

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P (T) No. 432 of 2021

M/s Mandhan Minerals Corporation --- --- Petitioner
Versus

1. Union of India through the Secretary, Ministry of Finance, Department of Revenue, Government of India New Delhi
2. Director General of G.S.T. Intelligence, Regional Unit, Jamshedpur
3. Additional Director, G.S.T. Intelligence, Regional Unit, Jamshedpur
4. Superintendent (Adjudication), Central Goods and Service Tax, Dhanbad

--- --- Respondents

With

W.P (T) No. 4463 of 2021

Mithilesh Kumar Mehta --- --- Petitioner
Versus

1. Union of India through Commissioner,
Central GST and Central Excise, Jamshedpur
2. The Superintendent,
Central GST and Central Excise, Jamshedpur
3. The State of Jharkhand through its Secretary,
Department of State Tax

--- --- Respondents

With

W.P.(T) No. 4510 of 2021

M/s Kuldip Kumar & Co. --- --- Petitioner
Versus

1. Union of India through the Principal Commissioner, Central GST & Central Excise, Ranchi
2. Assistant Commissioner, CGST & C. Ex., South Division, Dhanbad
3. Superintendent (Prev.) Central Goods and Service Tax & Central Excise,
Baliapur, Dhanbad

--- --- Respondents

With

W.P.(T) No. 4518 of 2021

Jaydhan Rajwar --- --- Petitioner
Versus

1. Union of India through the Principal Commissioner, Central GST & Central Excise, Ranchi
2. Assistant Commissioner, CGST & C. Ex., South Division, Dhanbad
3. Superintendent (Prev.) Central Goods and Service Tax & Central Excise,
Baliapur Range, Dhanbad

--- --- Respondents

With

W.P.(T) No. 4520 of 2021

Jagdip Agarwala --- --- Petitioner
Versus

1. Union of India through the Principal Commissioner, Central GST & Central Excise, Ranchi
2. Assistant Commissioner, CGST & C. Ex., South Division, Dhanbad
3. Superintendent (Prev.) Central Goods and Service Tax & Central Excise,
Baliapur Range, Dhanbad

--- --- Respondents

With
W.P.(T) No. 4545 of 2021

M/s Sri Sai Ram Minerals --- --- Petitioner

Versus

1. Union of India through the Principal Commissioner, Central GST & Central Excise, Ranchi
2. Assistant Commissioner, CGST & C. Ex., South Division, Dhanbad
3. Superintendent (Prev.) Central Goods and Service Tax & Central Excise, Baliapur Range, Dhanbad --- --- Respondents

With
W.P.(T) No. 4608 of 2021

M/s Maa Amba Stone Works --- --- Petitioner

Versus

1. Union of India through the Commissioner, Central GST & Central Excise, Ranchi
2. The Deputy Commissioner (Preventive), Central GST & Central Excise, Ranchi
3. The Superintendent (Preventive) Central GST & Central Excise, Ranchi --- --- Respondents

With
W.P (T) No. 4609 of 2021

M/s Ratan Black Stone, Sahibganj --- --- Petitioner

Versus

1. Union of India through Principal Commissioner, Central GST & Central Excise, Ranchi
2. The Superintendent (Preventive), Central GST & Central Excise, Ranchi
3. The Superintendent, Central GST & Central Excise, Ranchi
4. The State of Jharkhand through its Secretary, Department of State Tax --- --- Respondents

With
W.P.(T) No. 4632 of 2021

M/s Bajrangbali Stone Works --- --- Petitioner

Versus

1. Union of India through Additional Commissioner, Central GST & Central Excise, Sub Commissionerate, Dhanbad
2. The Deputy Commissioner (Preventive), Central GST & Central Excise, Sub Commissionerate, Dhanbad
3. The Superintendent (Preventive), Central GST & Central Excise, Sub Commissionerate, Dhanbad
4. The State of Jharkhand through its Secretary, Dept. of State Tax, Ranchi --- --- Respondents

With
W.P.(T) No. 4652 of 2021

M/s Bihar Bentonite Supply Co. --- --- Petitioner

Versus

1. Union of India through the Additional Commissioner, Central GST & Central Excise, Dhanbad
2. The Deputy Commissioner (Preventive), Central GST & Central Excise, Dhanbad
3. The Assistant Commissioner (Preventive), Central GST & Central Excise, Dhanbad --- --- Respondents

With
W.P. (T) No. 4654 of 2021

M/s Bihar Bentonite Supply Co., Sahibganj --- --- Petitioner
Versus

1. Union of India through Additional Commissioner, Central GST & Central Excise, Dhanbad
 2. The Deputy Commissioner (Preventive), Central GST & Central Excise, Dhanbad
 3. The State of Jharkhand through its Secretary, Department of State Tax
- --- Respondents

With
W.P.(T) No. 4677 of 2021

M/s Patnibona Stone Quarries --- --- Petitioner
Versus

1. Union of India through the Principal Commissioner, Central GST & Central Excise, Ranchi
 2. The Deputy Commissioner (Preventive), Central GST & Central Excise, Ranchi
 3. The Superintendent (Preventive), Central GST & Central Excise, Ranchi
- --- Respondents

With
W.P. (T) No. 4678 of 2021

M/s Bandana Stone Works, Sahibganj --- --- Petitioner
Versus

1. Union of India through the Superintendent, Central GST & Central Excise, Sahibganj
 2. The State of Jharkhand through its Secretary, Department of State Tax
- --- Respondents

With
W.P.(T) No. 4683 of 2021

M/s Hindusthan Industries & Mining Corporation --- --- Petitioner
Versus

1. Union of India through the Principal Commissioner, Central GST & Central Excise, Ranchi
 2. The Deputy Commissioner (Preventive) Central GST & Central Excise, Ranchi
 3. The Superintendent (Preventive), Central GST & Central Excise, Ranchi
 4. The Superintendent, Central GST & Central Excise, Ranchi
- --- Respondents

With
W.P. (T) No. 4684 of 2021

M/s Maa Amba Stone Works, Sahibganj --- --- Petitioner
Versus

1. Union of India through Commissioner, Central GST & Central Excise, Ranchi
 2. The Deputy Commissioner (Preventive), Central GST & Central Excise, Ranchi
 3. The Superintendent (Preventive), Central GST & Central Excise, Ranchi
 4. The State of Jharkhand through its Secretary, Department of State Tax
- --- Respondents

With
W.P.(T) No. 4685 of 2021

M/s Ganga Stone Works --- --- Petitioner

Versus

1. Union of India through Commissioner, Central GST & Central Excise, Ranchi
 2. The Deputy Commissioner (Preventive), Central GST & Central Excise, Ranchi
 3. The Superintendent (Preventive), Central GST & Central Excise, Ranchi
 4. The State of Jharkhand through its Secretary, Dept. of State Tax, Ranchi
- --- Respondents

With
W.P.(T) No. 4709 of 2021

M/s Paharia Stone Works --- --- Petitioner

Versus

1. Union of India through the Additional Commissioner, Central GST & Central Excise, Dhanbad
 2. The Deputy Commissioner (Preventive), Central GST & Central Excise, Dhanbad
 3. The Superintendent (Preventive) Central GST & Central Excise, Dhanbad
 4. The State of Jharkhand through its Secretary, Dept. of State Tax, Ranchi
- --- Respondents

With
W.P.(T) No. 4711 of 2021

M/s Paharia Stone Works --- --- Petitioner

Versus

1. Union of India through the Additional Commissioner, Central GST & Central Excise, Dhanbad
 2. The Deputy Commissioner (Preventive), Central GST & Central Excise, Dhanbad
 3. The Assistant Commissioner (Preventive), Central GST & Central Excise, Dhanbad
 4. The Superintendent (Preventive), Central GST & Central Excise, Dhanbad
- --- Respondents

With
W.P (T) No. 4812 of 2021

M/s Narsingh Lagdhir (a Proprietorship Concern)--- --- Petitioner

Versus

1. Union of India through Additional Commissioner, Central GST and Central Excise, Sub Commissionerate, Dhanbad
 2. The Deputy Commissioner (Preventive),
 3. Deputy Commissioner of State Tax (In-charge), Sahibganj Circle, Sahibganj
- --- Respondents

With
W.P. (T) No. 4864 of 2021

Madan Kant --- --- Petitioner

Versus

1. Union of India through Additional Commissioner, Central GST & Central Excise, Deoghar
 2. The Superintendent, Central GST & Central Excise, Sahibganj
 3. The State of Jharkhand through its Secretary, Department of State Tax
- --- Respondents

With
W.P.(T) No. 4900 of 2021

M/s Hindusthan Industries & Mining Corporation --- --- Petitioner

Versus

1. The State of Jharkhand through its Secretary, Dept. of State Tax, Ranchi
2. The Deputy Commissioner of State Tax (Incharge), Sahibganj Circle, Sahibganj
3. Union of India through the Principal Commissioner, Central GST & Central Excise, Ranchi --- --- Respondents

With
W.P.(T) No. 4903 of 2021

M/s Vansla Granite --- --- Petitioner

Versus

1. The State of Jharkhand through its Secretary, Dept. of State Tax, Ranchi
2. Union of India through the Superintendent, Central GST & Central Excise, Sahibganj Range, Sahibganj
3. The Deputy Commissioner, State Goods and Service Tax & Commercial Tax, Sahibganj ----- Respondents

With
W.P.(T) No. 4904 of 2021

M/s Swastik Mineral Agency --- --- Petitioner

Versus

1. Union of India through the Principal Commissioner, Central GST & Central Excise, Ranchi
2. The State of Jharkhand through its Secretary, Dept. of State Tax, Ranchi
3. The Superintendent (Preventive), Central GST & Central Excise, Ranchi --- --- Respondents

With
W.P.(T) No. 4905 of 2021

M/s Patnibona Stone Quarries --- --- Petitioner

Versus

1. Union of India through Commissioner, Central GST & Central Excise, Ranchi
2. The Deputy Commissioner (Preventive), Central GST & Central Excise, Ranchi
3. The Superintendent (Preventive), Central GST & Central Excise, Ranchi
4. The State of Jharkhand through its Secretary, Dept. of State Tax, Ranchi --- --- Respondents

With
W.P.(T) No. 4918 of 2021

M/s Vansla Granite --- --- Petitioner

Versus

1. Union of India through Assistant Commissioner, Central GST & Central Excise, Division -Deoghar
2. The Superintendent, Central GST & Central Excise, Sahibganj Range, Sahibganj --- --- Respondents

With

W.P.(T) No. 4919 of 2021

M/s Swastik Mineral Agency

--- --- Petitioner

Versus

1. Union of India through the Principal Commissioner, Central GST & Central Excise, Ranchi
2. The Additional Commissioner (Preventive), Central GST & Central Excise, Ranchi
3. The Superintendent (Preventive), Central GST & Central Excise, Ranchi
4. The Superintendent, Central GST & Central Excise, Ranchi

--- --- Respondents

With

W.P.(T) No. 4959 of 2021

M/s Vidyarthi Stone Works

--- --- Petitioner

Versus

1. The State of Jharkhand through its Secretary, Dept. of State Tax, Ranchi
2. The Deputy Commissioner of State Tax, Sahibganj Circle, Sahibganj
3. The State Tax Officer, Sahibganj Circle, Sahibganj
4. Union of India through the Principal Commissioner, Central GST & Central Excise, Ranchi

--- --- Respondents

With

W.P.(T) No. 4971 of 2021

M/s Vidyarthi Stone Works

--- --- Petitioner

Versus

1. The State of Jharkhand through its Secretary, Dept. of State Tax, Ranchi
2. The Deputy Commissioner of State Tax, Sahibganj Circle, Sahibganj
3. The State Tax Officer, Sahibganj Circle, Sahibganj
4. Union of India through the Principal Commissioner, Central GST & Central Excise, Ranchi

--- --- Respondents

With

W.P.(T) No. 36 of 2022

M/s Ansari Stone Works

--- --- Petitioner

Versus

1. Union of India through the Principal Commissioner, Central GST & Central Excise, Ranchi
2. The Assistant Commissioner, CGST & Central Excise Division-Deoghar
3. The Superintendent, Central GST & Central Excise, Range- Sahibganj

--- --- Respondents

With

W.P.(T) No. 42 of 2022

M/s Bhai Bhai Stone Works

--- --- Petitioner

Versus

1. Union of India through the Principal Commissioner, Central GST & Central Excise, Ranchi
2. The Assistant Commissioner, Central GST & Central Excise, Division-Deoghar
3. The Superintendent, Central GST & Central Excise, Range-Sahibganj

--- --- Respondents

With

W.P.(T) No. 114 of 2022

M/s Ansari Stone Works

--- --- Petitioner

Versus

1. Union of India through the Principal Commissioner, Central GST & Central Excise, Ranchi
2. The Superintendent, Central GST & Central Excise, Range-Sahibganj
3. The State of Jharkhand through its Secretary, Dept. of State Tax, Ranchi
4. The Deputy Commissioner of State Tax (In charge), Sahibganj Circle, Sahibganj

--- --- Respondents

With

W.P.(T) No. 115 of 2022

M/s Bhai Bhai Stone Works

--- --- Petitioner

Versus

1. Union of India through the Principal Commissioner, Central GST & Central Excise, Ranchi
2. The Superintendent, Central GST & Central Excise, Range- Sahibganj
3. The State of Jharkhand through its Secretary, Dept. of State Tax, Ranchi
4. The Deputy Commissioner of State Tax (In charge), Sahibganj Circle, Sahibganj

--- --- Respondents

With

W.P (T) No. 214 of 2022

M/s Triveni Engicons Pvt. Ltd

--- --- Petitioner

Versus

1. Union of India through the Principal Commissioner, Central GST and Central Excise, Ranchi
2. The State of Jharkhand through its Secretary, Department of State Tax

--- --- Respondents

With

W.P (T) No. 619 of 2022

M/s Mohsin Hassan Raja

--- --- Petitioner

Versus

1. Union of India through Principal Commissioner, Central GST and Central Excise, Ranchi
2. The Superintendent, Central GST & Central Excise, Range-II, North Division, Ranchi
3. The State of Jharkhand through its Secretary, Department of State Tax

--- --- Respondents

With

W.P (T) No. 620 of 2022

Trustline Mining & Minerals

--- --- Petitioner

Versus

1. The State of Jharkhand through its Secretary, Department of State Tax
2. Deputy Commissioner of State Tax, Chaibasa Circle, Chaibasa
3. Union of India through the Principal Commissioner, Central GST & Central Excise, Ranchi

--- --- Respondents

With

W.P (T) No. 715 of 2022

M/s Rajan Stone Works

--- --- Petitioner

Versus

1. The State of Jharkhand through its Secretary, Dept. of State Tax, Ranchi
2. Deputy Commissioner of State Tax, Sahibganj Circle, Sahibganj
3. Union of India through the Principal Commissioner, Central GST & Central Excise, Ranchi

--- --- Respondents

With
W.P (T) No. 776 of 2022

M/s Shiva Minerals

--- --- Petitioner

Versus

1. The State of Jharkhand through its Secretary, Dept. of State Tax, Ranchi
 2. Deputy Commissioner of State Tax, Urban Circle, Jamshedpur
 3. State Tax Officer, Urban Circle, Jamshedpur
 4. Union of India through the Principal Commissioner,
Central GST & Central Excise, Ranchi
- --- Respondents

With
W.P (T) No. 855 of 2022

M/s Hari Lal Ajoy and Co.

--- --- Petitioner

Versus

1. The State of Jharkhand through its Secretary, Dept. of State Tax, Ranchi
 2. Deputy Commissioner of State Tax (In-charge), Sahibganj Circle, Sahibganj
 3. Union of India through the Principal Commissioner,
Central GST & Central Excise, Ranchi
- --- Respondents

With
W.P (T) No. 897 of 2022

M/s Dokania Stone Works

--- --- Petitioner

Versus

1. Union of India through Principal Commissioner, Central GST & Central Excise, Ranchi
2. The Deputy Commissioner (Preventive), Central GST & Central Excise, Ranchi
3. The Superintendent (Preventive), Central GST & Central Excise, Ranchi

With
W.P (T) No. 903 of 2022

M/s Jai Maa Bhagwati Stone Works

--- --- Petitioner

Versus

1. Union of India through Principal Commissioner,
Central GST & Central Excise, Ranchi
 2. The Additional Commissioner, Central GST & Central Excise,
Sub Commissionerate, Dhanbad
- Respondents

With
W.P (T) No. 926 of 2022

S.S. Black Stone Works

--- --- Petitioner

Versus

1. Union of India through Additional Commissioner, Central GST & Central Excise, Sub Commissionerate, Dhanbad
 2. The Deputy Commissioner (Preventive), Central GST & Central Excise, Sub Commissionerate, Dhanbad
- --- Respondents

With
W.P (T) No. 927 of 2022

M/s Maa Basnawi Stone Works (popularly known as "Maa Baishnavi Stone Works")

--- --- Petitioner

Versus

1. Union of India through Principal Commissioner, Central GST & Central Excise, Ranchi
2. The Deputy Commissioner (Preventive),
Central GST & Central Excise, Ranchi

3. The Superintendent (Preventive),
Central GST & Central Excise, Ranchi --- --- Respondents

With

W.P (T) No. 933 of 2022

M/s Dokania Stone Works --- --- Petitioner

Versus

1. The State of Jharkhand through its Secretary, Dept. of State Tax, Ranchi
2. Deputy Commissioner of State Tax, Sahibganj Circle, Sahibganj
3. Deputy Commissioner of State Tax (In-charge), Sahibganj Circle, Sahibganj
4. Union of India through the Principal Commissioner,
Central GST & Central Excise, Ranchi --- --- Respondents

With

W.P (T) No. 955 of 2022

S.S. Black Stone Works --- --- Petitioner

Versus

1. The State of Jharkhand through its Secretary, Dept. of State Tax, Ranchi
2. Deputy Commissioner of State Tax (In-charge), Sahibganj Circle, Sahibganj
3. Union of India through the Principal Commissioner,
Central GST & Central Excise, Ranchi --- --- Respondents

With

W.P (T) No. 974 of 2022

M/s Sri Ram Stone Works --- --- Petitioner

Versus

1. The State of Jharkhand through its Secretary, Dept. of State Tax, Ranchi
2. Deputy Commissioner of State Tax, Sahibganj Circle, Sahibganj
3. Union of India through the Principal Commissioner,
Central GST & Central Excise, Ranchi --- --- Respondents

With

W.P (T) No. 979 of 2022

M/s Jai Maa Bhagwati Stone Works --- --- Petitioner

Versus

1. Union of India through the Principal Commissioner,
Central GST & Central Excise, Ranchi
2. The State of Jharkhand through its Secretary, Dept. of State Tax, Ranchi
--- --- Respondents

With

W.P (T) No. 986 of 2022

M/s Maa Basnawi Stone Works (popularly known as "Maa Baishnavi Stone Works") --- --- Petitioner

Versus

1. The State of Jharkhand through its Secretary, Dept. of State Tax, Ranchi
2. Deputy Commissioner of State Tax, Sahibganj Circle, Sahibganj
3. Deputy Commissioner of State Tax (In-charge), Sahibganj Circle, Sahibganj
4. Union of India through the Principal Commissioner,
Central GST & Central Excise, Ranchi --- --- Respondents

With

W.P (T) No. 1282 of 2022

M/s Maa Tara Construction & Equipment Co. --- --- Petitioner
Versus

1. The State of Jharkhand through its Secretary, Dept. of State Tax, Ranchi
2. Deputy Commissioner of State Tax, Jamshedpur Circle, Jamshedpur
3. State Tax Officer, Jamshedpur Circle, Jamshedpur
4. Union of India through the Principal Commissioner,
Central GST & Central Excise, Ranchi --- --- Respondents

CORAM: Hon'ble Mr. Justice Aparesh Kumar Singh
Hon'ble Mr. Justice Deepak Roshan
Through: Video Conferencing

For the Petitioners: Ms/ Biren Poddar, Sr. Advocate, Deepak Kr. Sinha,
Advocate [WPT 432/2021]
Mr. N.K. Pasari, Advocate [WPT 4510/21, 4518/21,
4520/21 & 4545/21]
Mr. Sumeet Gadodia, Advocate [Rest of the matters]
For the Resp.-CGST: Mr. Amit Kumar and P.A.S. Pati, Advocates
For the Resp.-State: M/s Sachin Kumar, A.A.G-II,
Ashok Kr. Yadav, G.A-I

08/20.04.2022 Heard learned Senior Counsel Mr. Biren Poddar assisted by learned counsel Mr. Deepak Sinha and learned counsel Mr. Sumeet Gadodia for the petitioners in the respective writ petitions. We have also heard Learned A.A.G-II Mr. Sachin Kumar on behalf of the State and Mr. Amit Kumar and Mr. P.A.S Pati, learned counsel representing the CGST in respective writ petitions.

2. The present batch of writ petitions have been listed today in view of our order passed in W.P.(T) No. 432 of 2021 dated 24.02.2022, para 3 whereof reads as under:

*“On being apprised of the order dated 04.01.2022, we deem it necessary to hear the prayer of the petitioners on the question of stay on payment of GST on royalty for grant of mining lease. Since this Court has earlier granted stay on payment of GST for grant of mining lease / royalty in view of the interim order passed by the Apex Court in the case of **M/s Lakhwinder Singh (supra)** in the batch of writ petitions such as W.P (T) No. 4609/2021 and also W.P (T) No. 4510/2021, those matters be posted along with the present matters for consideration on the continuation of interim relief granted to them earlier. As such, learned counsel for the petitioners pray for an earlier date for hearing on the interim plea.”*

3. The writ petitions at serial no. 40 to 50 [W.P.(T) No. 855 of 2022, W.P.(T) No. 897 of 2022, W.P.(T) No. 903 of 2022, W.P.(T) No. 926 of 2022, W.P.(T) No. 927 of 2022, W.P.(T) No. 933 of 2022, W.P.(T) No. 955 of 2022, W.P.(T) No. 974 of 2022, W.P.(T) No. 979 of 2022, W.P.(T) No. 986 of 2022 and W.P.(T) No. 1282 of 2022] also relate to the

common issue of levy of Service Tax and / or GST on royalty and District Mineral Fund (DMF). However, some of the writ petitions such as from Serial No. 41 to 44 [W.P.(T) No. 897 of 2022, W.P.(T) No. 903 of 2022, W.P.(T) No. 926 of 2022, W.P.(T) No. 927 of 2022] relate exclusively to levy of service tax on royalty. Therefore, all these writ petitions are being tagged together. In these cases, no interim order has been passed on the levy of service tax or GST on royalty and DMF. By the order of this Court dated 02.03.2021 passed in ***W.P.(T) No. 3878 of 2020*** in the case of ***Sunita Ganguly Vrs. Principal Commissioner, Central GST and Central Excise, Ranchi & others*** this Court had been pleased to grant interim protection in respect of levy of service tax on royalty in the respective petitions. Following the said interim order, similar interim relief has been granted to other writ petitioner so far as levy of service tax on royalty and DMF is concerned. This Court had however refused to grant interim protection so far as levy of GST on royalty and DMF is concerned at that stage. Later on in view of the order passed by the Apex Court in the case of ***M/s Lakhwinder Singh Vrs. Union of India & others*** in ***Writ petition (Civil) No. 1076 of 2021*** dated 04.10.2021 granting interim stay on payment of GST for grant of mining lease / royalty to the petitioners, this Court also granted similar relief to several writ petitioners such as ***W.P.(T) No. 4609 of 2021*** in the case of ***M/s Ratan Black Stone, Sahibganj Vrs. Union of India through Principal Commissioner, Central GST and Central Excise & others*** and other analogous cases such as ***W.P.(T) No. 4510 of 2021***. When the case of ***M/s Mandhan Minerals Corporation*** in ***W.P.(T) No. 432 of 2021*** was taken up before this Court on 24.02.2022, this Court was apprised of the judgment dated 04.01.2022 passed in the case of ***M/s Lakhwinder Singh***(supra) wherein the Apex Court had refused to entertain the petition under Article 32 of the Constitution of India at the first instance and relegated the petitioners to avail of the alternative and efficacious remedy before the concerned High Courts under Article 226 of the Constitution of India. The petition was dismissed leaving it open to the petitioners to pursue their remedies in accordance with law. In this background the present batch of writ petitions have been posted for consideration on the continuation of the interim relief granted to them earlier, so far as levy of GST on royalty and DMF is concerned. Some other fresh writ petitions have by now come on board, which have been tagged together by the instant order also on the same issue.

4. In the respective writ petitions preferred by learned Senior Counsel Mr Biren Poddar and learned counsel Mr. Sumeet Gadodia, the petitioners have laid challenge to the show cause notice/ notices issued by the Respondent Authorities directing them to furnish data relating to payment of royalty against licensing services for right to use minerals including exploration and evaluation for different periods concerning levy of GST on royalty. In some of the writ petitions petitioners have sought declaration that royalty is not a payment in respect of a taxable service and as such there is no liability to pay GST on royalty and DMF.

5. Learned counsel for the petitioners have pressed the prayer for interim protection from levy of GST on royalty and DMF or continuation of the interim protection granted earlier in some of the writ petitions based on the following plea:

- (i) The sheet anchor of the case of the petitioners is that royalty is in the nature of a "Tax" or profit pendre and cannot be termed as a consideration towards supply of services in terms of Section 15 of the GST Act. They have placed reliance on the case of ***India Cement Ltd. & others Vrs. State of Tamil Nadu & others*** reported in ***1990 (1) SCC 12*** rendered by the 7 Judges Constitution Bench of the Apex Court where in it has been held that royalty is a tax. Learned counsel for the petitioners submit that in view of the opinion of the Apex Court in the case of ***State of W.B. Vrs. Kesoram Industries Ltd & others*** reported in ***2004(10) SCC 201*** rendered by a 5 Judges Constitution Bench of the Apex Court, the very question whether royalty is a tax or not, is pending consideration before a 9 Judges Constitution Bench of the Apex Court in view of the reference made in the case of ***Mineral Area Development Authority & others Vrs. Steel Authority of India & others*** reported in ***2011(4) SCC 450***. Till the issue is authoritatively decided by the 9 Judges Bench, the ratio rendered by the Apex Court by a 7 Judges Constitution Bench in the case of ***India Cement*** (supra) holds the field.
- (ii) Learned counsel for the petitioners have drawn the attention of this Court to the provisions of Article 366 (12 A) of the Constitution of India, which defines "Goods and Services Tax". Article 366 (12) defines Taxation and includes the imposition of any tax or impost. Reliance is also placed upon Article 246 A of the Constitution of India inserted by 101st Constitutional

Amendment where under special provisions has been made in respect of Goods and Service Tax.

- (iii) Learned counsel for the petitioners have also placed reliance upon the relevant provisions of the CGST Act such as Section 15, which provides for value of taxable supply. However, the basic plea of the petitioners is that royalty being a tax cannot be the price paid for any supply of services so to say, conceived under the GST Act for leasing out the minerals to the writ petitioners / lessee within the meaning of the expression used under Schedule II of the Act. A Tax in the nature of GST cannot be imposed on royalty, which in itself has been held to be tax by the Apex Court in the case of *India Cement* (supra).
- (iv) Learned counsel for the petitioners have also referred to the observations of the Apex Court relying upon the classic exposition of Latham CJ in *Matthews Vrs. Chicory Marketing Board* in the case of *Dewan Chand Builders & Contractors Vrs. Union of India & Ors.* reported in *2012(1) SC 101*. The Apex Court in the said case has relied upon the Constitution Bench judgment in the case of *Hingir Rampur Coal Co. Ltd. Vrs. State of Orissa* relating to the challenge to the constitutional validity of the Orissa Mining Area Development Fund Act, 1952 levying cess upon the petitioner colliery wherein the different features of “tax”, “a fee” and “cess” has been dealt with. A ‘tax’ as per Latham CJ “is a compulsory exaction of money by public authority for public purposes enforceable by law, and is not payment for services rendered”.
- (v) They have also referred to the judgment rendered by the Apex Court in the case of *Commissioner of Income Tax, Udaipur, Rajasthan Vrs. McDowell and Company Limited* reported in *(2009) 10 SCC 755*, para 21 and 22, wherein it has been held that “Tax”, “duty”, “cess” or “fee” constituting a class denotes to various kinds of imposts by State in its sovereign power of taxation to raise revenue for the State.
- (vi) Another limb of argument on behalf of the petitioner is that levy of GST on royalty/ DMF is akin to levy of service tax under the Finance Act, 1994, since by virtue of the 101st constitution amendment, various indirect taxes prevalent in the country such as VAT, Central Excise Tax, Service Tax, Entry Tax etc. have been

subsumed in one Tax in the nature of Goods and Services Tax. Article 366 (12A) of the Constitution of India defines Goods and Services Tax to mean tax on supply of goods and services or both. The nature of levy under the service tax under the Finance Act, 1994 imposed by the respondents are akin to GST. On a mistaken notion of supply of services by way of leasing of mineral rights to the petitioners by the State, GST is sought to be imposed on royalty. Since the levy of service tax on royalty/ DMF has been stayed by the Apex Court in the case of *Udaypur Chambers of Commerce and Industry & others Vrs. Union of India & Others* in *Special Leave to Appeal (C) No. 37326 of 2017* and following the said order, interim reliefs have been granted by this Court and other High Courts on levy of service tax on royalty/ DMF, by the same principles petitioners be granted interim protection from levy of GST on royalty / DMF.

- (vii) It is further submitted that the Apex Court in the case of *M/s Lakhwinder Singh (supra)* had earlier been pleased to grant interim protection on levy of GST on mining lease / royalty being guided by similar consideration. Though the said writ petition has been dismissed to enable the petitioners to avail of the alternative remedy before the concerned High Court under Article 226 of the Constitution of India, the principles on which such interim protection was granted by the Apex Court on levy of GST on mining lease/ royalty, should apply to the case of the petitioners at hand. Interim order has been passed by other High Courts on independent consideration, such as in the case of *Oil India Limited Vrs. Union of India & others (W.P.C. No. 3872 of 2020)* by the High Court of Gauhati vide order dated 17.11.2020. Similar order has been passed by the Andhra Pradesh High Court in the case of *M/s C.R. Granites Vrs. The Assistant Commissioner (ST)(FAC), Addanki Circle, Addanki & another* in *Writ Petition No. 30248 of 2021*, order dated 22.12.2021. It is submitted that the different High Courts as above have taken into consideration that the question whether royalty is a tax or not is pending consideration before the 9 Judge Constitution Bench of the Apex Court and till then the ratio rendered by the 7 Judges Bench in the case of *India Cement Ltd. (supra)* that royalty is a tax holds the field.

Learned counsel for the petitioners submit that petitioners are

suffering under a constant threat of recovery of GST on royalty/DMF and if interim protection is not granted, they run the risk of paying interest on any unpaid amount of GST on such royalty /DMF, which may entail huge unnecessary burden on the petitioners. Based on these pleas learned counsel for the petitioners have pressed for interim protection on levy of GST on royalty/DMF.

6. Learned counsel for the respondent State, Additional Advocate General No.-II Mr. Sachin Kumar at the outset submits that the matter may be posted for final hearing on any convenient date and no interim protection may be granted. Learned counsel for the State has made two fold arguments on the interim plea:

- (i) That royalty also amounts to a consideration on which GST can be levied.
- (ii) That there is no bar on imposition of GST even if royalty is considered as a tax as per the judgment of the Apex court in the case of India Cement Ltd. (supra).

Counter affidavit has been filed by the State in some of the writ petitions.

7. Learned counsel for the CGST Mr. Amit Kumar and Mr. P.A.S. Pati in respective cases have also opposed the plea. They have drawn the attention of this Court to Section 7 of the CGST Act, 2017 which explains the expression “supply” and includes all forms of supply of goods or services or both, such as sale, transfer, barter, exchange, license, rental, lease etc. He submits that clause 1(a) under Section 7 provides that activities such as lease are to be treated as supply of services as referred to in Schedule II. Referring to the definition clause of “consideration” under Section 2(31), it is submitted that “consideration” in relation to supply of goods or services or both includes any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government. As such royalty would come within the meaning of consideration in respect of the services received by the petitioners on grant of such lease of exploration of minerals. Based on these contentions learned counsel for the respondents have opposed the prayer.

8. We have considered the submissions of learned counsel for the

parties on the prayer for interim relief on the levy of GST on royalty /DMF. On consideration of the rival pleas in the canvass of facts and the legal propositions advanced by them, it is clear that the levy of GST by the respondents is on the royalty/DMF in respect of the mining lease granted to the petitioners. The decision of the Apex Court by the 7 Judges Constitution Bench in the case of **India Cements Ltd.** (supra) that royalty is a tax is under consideration before a 9 Judges Constitution Bench of the Apex Court upon reference made in the case of **Mineral Area Development Authority & others** (supra).

9. Following the interim order passed by the Apex Court in the case of **M/s Lakhwinder Singh** (supra) dated 04.10.2021, this Court had been pleased to grant interim protection on levy of GST on mining lease / royalty/DMF. In the background of the legal position that royalty has been considered to be a tax or profit pendre and the issue is pending before the 9 Judge Constitution Bench, we are of the considered view that the petitioners have made out a case for interim protection. As such, there shall be stay of recovery of GST for grant of mining lease/ royalty/DMF from the petitioners till further orders. However, the Revenue is not restrained from conducting and completing the assessment proceedings.

Since interim protection has been granted earlier in the case of **Sunita Ganguly and others Vrs. Union of India & others** vide order dated 02.03.2021 passed in W.P.(T) No. 3878 of 2020 and other analogous cases on levy of service tax on royalty/DMF, similar interim protection is being granted in W.P.(T) No. 897 of 2022, W.P.(T) No. 903 of 2022, W.P.(T) No. 926 of 2022, W.P.(T) No. 927 of 2022 where the levy of service tax on royalty/ DMF is under challenge. As such, interim order dated 02.03.2021 shall govern the case of said writ petitioners also.

10. Learned counsel for the respondent State and CGST are granted 3 weeks' time to file counter affidavit in respective writ petitions in which no counter affidavit has been filed. 2 week time thereafter is granted to the petitioners to file rejoinder, if any. Let these matters be listed in the 1st week of July, 2022.

(Aparesh Kumar Singh, J.)

(Deepak Roshan, J.)

A.Mohanty