

EY Tax Alert

SC decides on timelines for operability of tax on mineral rights and waiver of interest and penalty

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Executive summary

This Tax Alert summarizes a recent ruling of the Supreme Court (SC)¹ to decide whether the majority ruling of nine-judge bench of SC in case of Mineral Area Development Authority vs. Steel Authority of India (MADA)² should be given prospective effect.

SC in the above case had earlier upheld the power of States to impose taxes on mineral rights. Subsequently, the question arose whether the judgement should apply prospectively or retrospectively.

SC observed that if MADA is given a prospective effect, the validity of all relevant legislation enacted before the date of the decision will have to be tested on the touchstone of the previous law which was unsettled because of the conflicting decisions. Since MADA has resolved the conflict, it should be applied retrospectively.

Further, bearing in mind the consequences that would emanate from the past period, SC directed following conditionalities to prevail:

- ▶ The demand of tax on mineral rights by States shall not operate on transactions made prior to 1 April 2005;
- ▶ The time for payment of the demand shall be staggered in instalments over a period of twelve years commencing from 1 April 2026; and
- ▶ The levy of interest and penalty on demands made for the period before 25 July 2024 shall stand waived for all the assesseees.

¹ TS-318-SC-2024-NT

² TS-287-SC-2024-NT

Background

- ▶ Recently, in the case of Mineral Area Development Authority vs. Steel Authority of India (MADA)³, the nine-Judge Bench of the Supreme Court by a majority of 8:1 upheld the power of States to impose taxes on mineral rights⁴.
- ▶ The judgment overruled previous SC ruling in case of India Cement Ltd vs. State of Tamil Nadu⁵ and subsequent decisions which relied on it.
- ▶ Later, the proceedings were listed for hearing submissions on whether the judgement should be given prospective or retrospective effect.

Assessee's Contentions

- ▶ SC ruling in the case of India Cement Ltd (supra) held the field for 35 years before it was overruled by MADA (supra). If State legislatures are allowed to renew tax demands, end consumers will ultimately bear the burden.
- ▶ Since 2015, mineral concession bids have been based on the India Cement precedent. A retrospective application of MADA ruling would alter the commercial bargains of these auctions.
- ▶ The doctrine of prospective overruling is well-established in Indian constitutional jurisprudence. Hence, the SC ruling should be given prospective effect because it lays down new constitutional principles.
- ▶ Where enforcement of taxing legislation was either partially or completely interdicted by judicial orders, it should be directed that no new tax demand be made for the period before the judgment in case of MADA i.e., before 25 July 2024.
- ▶ Retrospective application of MADA ruling will lead to revival of cumulative demands from different States. The delay in the court proceedings should not be to the detriment of the taxpayers.

Revenue's Contentions

- ▶ The above doctrine of prospective overruling is applicable only when the judgment invalidates a legislation or introduces a new interpretation by overruling its earlier decision. It has never been applied to situations where the declaration of law attaches validity to taxing legislation.
- ▶ If MADA ruling is applied prospectively, India Cement will operate till 25 July 2024.

Resultantly, all relevant State legislation will be tested on the anvil of India Cement (supra) and may be declared *ultra vires*. This consequence is unjust and against the public interest.

- ▶ In State of West Bengal vs. Kesoram Industries Ltd⁶, the Court upheld the validity of legislation enacted by the State of West Bengal levying tax on mineral rights. Consequently, several States enacted similar legislations which were upheld by the respective High Courts.

Giving prospective effect to MADA ruling will result in a discriminatory situation where while West Bengal will continue to collect tax, other States with similar enactments may be deprived of collecting tax from the date of their enactments.

Supreme Court's Ruling

- ▶ The doctrine of prospective overruling is applied when a constitutional court overrules a well-established precedent by declaring a new rule but limits its application to future situations. The underlying objective is to avert injustice or hardships.
- ▶ The said doctrine has been applied by SC in situations where the new declaration results in the invalidation of legislation, which would otherwise have been valid under the old declaration.
- ▶ It has also been used where a legislation is declared as *ultra vires*. In the case of taxing statutes, such a declaration would make the State liable to refund all amounts collected under the invalid legislation if made effective retrospectively. Therefore, the said doctrine is applied not only to secure the revenues of the State but also to protect the rights and obligations crystallized by persons and entities under the old regime.
- ▶ However, prospective overruling is generally not declared when upholding the legislative competence of legislatures.
- ▶ If MADA ruling is given a prospective application, the validity of all relevant legislation enacted before the date of the decision i.e., 25 July 2024, will have to be tested on the touchstone of the previous law which was unsettled because of the conflicting decisions in India Cement (supra) and Kesoram (supra).
- ▶ Further, the relevant tax legislations may conceivably be invalidated, requiring the States to refund the amount collected from the assesseees. Since MADA ruling has resolved the

³ TS-287-SC-2024-NT

⁴ Refer our alert "SC upholds legislative power of States to impose taxes on mineral rights" dated 2 August 2024

⁵ (1990) 1 SCC 12

⁶ (2004) 10 SCC 201

conflict, it would be iniquitous to apply the decision prospectively.

- ▶ The power to levy tax is an incidence of sovereignty. If prospective application is given to MADA ruling, it would result in a situation where the legislation enacted by the States in pursuance of their plenary powers under Entries 49 and 50 of List II may conceivably be invalidated based on a position of law which has been overruled.
- ▶ Kesoram judgement (supra) is an operative fact based on which many State legislatures have already enacted taxing statutes. A pragmatic solution to reconcile the financial interests of the States and the assesseees can be achieved by proscribing the States from demanding taxes pertaining to Entries 49 and 50 of List II of the Seventh Schedule for the period before Kesoram.
- ▶ Basis above discussion, SC rejected the assessee's submission that MADA ruling should be given prospective effect.
- ▶ Further, bearing in mind the consequences that would emanate from the past period, SC directed following conditionalities to prevail:
 - ▶ While the States may levy or renew demands of tax on mineral rights in terms of the law laid down in the decision of MADA, the same shall not operate on transactions made prior to 1 April 2005;
 - ▶ The time for payment of the demand of tax shall be staggered in instalments over a period of 12 years commencing from 1 April 2026; and
 - ▶ The levy of interest and penalty on demands made for the period before 25 July 2024 shall stand waived for all the assesseees, regardless of whether they have approached SC or the HCs challenging the validity of relevant statutes.

Comments

- a. While the Supreme Court upheld the power of States to levy tax on mineral rights, restricting the power to recover the same only from 1 April 2005 along with waiver of interest and penalty may lower the burden on the concerned industries.
- b. Allowing staggered payment over a period of 12 years is likely to ease the working capital issue for such businesses.
- c. Taxpayers may have to evaluate whether the SC judgement upholding the State's power to levy tax on mineral rights has any bearing on the royalty charged under Section 6A of Oilfields (Regulation and Development) Act, 1948.

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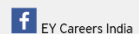
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