ‘1’.

108. The petitioner has been served with a notice under Section 73 of the CGST Act, 2017 on the grounds inter alia that he had not paid the tax due. The authority of the State Taxes Department, Bagha found that there was a difference between the amount paid by the petitioner to the Mining Department, Bettiah and the taxable amount shown by them in their GSTR-3B. The petitioner was served with a notice to pay the ascertained amount of tax along with applicable interest under Section 50 of the CGST Act, 207.

109. From Annexure ‘2’ to the writ application, it would appear that the petitioner failed to pay the tax ascertained along with applicable interest whereupon a show cause notice was issued to the petitioner as to why he should not pay the amount of tax along with interest payable thereon under Section 20 and penalty leviable under the provisions of the CGST/BGST Act, 2017. Sufficient opportunity of hearing has been given but the petitioner did not pay the amount. In these circumstances, the order as contained in Annexure ‘2’ has been passed.

110. The petitioner preferred an appeal against the said order (Annexure '3'). In his appeal, he contended that classification of service as "renting on immovable property" is not correct and that in view of the judgment of Seven Judges' Bench of the Hon'ble Supreme Court of India in the case of **India Cements Limited versus State of Tamil Nadu** reported in **(1990) 1 SCC 12** and other judgments of the Hon'ble Supreme Court the classification of service is illegal and without jurisdiction.

111. In the writ application, the petitioner has raised issue as to whether royalty determined under Section 9/15 (3) of the MMDR Act, 1957 is in the nature of Tax? The other issues raised by the petitioner is as to what is true nature of royalty/ dead rent payable on minerals produced/ mined/ extracted from mines. Scope of expression "Taxes" on mineral rights in List II of Entry 50 of the Seventh Schedule to the Constitution and other related issues have been raised. One of the issues raised in the writ application is that the order of the respondent no. 2 as also respondent no. 3 is without the digital signature which is contrary to Rule 26(3) of the Rules, therefore, it would be void ab-initio.

112. A counter affidavit has been filed on behalf of respondent no. 2 and 3. It is stated that the royalty is paid to the lessor by way of a consideration for providing right to lease to exploit sand from river land. Hence, in terms of Section 15 of the BGST/CGST Act, 2017, royalty paid to the lessor is the value (consideration) of supply of services to the lessee and is taxable at the rate of 18% (9% CGST + 9% SGST). It is stated that exercise of power conferred under Entry 97 of List I of the Seventh Schedule of the Constitution of India was pleased to introduce service tax vide Chapter VII of the Finance Act, 1994. The term ‘service’ was defined in clause (44) of Section 65B of the aforesaid Act. Under the provisions of the Finance Act, 1994 of the taxable services as on 01.05.2011 were listed in Appendix-1. According to which mining was also a taxable service and lease holders for mining used to pay service tax. It is submitted that the service tax has been subsumed in the CGST Act and BGST Act and with the enforcement of this Act w.e.f. 01.07.2017, the independent existence of service tax has come to an end.

113. It is submitted that the levy of GST under BGST/CGST Act, 2017 is on the supply of goods or services. The term “supply” is defined under Section 7 of the BGST/CGST Act, 2017 in an inclusive manner and it includes all activities undertaken for consideration unless expressly exluded under Schedule III to the BGST/CGST Act. It is submitted that assignment of right to use mineral rights by the Government is a supply of service and the payment of royalty by the petitioner is a consideration thereof.

114. The answering respondents have explained the relevant provisions of the BGST/CGST Act, 2017 wherein the Central Government, on recommendation of the GST Council, has issued Notification No. 13/2017-Central Tax (Rate), dated 28.06.2017. As per serial no. 5 of the abovementioned notification, the services supplied by the Central Government, State Government, Union Territory or Local Authority to a business entity in respect of leasing work by way of assignment of right to use natural resources is liable to tax on RCM basis. The answering respondents have stated that the petitioner suppressed the amount of royalty paid by him to the Mines Department of the State Government in the turnover as reflected in the returns and as a result thereof a lesser tax amount has been paid to the Government. In these circumstances, the case of suppression of turnover requiring a proceeding under Section 73(1) of the BGST/CGST Act, 2017 was made out. In this background, show cause notice along with summary of the show cause notice in form of GST DRC-01 was served upon the petitioner by uploading it on GSTBO portal but no response to the said show-cause was filed by the petitioner. In these circumstances, an order dated 02.02.2021 levying tax, interest and penalty under Section 73(9) of the BGST/CGST Act has been passed against the petiioner.

115. Learned counsel for the respondents submits that in **MADA** case, it has already been held by nine judges' Bench decision of 8:1 that Royalty is not in the nature of a tax. It is submitted that validity of levy of GST on royalty of lease of mines was challenged in the Hon'ble Supreme Court in **Writ Petition (Civil) bearing No. 1076 of 2021 M/s Lakhwinder Singh versus Union of India and Others**. The said writ petition has already been dismissed vide order dated 04.01.2022. In SLP (C) No. 3726 of 2017 i.e. Udaipur Chambers of Commerce and Industry & Others versus Union of India and Others has passed the following order:-

> "i. We are not inclined to entertain the petitions under Article 32 of the Constituion in the first instance before this Court. The petitioners have an alternate and efficacious remedy of moving the concerned High Courts under Article 226 of the Constitution.
> ii. The petitioners are accordingly dismissed, leaving it open to the petitioners to pursue their remedy in accordance with law.
> iii. Pending applications, if any, stand disposed of."

116. As regards the plea of the petitioner that Annexures '2' and '3' do not bear digital signature, learned counsel submits that in **Rakesh Ranjan versus the State of Bihar and Others** (CWJC No. 1200 of 2023), this Court vide its judgment dated 05.05.2023 has already held that a mere omission to put the signature cannot lead to invalidation of the assessment proceeding. Learned counsel has also enclosed a copy of the judgment passed by learned Co-ordinate Bench of this Court in the case of **Rakesh Ranjan** (supra) as Annexure 'E' to the counter affidavit.

117. We have already discussed the law on the subject in the case of M/s BSCPL (CWJC No. 3531 of 2022. There is no point in repeating the same and one thing once again. We are of the considered opinion that no ground has been made out by the petitioners in these writ applications to interfere with the impugned judgment.

118. Further, we find that in the case of **Rakesh Ranjan** (supra), the learned Co-ordinate Bench has held that a mere omission to put a signature cannot lead to invalidation of the assessment proceeding.

CWJC No. 11538 of 2023

119. In this writ application, the petitioner has prayed for the following reliefs:-

> "(i) For issuance of appropriate writ/order/direction for setting aside order dated 28.01.2023 passed by Additional Commissioner (Appeal), Tirhut Division, Muzaffarpur in Appeal Case bearing Appeal Case No. AD10052200653U for the financial year 2017-18 whereby and whereunder the Appellate Authority upheld the order bearing Order No. ZD100121010344K dated 12.01.2021

passed by Respondent no. 5 and directed to issue APL-04 to the petitioner.

(ii) For setting aside order dated 04.12.2020 passed by Deputy Commissioner of State Tax Jurisdiction, Muzaffarpur East Circle, Muzaffarpur whereby and whereunder the respondent Deputy Commissioner has imposed tax on the petitioner against the royalty paid by the petitioner in the financial year 2017-18 and imposed tax, penalty and interest of an amount of Rs.13,86,433/-, 1,38,643/- and Rs.7,07,081/- respectively under Section 73(1) of BGST Act and a direction of GST DRC 07.

(iii) For setting aside the demand notice bearing reference no. ZD100121010344K dated 12.01.2021 issued in the Form of DRC 07 and a demand of Rs. 44,64,314/- has been raised against the petitioner.

(iv) For restraining the respondent authorities for issuance of DRC-13 and initiating recovery proceeding for recovery of the tax amount through the Bank Account Attachement.

(v) For issuance of an appropriate Writ(s), order(s), and/or directions(s), as Your Lordships may deem fit and proper in the facts and circumstances of this case in the interest of justice."

120. The petitioner has raised a question as to whether the royalty is in the nature of tax? According to the petitioner, royalty cannot be considered as consideration and, therefore, GST is not leviable on said royalty. It has also been stated in the writ petition that the issue is sub-judiced before Nine-Judges' Bench of the Hon'ble Supreme Court in **MADA** case.

121. This Court finds that the issue which has been raised by the petitioner has already been answered in the **MADA** judgment of the Hon'ble Supreme Court. We have already dealt with those issues in the case of M/s BSCPL. No other issue has been raised by learned counsel for the petitioner.

122. We, therefore, do not find any reason to interfer with the impugned orders and the demand notice. The petitioner may, if so advised, avail statutory remedy, if any, available to him in accordance with law.

123. This writ application is dismissed.

CWJC No. 16764 of 2023

124. The petitioner in the present writ application has prayed for the following reliefs:-

> "(i) For quashing the Letter No. 247 dated 18.10.2023 issued under the signature of the Respondent Joint Commissioner, State Tax, Sahabad Anchal, Arrah communicated to the Petitioner along with the Letter No. 4579 dated 04.11.2023 whereby it has been communicated that after payment of GST on Royalty, the successful Tenderer could be granted permission for mining with respect to the Sand Ghats settled in its favour;
> (ii) For quashing of the letter No. 4579 dated 04.11.2023 issued by the Respondent Mines Development Officer, District Mining Office, Bhojpur, Ara to the extent by which the Petitioner

has been called upon to deposit the GST on Mining royalty with respect to the premiums to be paid for Sand settlement of two Sand Ghats, namely, Bhoj-Son-33 and Bhoj-Son 37, as the dispute with regard to whether the component of Royalty charged on mines or minerals is a consideration or an impost in itself is pending adjudication before the Hon'ble Supreme Court;

(iii) For direction upon the Respondents to accept the first instalment of the sand settlement from the petitioner with respect to two sand ghats, namely, BHOJ-SON-33 and BHOJ-SON 37, without insisting the Petitioner to pay GST on the Mines Royalty;

(iv) For a declaration that as the issue as to whether the Mines Royalty is to be considered as consideration for settlement of Ghats or is an impost in itself is pending adjudication before the Hon'ble Supreme Court in the case of Udaipur Chamber of Commerce & Industy & Ors. Vs. Union of India & Ors. Bearing Special Leave to Appeal (Civil) No. 37326 of 2017 and as an interim order of stay for levy of Service Tax on Royalty has also been granted by the Hon'ble Supreme Court, the impugned letter no. 4579 dated 04.11.2023 issued by the Respondent Mines Development Officer, Mines Development Office, Bhojpur at Arrah is liable to be quashed or kept in abeyance to that extent until finalization of the aforesaid case by the Hon'ble Supreme Court; and/or for any other appropriate writ(s)/order(s)/direction(s) as Your Lordships may deem fit and proper in the facts and circumstances of the case."

125. According to the petitioner, he had participated in the tender for two sand ghats, namely, BHOJ-SON-33 and BHOJ-SON 37. The petitioner was found the highest bidder and he was communicated about the acceptance of his tender. In para '2' of letter of acceptance (LoA) dated 18.01.2023, the schedule of payment of settlement amount has been provided. In para '3' of the 'LoA', it is stated that GST is to be paid as per the prevailing rate to the respondent Commercial Taxes Department and that the petitioner will have to submit the proof of payment of GST along with each installment.

126. The bone of contention in the present writ application is the taxablity on the amount of royalty/settlement amount. The petitioner has questioned the communication made by the Mining Authorities wherein it has been specifically stated that GST @ 18 % shall be levied on royalty with respect to the sand and permission for mining would only be granted after payment of GST on the royalties on sand by the petitioner. The communication of the Mininy Authority, it is stated, is based on the order dated 10.12.2021 passed in CASe No. AAAR/01/2021 by the Appellate Authority for advance ruling, Bihar.

127. It appears on going through the writ application that the petitioner has yet not entered into any agreement with the State Government. The issues raised in the writ application are identical to the issues raised in the leading case of M/s BSCPL (CWJC No. 3531 of 2022) in which the order dated 10.12.2021 passed by the Appellate Authority for Advance Ruling, Bihar has been challenged, we find that the case is covered by our judgment hereinabove in the case of M/s BSCPL.

128. This writ application is dismissed.

CWJC No. 17700 of 2023 and CWJC No. 18206 of 2023

129. In both the writ applications, the following reliefs have been prayed for :-

> "(a) For issuance of a writ in the nature of certiorari for quashing of the demand notice issued vide letter number 1654/M dated 30.11.2023 by respondent number 5 with reference to the letter number 154/M dated 25.11.2023 issued by the respondent number 4 whereby the petitioner has been called upon to pay GST at the rate of 18% on royalty paid to the Department of Mines And Geology, Government of Bihar against grant of alleged licensing services rendered by the Government of Bihar permitting mining activities by the petitioner in block number 07, River Chanan, Mauza-Goudiya, Circle Banka, District Banka;

(b) For the issuance of a writ in the nature of certiorari for quashing of the letter number 154 dated 25.11.2023 issued by the respondent number 4 whereby the respondent 5 -mines development officer, Banka has been requested to recover GST at the rate of 18% on royalty/settlement amount paid/payable by the mining lease holders which included the petitioner also on grounds of the same being illegal and wholly without jurisdiction;

(c) For further restraining the respondents from initiating any process or action against the petitioner and its directors and other/or stakeholders in connection with imposition, demand and recovery of GST allegedly chargeable against the licensing services rendered by the Department of Mines and Geology, Government of Bihar in the shape of grant of mining rights to the petitioner;

(d) For holding and a declaration that the royalty paid by the petitioner to the Department of Mines and Geology, Government of Bihar is payable in terms of the grant of right to carry out mining of sand and stone in the state of Bihar is not a consideration paid against any licensing service rendered by the said government department and therefore no GST is leviable against the same;

(e) For further holding and a declaration that the issue that no service tax is payable on the royalty paid against the grant of mining rights is sub-judice before the Honourable apex court in the matter of Udaipur Chamber of Commerce and Industry and Others Versus The Union of India and others. (Special Leave To Appeal Number- 37326 of 2017) wherein an interim order dated 11.01.2018 restraining the recovery of service tax on royalty has been passed by the Honourable apex court;

(f) For further holding and a declaration that the respondents ought to await the verdict of the Honourable apex court on the issue of the true nature of royalty paid by the petitioner being a tax or a consideration against grant of mining rights by the state government which is pending in consideration before the Constitution bench of 9 Honourable Judges in the matter of Mineral Area Development Authority And Others Versus Steel Authority Of India And Others (Civil Appeal Number 4056 - 64 Of 1999 And Other Analogous Cases);

(g) For grant of any other relief or reliefs to which the petitioner is found entitled to in the facts and circumstances of the case."

130. The only difference in the prayer of the two writ petitioners is with respect to the letter number by which demand notice has been issued to the petitioners.

131. We find on reading of the statement made in the writ application that the petitioners have raised a common question as to whether the royalty paid by the petitioners in terms of Section 9 read with Section 15(3) of the MMDR Act, 1957 is a tax or a consideration paid against the grant of mining rights by the State Government. The petitioners made a statement in the writ petition that the Constitution Bench of Seven Hon'ble Judges of the Hon'ble Supreme Court in the matter of **India Cement** (supra) has already held that royalty is a tax. The petitioners have also submitted that the views taken by the Hon'ble Supreme Court on this issue has been referred to a Constitution Bench of Nine Hon'ble Judges in the matter of **MADA** which is still pending. We have dealt with all these issues in the earlier part of our judgment in case of M/s BSCPL (CWJC No. 3531 of 2022). The majority judgment of the Hon'ble Nine Judges Bench of the Hon'ble Supreme Court in **MADA** case has already held that royalty is not in the nature of a tax. In our opinion, the issues raised by the petitioners in these two writ applications are duly discussed in the judgment rendered by this Court in the case of M/s BSCPL hereinabove.

132. These writ applications have no merit, hence, both the applications are dismissed.

CWJC No. 2730 of 2024 and CWJC No. 4297 of 2024

133. In these two writ applications, the petitioners have made the following prayer:-

"i) To issue an appropriate writ, order or direction in the nature of Certiorari for quashing the communication dated 22.1.2024 under reference no. 94, issued by the respondent no. 3, whereby and whereunder the petitioner has been asked to pay GST at the rate of 18% on the royalty paid to the Department of Mines & Geology, Government of Bihar against settlement of Sand Block for Sone Cluster-10, Paliganj in the District of Patna, over river Sone.

ii) For restraining the respondents from taking any coercive step against the petitioner by initiation of any proceeding for imposition of demand or recovery thereof, purported to be the GST against the licensing services rendered by the State, in the nature of grant of mining rights to the petitioner.

iii) This Hon'ble Court may further adjudicate and hold that the services provided by the State of Bihar to the petitioner by way of grant of mineral concession for winning sand is not liable for GST, as it is not a consideration paid against any licensing services.

iv) This Hon'ble Court may further adjudicate and hold that the royalty being in the nature of statutory impost, is a tax and therefore the same cannot be exigible to further taxation.

v) This Hon'ble Court may adjudicate and hold that grant of mineral concession is merely a statutory function/duty under the provisions of law and does not amount to rendition of any service, so as to attract goods and service tax.

vi) For a further direction to the respondent authorities not to precipitate the matter in view of pendency of similar issue in the matter of Udaipur Chamber of Commerce & Industry and others Vs. The Union of India and others, wherein the Hon'ble Apex Court has restrained the authorities from recovering service tax on royalty.

vii) For a direction to the respondent authorities to await the verdict of the Hon'ble Apex Court on the issue as to whether royalty paid by the petitioner is a tax or a consideration against grant of mining rights, in the case of Mineral Area Development Authority and others Vs. Steel Authority of India and others.

viii) To grant any other relief or reliefs for which the petitioner may be found entitled to in the facts and circumstances of the case."

134. On perusal of the writ applications, it appears that the petitioners are questioning the communications by which they have been asked to deposit GST at the rate of 18% i.e. 9% CGST and 9% SGST on the settlement amount that is royalty paid by the petitioner against settlement. The petitioners have been informed by the Mining Authority that as per Notification No. 13 of 2017-Central Tax (Rate) dated 28.06.2017 and Notification No. 11 of 2017- Central Tax (Rate) dated 28.06.2017 issued by the Ministry of Finance (Department of

Revenue), Government of India, New Delhi, the petitioner was required to make payment of 18% GST.

135. The submission of the petitioner is that the very basis of issuance of communication is bad, the same is without jurisdiction and the respondent no. 3 has failed to appreciate the judgment of the Hon'ble Supreme Court in the case of **India Cement** (supra). Since the said principle has been doubted in the case of **West Bengal versus Kesoram and Others** reported in **(2004) 10 SCC 201,** the latter has been referred to the larger Bench in the case of Mineral Area Development and Others versus Steel Authority of India Limited and others reported in (2011) 4 SCC 450. It is submitted in the writ petition that royalty is collected by the Government on the basis of determination and fixation, keeping in view the parameters relevant for the purpose, it can never be said to be a consideration paid against grant of mining rights to the lease holder. The petitioner while filing the writ application contended that the royalty is in the nature of tax collected by the Government in exercise of a statutory powers under the MMDR Act, 1957 and the Rules framed thereunder. At this stage, however, this plea has not been taken by the petitioner.

136. In the opinion of this Court, the plea taken by the petitioner in the writ application did not find favour in the judgment of the Hon'ble Supreme Court in **MADA** case. In **MADA** case, the Hon'ble Supreme Court did not approve the judgment in the case of **India Cement** (supra). The Hon'ble Nine-Judges' Bench of the Supreme Court has held and declared that royalty is not in the nature of tax and tax may be imposed on royalty. We have already discussed all these issues in our judgment in the case of M/s BSCPL, hereinabove.

137. No other issue has been raised before us.

138. In the circumstances, we find no merit in the writ applications. Both the writ applications are hereby dismissed.

CWJC No. 4562 of 2024

139. In this writ application, the petitioner has prayed for the following reliefs:-

> "i) To issue an appropriate writ, order or direction in the nature of mandamus commanding the Respondents to refund the amount of Rs. 1,48,22,500/- paid by the petitioner, under compulsion as Goods and Service Tax at the rate of 18% on the royalty of Rs. 8,23,50,000/- paid to the Department of Mines & Geology, Government of Bihar, as first installment for settlement of Sand Block for Sone Cluster 16 in the District of Bhojpur, over river Sone.

ii) To issue an appropriate writ, order or direction in the nature of mandamus commanding the Respondents not to levy and claim GST on the second and third installment of royalty for settlement of Sand Block for Sone Cluster 16 in the District of Bhojpur, over river Sone.

iii) This Hon'ble Court may further adjudicate and hold that the services provided by the State of Bihar to the petitioner by way of grant of mineral concession for winning sand is not liable for GST, as it is not a consideration paid against any licensing services.

iv) This Hon'ble Court may further adjudicate and hold that the royalty being in the nature of statutory impost, is a tax and therefore the same cannot be exigible to further taxation.

v) This Hon'ble Court may adjudicate and hold that grant of mineral concession is merely a statutory function/duty under the provisions of law and does not amount to rendition of any service, so as to attract goods and service tax.

vi) For a further direction to the respondent authorities not to precipitate the matter in view of pendency of similar issue in the matter of Udaipur Chamber of Commerce & Industry and others Vs. The Union of India and others, wherein the Hon'ble Apex Court has restrained the authorities from recovering service tax on royalty.

vii) For a direction to the respondent authorities to await the verdict of the Hon'ble Apex Court on the issue as to whether royalty paid by the petitioner is a tax or a consideration against grant of mining rights, in the case of Mineral Area Development Authority and others Vs. Steel Authority of India and others.

viii) To grant any other relief or reliefs for which the petitioner may be found entitled to in the facts and circumstances of the case."

140. The reliefs prayed in the writ application is based on the understanding of the petitioner that with the coming into force of the GST Laws, the petitioner was asked to deposit 5 % of the instalment payable on the settlement amount which he deposited and requested the respondent to execute the lease deed but the respondent did not execute the lease deed and directed the petitioner to deposit the GST at the rate of 18 % (i.e. 9% CGST and 9% SGST) on the settlement amount i.e. the royalty paid by the petitioner against the settlement. It is his submission that under compulsion, he deposited an additional amount of Rs.1,07,05,500/- as GST on 11.12.2023 which would be evident from Annexure 'P/4' to the writ application. Thereafter, the lease deed (Annexure 'P/5') dated 12.12.2023 was executed between the petitioner and the Department of Mines and Geology, Government of Bihar.

141. The grievance of the petitioner is that once the royalty is collected by the Government on the basis of determination and fixation keeping in view the parameters relevant for the purpose, it can only be said to be consideration paid against the grant of mining right to lease holder. This petitioner has also contended in the writ petition that the royalty is in the nature of a tax collected by the Government in exercise of Statutory powers under the MMDR Act, 1957 and Rules of 2019 and as such there cannot be any tax on royalty. In the writ petition, he contended that imposition of GST upon royalty paid by the petitioner is violative of Article 265 of the Constitution of India, as the respondent authority have no jurisdiction and authority under the law to impose royalty of GST.

142. At the time of filing of the writ petition, the petitioner pointed out the judgment of the Hon'ble Supreme Court in case of **India Cement** (supra) which was doubted in the case of **Kesoram** (supra) and the issue has been referred to a larger Bench in **MADA** case. Learned counsel for the petitioner is now aware of the judgment of the Hon'ble Supreme Court in **'MADA'** case. Royalty is not in the nature of tax and tax may be impose on royalty.

143. From the contents of the writ application, it is crystal clear that it is raising the same issues which we have already discussed in the case of M/s BSCPL hereinabove. It would be covered by the reasoning and rationale provided by this Court in the case of M/s BSCPL (CWJC No. 3531 of 2022).

144. This writ application is dismissed.

<u>CWJC No. 6389 of 2024</u>

145. In this writ application, the petitioner has challenged the order dated 16.12.2023 passed by Deputy Commissioner State Tax (DCST)/respondent no. 4 by which he has directed the petitioner to pay Rs.45,936/- by way of GST with interest and penalty under Section 73(9) of the BGST/CGST Act, 2017 for the period 2017-18 (July 2017 to March 2018).

146. It is the case of the petitioner that being a proprietor firm it is engaged in manufacturing of bricks. The petitioner has obtained permit for mining of soil for manufacturing of bricks from his own land bearing Mauza Parbatti, Khata No. 82, Khesra No. 170 and 171. Every year a separate permit is issued by the Mining Department, Government of Bihar for mining of soil on payment of royalty. The petitioner has paid a sum of Rs.70,875/- for grant of permit under Bihar Mining and Mineral Rules.

147. It is submitted that after manufacturing bricks, the petitioner used to sell bricks to different customers and the GST is being charged on the sale of bricks which the petitioner has been regularly paying to the State Exchequer. It is submitted that despite this compliance by the petitioner, the respondent no. 4 has served a show cause notice dated 29.09.2023 (Annexure '4' to the writ application) upon the petitioner calling upon him to pay Rs.45,438/- as per deatils furnished in the notice under Section 73(1) of the BGST/CGST Act, 2017.

148. Learned counsel for the petitioner submits that the petitioner filed a reply to the show cause notice but the notice has been rejected on the ground that the matter relating to realisation of GST of royalty is pending before the various High Court and the Hon'ble Supreme Court, hence, the petitioner would be liable for payment of GST on amount of royalty with interest and penalty.

149. In the writ petition, it is the contention of the petitioner that the amount of royalty paid to the Mining Department is tax and not consideration either for sale of goods or service provided. The petitioner submits that the respondent authority is not justified in demanding GST (Tax, Interest and Penalty) on the royalty paid to the Mining Department for mining of soil for manufacturing of bricks.

150. The issues raised by the petitioner have already been answered in the judgment of the Hon'ble Supreme Court in **MADA** case. We have discussed the various aspects of the matter in our judgment in case of M/s BSCPL. The case of the petitioner would be covered by this Court's judgment hereinabove.

151. This writ application has no merit. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

(Sourendra Pandey, J)

Rishi/-

AFR/NAFR	AFR
CAV DATE	27.03.2025
Uploading Date	18.04.2025
Transmission Date	